House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 051 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, May 10, 2007

Chair

Mr. Colin Mayes

Standing Committee on Aboriginal Affairs and Northern Development

Thursday, May 10, 2007

● (1130)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I open the Standing Committee on Aboriginal Affairs and Northern Development of Thursday, May 10, 2007.

Committee members, you have before you the orders of the day. We're continuing our study of Bill C-44, An Act to amend the Canadian Human Rights Act.

We'll be going for three hours. We have two panels, so we'll deal with the first panel of witnesses now.

From the Norway House Cree Nation, we have Chief Marcel Balfour. From the Six Nations of the Grand River, we have Chief David General, and Richard C. Powless, consultant.

Welcome, witnesses. Thank you very much.

We'll be asking for a presentation of 10 minutes from each of the representatives. Then we'll be asking questions.

I apologize for the delay.

Mr. Balfour, do you want to begin?

Chief Marcel Balfour (Norway House Cree Nation): Thank you.

I regret that I don't have a presentation for you. I pulled this together at the last minute, and hopefully I will be able to highlight some of my speaking notes here and provide you a copy later.

Tansi, distinguished members of the committee. My name is Marcel Balfour. I am the chief of Norway House Cree Nation, or what would be referred to under the Indian Act or Treaty 5 as the Norway House Band of Indians. We are located on the Norway House Indian Reserve, or on the Norway House Cree Nation reserve land, which is located in mid-north Manitoba, about 850 kilometres north of Winnipeg. We have a population of over 6,000 people now, with about 4,500 living on-reserve and about 1,600 living off-reserve.

Over time, we have been referred to by many as one of the more progressive first nations in Manitoba.

By way of background, I was elected chief in March 2006, and from 2002 to 2006 I was elected Norway House Cree Nation councillor. From that experience, I have a personal understanding of human rights on reserve, or the lack thereof, because during my term in office, I had to go to court to be able to carry out some of my elected duties.

In February 2006, the Federal Court found that I was subject to influence peddling and blackmail by the then chief and some of my fellow members on the council. The Federal Court also noted that the rule of law was not being followed in Norway House. Luckily, with time things changed, and some members of my council and I have remain committed to human rights, to ensuring accountability for the spending of band funds, and to protecting aboriginal and treaty rights.

It is within this context that I have both concern and measured enthusiasm regarding the repeal of section 67 of the Canadian Human Rights Act, as set out in Bill C-44. In my presentation, I should like to first deal briefly with human rights and aboriginal and treaty rights; second, identify the need to balance individual and collective rights; third, share with you some concerns identified by my people in Norway House on reserve, when we met to discuss Bill C-44; and finally, identify some possible avenues to address the shortfalls of the bill.

I should like to encourage the efforts of Canada's current government to further human rights for Indians and bands of Indians, as defined under the Indian Act. It is well known that section 67, enacted in 1977, was originally intended as a temporary measure. I believe it is long past due to address the inequalities imposed by section 67.

Unfortunately, however, over time with respect to this issue, things have not changed much for Norway House. For the last 30 years, there has been no consultation with the Norway House Cree Nation, neither with the Norway House Band of Indians nor with individual Norway House Band members. This includes not working together with the Canadian Human Rights Commission, the federal government, the Assembly of Manitoba Chiefs, the Assembly of First Nations, NWAC, or any other aboriginal organization that has been talking to you or working on this particular issue.

I find that I'm being pressed here to present on something that has been looked at over the years and is something that really needs to go forward. I believe the Canadian Human Rights Commission presented to you and asked, why is the repeal so urgent? They were saying that it's long overdue. I would say, why is it so urgent now? I haven't had a chance to take a look at this stuff. This legislative agenda is extremely fast for me as a chief, but also for my band. Ironically, we have not been informed or consulted.

I asked the Canadian Human Rights Commission and Indian and Northern Affairs to please come and do a presentation at Norway House, at least to inform my people as to what's going on. Both said they didn't have enough resources to be able to do that. Luckily, I had the benefit of a technician who came from the Assembly of Manitoba Chiefs to try to explain what's going on here, which was really hard to do.

When I had that session—and it was only last week—we had 30 people discuss it. I kind of forced my staff to attend, because I knew people probably wouldn't be too interested. Of the 30 members of my band on reserve, 17 of them are women and 13 are men. It became clear to me that I should present to you that while a repeal of section 67 is supported, Bill C-44 is not.

Both the CHRA and the implications of Bill C-44 are not necessarily well understood by my people, who have not been consulted. I would wholeheartedly agree with the revocation of section 67, but I cannot support the bill.

● (1135)

My rationale for this position is based on two interrelated factors: my belief in the fundamental importance of human rights, aboriginal rights, and treaty rights, and the crucial role of consultation in the democratic process.

Canada's first nations, both individual Indians and Indian bands, who are living under the Indian Act have their own long-standing customs of governance, many of which pre-date those of Canada itself, and which have traditionally provided an harmonious balancing of both the collective human rights of the community and the human rights of the individual.

I go further in my presentation, but I think I could probably address the issues more appropriately in questions and answers, because I'm sure you've heard them before from other presenters.

The way I look at this, the CHRA, in its current form, embodies an essentially western or Euro-American notion of one aspect of individual human rights, notably, equality rights, and western or Euro-American remedies and dispute resolution mechanisms to ensure protection of those rights. The CHRA offers little with regard to protection of other human rights, whether collective or individual, of the community, such as constitutionally protected treaty rights and inherent aboriginal rights.

The Chair: Chief Balfour, could you slow your presentation down so that the translator can keep up?

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): We can give you two additional minutes.

Chief Marcel Balfour: Good. Thank you. Then I'll talk much more slowly, because I wasn't even following myself.

Some hon. members: Oh, oh!

Chief Marcel Balfour: While Bill C-44, perhaps admirably, increases protection of equality of rights for aboriginal people under the Canadian Human Rights Act, it does not address the question of balance between individual equality rights and protection of other individual human rights. This a central consideration that I think you've been hearing a lot about from other witnesses.

I guess when I take a look at this, it's informed also from an international perspective. Looking at the international context, one might cite from an equality perspective articles 2 and 3 of the UN Covenant on Civil and Political Rights. These provisions, which are often cited as being violated by section 67, protect individual equality rights by requiring states to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the covenant, without distinction of any kind, such as race, sex, colour, or religion, and requiring states to provide remedies for violations. However, at the same time, the covenant also provides that these individual equality rights may be limited to protect the existence of the states, i.e. the collectivity, for example, in cases of public emergency as set out in article 4.

Further, and quite significantly for first nations, article 1 of the covenant sets out important collective rights, namely, that all peoples have the right of self-determination, and that by virtue of that right, they may freely determine their political status and freely pursue their economic, social, and cultural development.

The Canadian Constitution, within the Canadian context, also recognizes the importance of individual rights, including individual equality rights and collective rights. You've heard analysis on section 15. From a broader perspective it also, of course, protects collective rights. The charter, though, does not limit the protection of human rights protected therein to individual equality rights. In direct reference to collective rights, the charter recognizes and protects, in addition to the collective rights of first nations, collective rights of linguistic communities with regard to the official languages of Canada.

For example, the charter recognizes that members of English or French linguistic minorities have the right to have, in certain circumstances, their children educated in their own official language. In this connection, the collective rights afforded to the English and French language communities in New Brunswick are particularly striking.

Sections 16 and 16.1 of the charter specifically recognize that the English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

While I recognize that there are limitations to any analogy that may be drawn with the situation of Canada's first nations, I believe that the wording in the charter with regard to New Brunswick's linguistic communities provides an interesting example of the important role of collective rights.

Similarly, one must also consider that the charter, as well as the Indian Act, mandate that first nations be empowered to take action to preserve their existence, identity and culture of their communities.

When I take a look at this, I think there might be a tendency to characterize opponents of Bill C-44, if there are any, in its current form as being anti-human rights. But that's not where I think this argument is coming from, or where I'm coming from at all. The diversity of rights protected in both the charter and international instruments demonstrates that the concept of human rights extends far beyond the equality of rights promoted by Bill C-44. Given the broad spectrum of human rights recognized in both Canadian and international law, as well as the recognition that equality of rights also can apply on a collective basis, I think that characterizing Bill C-44 as pro-human rights versus anti-human rights is both counter-productive and misleading.

Secondly—and I believe this point to go to the heart of many of my reservations about Bill C-44 in its current form—the broad concept of human rights also recognizes rights of the collectivity, and that collective human rights and individual rights must be reconciled.

While I do not want to address the various pros and cons of the Indian Act—and I find it kind of funny because the last time I was here I was speaking on the FNGA and we were talking about, “Don't tinker with the Indian Act” —it's kind of ironic that we are actually promoting an application of human rights law on race-based legislation. In effect, what we're doing is tinkering with the Indian Act.

● (1140)

So if I say yes to this, it means I say to the Indian Act, and I can't. It's just an untenable position I find myself in as chief.

There are at least areas recognized in the Indian Act as well as the charter that are exercised by bands with a view for protecting culture, language, and welfare, and there are specific powers within the act as well. And of course you know this already. There are always problems with the Indian Act in terms of bylaw-making power, and land designation, and the role of the minister. There is something there, weak as it is.

The Chair: Chief Balfour, I'm sorry, could you go more quickly through your submission.

Chief Marcel Balfour: Okay. I won't go faster, but I'll cut out a lot.

My people have expressed fear with regard to Bill C-44. As I said, the small working group I had and I discussed this—for on-reserve only, never mind my off-reserve members—and some members of the band expressed fear that they might be excluded from housing on-reserve. Others expressed concern that the band might have to start providing services such as health care for people off the reserve. Other band members stated that they did not understand or know what the Human Rights Act is or what available remedies there are. Others were worried that the implementation of Bill C-44 would diminish our treaty and aboriginal rights, and others felt that it was leading to further assimilation.

I should like to perhaps just quickly identify three areas that I've thought about but I haven't really.... I sat down to present this, but I haven't thought about everything.

One of the ideas with respect to this particular bill—or an approach to a bill, if you wish to proceed on it at another time when there's actually consultation with those who are on-reserve who will be affected as well as those off-reserve and bands— is maybe a first nations notwithstanding clause.

Now, I know you've listened to a number of presentations, and they're well considered. Certainly from AFN there was some good analysis.

The provision of a notwithstanding clause in the CHRA itself would allow first nations to override the equality protections of the CHRA, but of course such a clause would rather obviously require careful wording and might be objectionable in the eyes of many.

While the notwithstanding clause is controversial, history has shown us that its existence has not provided an insurmountable barrier to the protection of human rights in Canada. Federal and provincial governments have this, so why don't first nation governments have this?

The second consideration, another option that might be considered, would be a saving or justification clause serving a function similar to section 1 of the charter, that would allow restrictions on CHRA rights by first nations to the extent that such restrictions are demonstrably justified. There are a number of things of course that need to be considered. The wording would definitely have to be well thought out, and again, consultation would definitely be a key on this.

And third, as presented by AFN—and we are cautiously thinking about this—is an independent first nation mechanism, which of course leads to what we can actually do ourselves.

I look forward to questions, and I'm sorry for taking so much time and speeding along at too fast a pace at the beginning.

Thank you.

● (1145)

The Chair: Thank you, Chief Balfour.

Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Mr. Chairman, some witnesses have travelled very long distances to appear before us. The surrounding noise is disturbing, and is preventing us from concentrating on the testimony. I consider this a lack of respect. Can something be done to resolve this problem?

[*English*]

The Chair: We have already done so. The clerk did that right away. She's contacted the Sergeant-at-Arms to see if we can get the music to stop. We can shut that window, but it's not going to make any difference in this particular room, so I apologize for the noise. Is everybody able to hear? I don't know about concentrate, but hear anyway.

We're also looking for another room.

[*Translation*]

Mr. Yvon Lévesque: Mr. Chairman, a distinction should be drawn between hearing and being able to understand. We need to be able to concentrate in order to properly grasp the subject. This is becoming difficult.

[*English*]

The Chair: The chair is going to continue unless I hear from the committee that you don't want to continue because of the distraction.

I just want to announce to our witnesses and of course to committee members that we do have lunch here, because we are bridging the lunch hour, and we invite the witnesses to join us for lunch, if you would like to share lunch with us.

We'll carry on with Chief David General, please.

Chief David General (Six Nations of the Grand River): Thank you, Mr. Chair.

Ladies and gentlemen of this esteemed committee, *sekoh, sge:no*. *Sekoh* is Mohawk for hello. *Sge:no* is Cayuga for hello.

I first want to acknowledge the Algonquin Nation, on whose territory we are meeting today for a very valuable discussion about nations, and this discussion of human rights falls right into the whole discussion of nationhood.

We have provided a short background on Six Nations in our formal brief, which we have tabled with the clerk. I want to start this presentation by stating clearly that this presentation and our participation in this committee process is not to be taken or referred to as consultation. There has been no consultation on this current bill, which I will speak about later. I'm referring to the fact that there have been no formal discussions with Six Nations of the Grand River on this particular topic.

The passage of the proposed Bill C-44 will once again be an imposition of an external law on our community, which is a violation of our treaty relationship with the Crown in Canada. Canada was peacefully settled because of the treaties with first nations and the treaty relationship that followed. These are solemn agreements viewed by many first nations as sacred.

It should be noted that none of the treaties before current day examples ever mentioned the rights of self-government. This is not something that we ever negotiated. It continues to this day. Let me be clear on that point. We still consider ourselves governing bodies of those we are responsible for.

Six Nations has one of the oldest treaties with the Crown in North America, called the *Kahswentha*, the Two-Row Wampum treaty. This treaty recognizes the equal but separate status of our respective governments and forms the basis of our current relationship. It means our governments and nations are equals. The Two-Row Wampum treaty means that in the same way as the two rows do not intersect, our respective governments also agree not to interfere with each other. Human rights is a jurisdiction of Six Nations. Six Nations has the inherent right to self-government, and only Six Nations is best placed to balance the rights of individuals with the collective rights of our citizens.

We are proposing that any legislation would recognize first nations jurisdiction in this area and would only be in place until first nations enact their own human rights legislation codes. It is important to state that any new federal legislation that has the potential to affect our aboriginal and/or treaty rights may trigger the duty to consult, accommodate, and obtain our consent. This duty is recognized by the Supreme Court of Canada. However, it is also a pre-existing duty based on our treaty relationships and alliances with the Crown as part of our Two-Row Wampum treaty. The Supreme Court of Canada has stated that the honour of the Crown mandated the duty to consult with first nations, and the principle is grounded in the honour of the Crown, which is also at stake in its dealing with the aboriginal peoples.

The federal government's duty to consult has clearly not been met with Bill C-44. You have heard from sponsors of the bill that section 67 of the Canadian Human Rights Act has been discussed for 30 years. However, much has changed in that time including the relationships, history, and Canadian law. During that time a constitution has been enacted in Canada that protects the aboriginal and treaty rights of aboriginal peoples of Canada. The specific wording in this bill is different from previous attempts.

It may be true that previous governments consulted native organizations in the past in other attempts to amend the Canadian Human Rights Act. However, the duty today is to consult the rights holders. This means that the government must consult with first nations communities represented by their governments, not with the aboriginal organizations. It means consultation must be held with over 133 first nation governments in Canada that will be affected by this legislation. Only Six Nations speaks for Six Nations. Consultation with anyone else claiming to represent us is invalid.

● (1150)

We submit that the consultation must be done before the legislation proceeds any further. A six-month delay in implementing the legislation will simply not do; the horse is already out of the barn. A six-month delay is meaningless if the ultimate result is the abrogation or violation of our constitutionally protected rights.

Any consultation must provide us with a full and informed analysis of potential impacts of this legislation. No one can say with any certainty what the impact of this legislation will be on our communities. Therefore, impact studies must be completed so that we have the best information available.

These studies must be completed before the legislation proceeds. This means that the timeframe for consultation must be increased to at least a year. We cannot see how the federal government could consult with 633 communities in a short timeframe. It also means resources must be provided to first nations so they can effectively participate. To be clear, consulting with first nations organizations will not meet the duty to consult.

Government sponsors of this bill have stated that any more delays in this legislation will lead to more human rights violations in first nations communities. Yet I would strongly argue that there is no pressing or immediate need for this legislation. The Canadian Human Rights Commission itself has cited only 20 examples per year of complaints amongst first nations. This is not a significant problem given the millions of first nations citizens across Canada.

The implementation and transition period provided in Bill C-44 must be extended. If it took the government 30 years to take action on this issue, surely they can take a few more to do it right.

It is important to note that when section 15 of the Charter of Rights and Freedoms was passed, three years were given before implementation. First nations deserve the same treatment and timeframe, 36 months, for implementation and transition and to ensure a grave mistake is not made.

This extra time should be taken at the beginning of the process, and following consultation, the legislation must be amended to reflect the results of the consultation.

The Canadian Human Rights Act primarily deals with individual rights. Like other federal legislation, it was developed from the different systems of law, traditions, and history and reflects a world view not shared by first nations, with the emphasis on individual rights over collective rights. Our histories, customs, traditions, and rights are based on collective rights, and they are reflected in our unique cultures, practices, traditions, and languages.

To be clear, we are fully supportive of individual human rights, but they must be balanced with the collective rights of our communities, cultures, and societies. We want to ensure that this legislation will not affect or interfere with how our traditional governments function. This would not only be an injustice but contrary to the international documents that recognize and protect our rights to our culture, traditions, and practices.

No other governments or people have the right to impose their cultures and cultural imperatives on our nations and societies—again, ladies and gentlemen, that two-row concept.

Article 27 of the International Covenant on Civil and Political Rights provides that persons belonging to ethnic, religious, or linguistic minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. Indigenous people are numerically a minority, so the rights of minorities apply to us. However, it is important to emphasize that we have the legal status of people...and the right to self-determination under international law. It is the obligation of the federal government, under international law, to respect and protect article 27 rights.

● (1155)

Six Nations is also concerned that non-supportive groups and organizations hostile to first nations rights could use the Canadian Human Rights Act to challenge existing first nations specific programs and services, such as education, housing, and tax exemption, etc., based on discrimination against non-Indians. If successful, this could unravel the entire basis of the social programming among first nations communities and create more poverty among first nations communities. I'm sure this is not the intent of this bill. This would impose a levelling agenda of the white paper of 1996.

This speaks to the need for both the interpretative clause and a non-derogation clause in the legislation that will balance individual rights and collective rights and protect the treaty and aboriginal rights of first nations. All first nations must be able to continue to provide first-nations-specific programs and services to their citizens without being charged with discrimination by outside interests.

The proposed legislation would impose unfunded, unforeseen, and potentially massive costs on all first nation governments. First nation governments will be required to participate in expensive tribunals. The current funding base is totally inadequate, and we've been subjected to a 2% funding cap, in place since the early 1990s. It is impossible to know the short- and the long-term impacts. However, we do know Six Nations does not have the existing resources to respond to potentially major costs resulting from this legislation.

For example, it is likely that the disabled or handicapped citizens will be the first to come forward and lodge complaints for the lack of accessibility to our facilities, yet we have never been adequately funded and we do not have the resources to make our facilities accessible to the handicapped. This is a very real example of where resources for first nations will be required immediately. Training in the entire process will be necessary. When you factor in 633 first nations communities, you can see it will take a much longer time than the six months' transition timeframe proposed.

The federal government has stated that international pressure led it to this action now, and we find it indeed ironic that the government, which is attempting to portray itself as the champion of human rights, is currently blocking the approval of the United Nations draft declaration on the rights of indigenous people.

The United Nations High Commissioner for Human Rights, Louise Arbour, the former Canadian Supreme Court judge, stated she does not understand why Canada has such a problem with the declaration. As a former Supreme Court judge, she sees no threat to Canada in the declaration, and she has said so to the Government of Canada. Perhaps this committee could persuade Canada, at a later date, to stop their hypocrisy and withdraw their opposition to the United Nations draft declaration, which is simply attempting to protect the international human rights of indigenous people.

Six Nations also is concerned with indigenous human rights and reminds Canada and this committee that human rights include the rights to safe water and adequate, decent housing; the rights to be employed, to clean air, and to good health; the right to culturally appropriate education, and the right to raise our children in their own first nations culture and language.

● (1200)

That concludes my comments to the committee today. I look forward to any questions you may have. From our territory, I say *niawen ko:wa*, which roughly translates into a big thank you.

Niawen ko:wa.

The Chair: Thank you, Chief General.

Okay, we'll move into the questions. Mr. Merasty, seven minutes.

Mr. Gary Merasty (Desnethé—Missinippi—Churchill River, Lib.): Thanks, Mr. Chair.

First of all, I want to thank you for your presentations here today. I think they were done extremely well, and you were very analytical in the way you presented them.

I've heard many different views from the aboriginal community on Bill C-44 and on human rights. I respect Chief Balfour for his comments that sometimes we have to split the repeal itself apart from the act, because they are two different things. You said you'd support the repeal, but not necessarily the act, and I think that's a very valid and worthwhile statement. From what I've heard over the last number of months with this issue, there is tremendous support for human rights issues and so on.

Now, in 1985 the Conservative government—at the time, of course—rushed into an amendment to the Indian Act, the tinkering you talk about, Chief Balfour, and ended up with Bill C-31. It was rushed. It was done in the name of protecting women. I think at the time the Conservative government believed it was the right thing to do. I hope there weren't any alternative motives; I don't think there were. However, Bill C-31 ended up being much more discriminatory and is actually more unfair to women and children in many respects, and many studies have said it will lead to there being no status Indian people within a few decades. So it was a very problematic piece of legislation that was rushed into in the name of ideology.

Today, in 2007, we see the same rushing into Bill C-44. It's rushed. Again, it's in the name of protecting women and children. I truly believe that my colleagues across believe this is the right thing to do. In many respects I agree, because we need to do some work in this area.

Women's groups, other aboriginal organizations, witnesses have appeared before this committee and have expressed their concerns. I want to summarize some of them.

Very logically, as you've presented this morning, we've heard people talk about the need for an interpretive clause, a non-derogation clause or a notwithstanding clause; a longer transition period than what is currently allowed; a more detailed impact analysis done from a legal perspective, because this will have consequences on other legislation as we move forward, including the Indian Act itself; and analysis of the balance on the collective rights of our people, treaty rights and aboriginal title, and so on.

Now, these arguments and these positions sound fair to me. I have not heard anybody say we're against human rights, and I think it's important to state that if you're against Bill C-44—I'm repeating again what was said here—you're not against human rights. That is an unfair painting of people who speak to concerns about Bill C-44.

I've also heard some concerns that the Conservatives have said that this process is consultation. I don't know if it is, because consultation usually occurs before a bill is drafted and worded and so on.

In essence, all these concerns fall under two umbrellas, as I look at it. The first umbrella assumes that we scrap the bill and that the government immediately engage in consultation to address this gap in the provision of human rights, balanced against all other issues—the collective rights, the impact on the Indian Act, all these other things—so that we can begin to address this fairly and reasonably.

The other bunch of concerns fall under the assumption that if the bill is not scrapped, then we need a longer transition period, we need more study, we need the non-derogation or interpretive clause, and so on.

I'm hearing from people out there that there's support, but that Bill C-44 is not the vehicle to get us there. Is that a fair statement? What do you think of what I've laid out here?

I don't know who wants to start first.

● (1205)

Chief David General: Thank you for the question, Mr. Merasty.

I'd like to say that your overview is a fair and accurate assumption of how most first nations citizens would view the consideration of human rights. I think they realize that all first nations governments across the country, in attempting to provide the provisional things like safe drinking water, adequate housing, and education, have a vested interest in human rights. What we are considering here is a provision, a recognition of all the rights that we consider the Creator provided and for which we have to be responsible to our brethren. All we're considering is that they be applied to this group that has been identified in the amendments to section 67. We have no problem with that.

Where there may be difficulty is with this whole reconciling of what rights an individual has over the rights of the collective. I can tell you of the experience we have had with one incident we have going on in our territory right now. When our community weighs into an issue and grabs hold of it and talks about it, that will take us a lot longer than six months. It will take us a lot longer than a year. It has taken us over a year to talk about this one particular issue, and I would assert that this discussion on human rights, if we are really consulting our community, our grassroots people, will take a considerable amount of time, longer than, I believe, this current government has.

● (1210)

Mr. Gary Merasty: Chief Balfour.

The Chair: You only have 35 seconds.

Chief Marcel Balfour: I'll try not to speak really fast, then.

As chief of Norway House, I have a position that is quite clear, and it's spelled out in writing.

I would say you have to throw out the bill because, as a chief, I can't be supporting this process that does not consult and engage me or my people. To say that it's section 67, human rights, or whatever—it's already tainted.

The Chair: Thank you.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Thank you for being here. I was not sleeping; I can assure you that I was listening to what you were saying quite attentively. Grand Chief, I wish to welcome you, and especially the aboriginal women from your six nations, who are here with you today. I had the opportunity and honour of meeting these ladies this week. Welcome to the committee.

Chief Balfour, I'm also very pleased to meet you and to understand your position. I've taken notes. I practised as a lawyer, you see. I have only one question, and I'd like an answer. You may take all the time you need.

We are in a minority government. Across the way, are the Conservatives. On this side, members come from the Liberal, Bloc and NDP parties. We are considering Bill C-44. We can propose significant amendments. My colleague, Mr. Merasty, has described the amendments quite eloquently. I will not go over them again, but I believe that we are heading down that track.

Would you be willing to run the risk of having us suspend the committee's work so that we can hold adequate consultations? This may take between six months to one year, and there's a possibility of an election. This is an entirely far-fetched hypothesis, but it is possible that the Conservatives will form a majority government, that they will once again table the bill and adopt it without any consultation. Or rather, would you prefer that we make the amendments that you have proposed, Grand Chief General?

I've read your submission. I would like to know your position. What do you really want? Now is the time to say so. I can assure you that I do not consider that the work of this committee constitutes the type of consultation referred to in the Supreme Court's rulings regarding Bill C-44. I know, and we all know what a true consultation should be. I would like to hear your comments on this matter.

● (1215)

[*English*]

Chief Marcel Balfour: Thank you.

I'm not a parliamentarian, but there are particular tactics you could probably employ. That would be pushing this bill through as quickly as possible and then voting against it. If you are in a minority position, then arguably you would be able to have the support of your three parties to be able to vote it down, based on very succinct and well-established precedents in Parliament in the recognition of aboriginal treaty rights.

But if you're asking me, I don't know. I've never contemplated that before. I can't necessarily say that on the one hand I should like to see some amendments so that I agree with this process. I specifically spoke in front of you guys before with FNGA because I wanted it on the record that Norway House was not involved in that process, that Norway House was not agreeing to that process. I think that's really important.

That's why I'm here today, because Norway House is not agreeing with this process. It's a parliamentary process. As with Chief Balfour ten years ago, you supported Bill C-44 and you suggested some amendments. So what's so wrong about doing whatever may be up someone's sleeve ten years from now, right? It sets a very dangerous precedent for me, as chief of Norway House Cree Nation, to be able to say I support a bill that I think doesn't meet the criteria and respect my people.

[*Translation*]

Mr. Marc Lemay: Grand Chief General, do you have any comments?

[*English*]

Chief David General: It sort of works on a sliding scale. In this piece of legislation, the recognition of jurisdiction for first nations to deal with human rights issues would be the optimum. But on a sliding scale, we realize we are in a parliamentary process and can only offer amendments to the bill. Some of the items Mr. Merasty offered—the non-derogation clause, the interpretive clauses—and maybe even consideration in developing an implementation schedule so we know what the real rolling out and operationalizing of this bill is going to be, would help a lot of first nations understand what it's about.

We take a chance every day. We take risks every day when we come forward to the government and ask for clean water and housing. That is no different from the approach we have for this issue. We always hope there is political will—good minds, as we conceive in our culture. We hope there is a willingness, that human rights doesn't know minority or majority governments, that it doesn't know party lines; it's just something we need to do because the Creator has obligated us to do this for our brothers and sisters.

The Chair: Thank you.

Madam Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

I want to thank you for coming to present your views to the committee today.

On a point of clarification, there is no reason why Bill C-44 cannot be put on hold until appropriate consultations have taken place.

But I think you've both addressed a far larger issue. We've heard consistently from witnesses who have come before the committee that they support the repeal of section 67. But it is the process. I know certainly that some of my colleagues and I have spoken about the need to repeal section 67.

Chief General and Chief Balfour, you've both touched on the larger problem. It doesn't matter whether it's Bill C-44, matrimonial real property, housing, or what bill comes before the committee; the larger issue is the lack of recognition of a nation-to-nation status. If we were talking to any other treaty signatory as a Canadian government, we would not present them with a fait accompli; we would not present them with a bill and ask them what they thought. If we wanted to change a treaty in which we'd already engaged, or change some rights that we had agreed to through a treaty process, we would engage in dialogue and consultation before we drafted any kind of legislation or treaty changes.

I think that comes to the heart of the matter of this. Once again we have a government that presents you with a proposal and asks what you think, instead of coming to you first and saying, "We think we need to do something about the repeal of section 67. How do you want to do this?"

I wonder if you could comment on that.

Chief David General: Again, I thank you for the question.

I can only say that the extreme standard and requirements of the duty to consult should have been looked at. This piece of legislation, on the sliding scale that the courts have provided us, impacts on our existing aboriginal and treaty rights, and therefore it needs the most consideration. It needs a large duty to consult, with ample time to consult.

It may require an accommodation. This sort of nation approach to providing jurisdiction, recognizing jurisdiction, and letting us look after the human rights codes and laws within our territories would be a significant accommodation. It may even require our consent.

So we need to study exactly what each other's obligations are. We have an obligation to our own people. The Crown has an obligation to us, working through this process. To understand this and have our citizens understand this, we need more time just for the consultation part of it.

A piece of legislation like this, although warranted and needed, is rushing into issues. The 30-year wait for this piece of legislation trivializes the 200-year wait we've had to resolve our land issues, our resource issues, and some of the history of the residential schools that our people have endured.

So when you talk about balancing 30 years against 200 years, I think you owe us the consideration of providing us more time to make sure you get this right. Then we won't have to go to the courts for interpretations and remedies.

Let's take the time, be considerate, be pensive, and do it right the first time through.

● (1220)

Ms. Jean Crowder: Chief Balfour, would you like to comment on that?

Chief Marcel Balfour: Can you rephrase the question? That was a big one for me.

Ms. Jean Crowder: Well, I guess for me it's a philosophical and legal consideration of whether the Canadian government recognizes first nations on a nation-to-nation basis. Canadian governments already have treaties with other nations outside Canada. We would never presume to change a treaty unilaterally without approaching the nation first. I would argue that in this case, and in any other piece of legislation the Canadian government puts forward, they're obligated to engage in nation-to-nation dialogue prior to developing and drafting legislation.

I think this is just an example of how successive Canadian governments, over many years, have unilaterally made decisions and then come and asked you what you think of the idea, instead of doing it before. And I just wanted you to comment.

Chief Marcel Balfour: Right, I agree. And it's not just this government. As I said before, the last time I was here before you, the FNGA, from the previous regime, was being pushed forward, and I think a lot of communities, including Norway House, weren't very comfortable with the approach the federal government was taking with us.

Yes, consultation is cool. It makes sense. The Supreme Court says it. Why don't we do it?

Ms. Jean Crowder: You made a comment about the Indian Act. When the Bar Association came before us, in their submission they actually talked about the fact that Bill C-44 could be used as a piecemeal approach to take apart the Indian Act without any appropriate look at the comprehensive picture. I wonder if you could comment on that, because you raised the Indian Act.

Chief Marcel Balfour: Oh, definitely, yes. That's where I was going with that. I totally agree.

I don't have the resources of the Canadian Bar Association, and I just did this yesterday and the day before, so I regret that I haven't fully analyzed it from that perspective. Definitely, you can hive off tonnes and chunks of the Indian Act. That's cool. That makes total sense.

That legal analysis I understand, and that's what concerns me. But I haven't seen anything, because I just did this in my spare time while I was doing my other duties. But I would make time in the community to participate in an analysis of that at the local level and then also take time to examine some of those things, because that's clearly where I was going with some of the comments I made on the Indian Act.

The Chair: Thank you.

We'll move on to the government side. We'll have Mr. Bruinooge.

● (1225)

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

I'd like to thank all the members who are before us today: Chief General, Chief Balfour, and Mr. Powless. Thank you for coming today.

I'm going to perhaps go back to a comment you made, Mr. General, in terms of human rights. You said that human rights are the inherent right of the Six Nations government. I was wanting you to perhaps define human rights. Can you do that? Considering that it's the inherent right of the Six Nations government, do you have a definition of what human rights are?

Chief David General: I don't have something about that pocket right now, but we'll provide you with something more substantial later.

Basically, when we talk about human rights, it's a responsibility rather than a right, especially when you're in a position of leadership, whether elected or traditional, to make sure that the quality of life—the safety and well-being of your people—is organized in such a way that they can gain the greatest benefits from the rights the Creator provided to them. This is all laid out to Iroquoian people—Haudenosaunee people—in the Great Law.

You may have heard that the arrival of the Great Law in our territory came from a lot of conflict. We had warring tribes all around us. So this is why five nations came together, realizing that there was more strength from putting their energy and time and minds to looking at peace. The Creator provided us with a messenger to say what our responsibilities were.

It's very voluminous. I can get you a copy of what the Great Law is. That is the basis of principle that even we, as an elected council.... Although we're not the formal bearers of that responsibility of the Great Law, it's something we've all grown into, that we all grow up with. And it becomes the basis of our world outlook on our responsibilities to human beings, to wildlife, to the land, and to whatever the Creator provided to us.

So that's the basis of our sense of responsibility for human rights.

Mr. Rod Bruinooge: So would human rights apply equally to all community members in your community?

Chief David General: Yes.

Richard.

Mr. Richard Powless (Consultant, Six Nations of the Grand River): The distinction that I think we make, and Chief General has made in the presentation, is that it is the balancing of the individual and the collective. In the Iroquois communities, it is the collective right. It is for the collective good, and you need to find that balance in the community. That is the distinction around human rights.

Human rights are common sense. They're natural rights. They are the rights of people to live and grow and live in healthy communities and aspire to be working, all the things that everyone can agree to.

But regarding how you approach that from the Canadian human rights perspective, legislation is based on the individual—the individual right always triumphs over the collective one—whereas in our community and our society, it is the collective that is primary, and we have to find what the balance is. Six Nations is the one that is best placed to determine that, to find that balance within our community.

Mr. Rod Bruinooge: How is that determined? How would you determine the balance?

Mr. Richard Powless: Right now we have a collective society, and when there is a need, people get together and meet. If there is a conflict, people get together and meet and discuss it. We don't always have to go immediately to court and sue people, individuals. It is about trying to find some consensus around the issues and around the problems.

Mr. Rod Bruinooge: And human rights would be defined through that same process.

Mr. Richard Powless: One of the processes, yes.

Chief David General: If I may add to that, I really don't think there is this compartmentalizing of human rights. There's this right to exist, and we try to instill in all of our children the relationship with the land, with the Creator, with each other.

So I think we resist this compartmentalizing and view it more as responsibilities to each other, rather than as having rights. We are talking about collective rights and individual rights, but the flip side of that coin is the responsibility to each other. There is more emphasis placed on that responsibility rather than on the whole discussion of rights.

● (1230)

Mr. Rod Bruinooge: Chief General, you also talked about how the rights of minorities apply to "us"—you being the Six Nations people—I guess in terms of the Canadian context, how minority rights apply to you, and that it is essential for many of the rights that you have.

Are there any minorities within your community?

Chief David General: Just to answer the previous question, I said numerically, in numbers, first nations people are low in numbers, so that would justify us as a minority.

But you are talking about inside of our community.

I guess everyone could view themselves, if they have a different point of view in terms of the different religions that we have in our territory.... Yes, they would be in the minority compared with the whole, the total membership. The number of people who make their living off the land, like farmers, is small, so they would be a minority within our community. As for the number of people who are still hunters or fishers, not everybody is a hunter or fisher in our territory, so they would constitute a small group or a minority inside the larger number.

So yes, there are. I am not sure if you want to call them minorities, but they have different perspectives and different interests, yes.

Mr. Rod Bruinooge: Are there any methods for balancing the minority rights within your community with the majority rights?

Mr. Richard Powless: The reference was to section 27 of the political protocol, which talked about minority rights with respect to the state, so indigenous peoples being a minority within the state, as is known in international law and in Canada. That's what the reference was to.

If you're asking whether there are racial minorities, we are all first nations. Haudenosaunee is the word we use to describe ourselves, but within that there are seven nations—Mohawk, Cayuga, etc.—within the community.

So I'm not sure what your question is aimed at. Are you talking about racial minorities? What kind of minorities are you talking about?

The Chair: Your time has ended. We are on the five-minute round now.

We'll begin with Madam Neville, please.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, Mr. Chair, and thank you all for being here today.

The discussion and conversation have gone in a slightly different direction, and I appreciate it.

We've heard a lot about consultation and the fact that consultation, in the best of all possible worlds, should have taken place with nations prior to the drafting of the bill. That has not happened. So we're now in a situation where we have the bill in front of us and we have to decide if and how we move forward. You've heard a whole array of options put forward by colleagues here today.

Assuming that we move forward with the bill and make a recommendation for a 12-, 30-, or 36-month transition period, or an extended period prior to implementation of the bill, how would you see that period being used? How would it be used in your communities? How would you see the government using that?

What we're doing here is not a consultation; it's an information-gathering process, from my perspective. But how would you see that time period being used?

Chief Marcel Balfour: Thank you.

I guess I should preface this by saying that since I was appointed chief, I've had a number of public meetings. Most of my decisions are made in formal meetings that are tape-recorded, like this proceeding now, and played on our local airwaves. I've also had about four or five general band meetings, involving the band as a whole, where people came to discuss particular issues.

When we discussed this particular issue—which was tape-recorded—and after people got over the initial information overload, they became very interested and engaged and wanted a continuation from the chiefs and councils of the discussion on individual versus collective human rights, and the larger context of governance, as well.

It was no mistake when I mentioned that prior to my being elected to office, there were real concerns with respect to the application of the rule of law and the way in which the leadership was doing certain things. And the way in which leadership does certain things, I think, is keenly important in being able to approach this particular issue.

If there were a consultation process after the fact—which, of course, I don't necessarily agree with—I would hope that it would first involve educating the leadership on what this whole process is about. I had the benefit of learning about this particular piece of legislation when I went to law school, but my colleagues on council haven't.

So engaging the leadership would be first, and then I think it would be reasonable to ensure that individual band members, both on- and off-reserve, were educated through a number of workshops and information sessions, utilizing various technologies, and stuff.

We've been asked to do certain things when it comes to the Indian Act, dealing with land, for instance, on which we have to have a referendum. And for Norway House, I think this would be appropriate under the circumstances.

● (1235)

Hon. Anita Neville: Thank you.

Chief General.

Chief David General: My first comment is that it would be a tremendous achievement if in this piece of legislation, if it goes forward, there was the recognition of a first nations jurisdiction in this area—again, I underscore that would be optimum—that if we were provided with more time, whether it's 24 or 36 months, we use the opportunity to develop our own laws using the statements that have been provided as information in this whole discussion on the repeal of section 67. It would be evidence that a first nation has, on the ground, the best opportunity to make sure that any piece of legislation we agree upon is provided to and accessed by our memberships.

The other part of operationalizing something is making sure it's enforceable. I think a difficulty that first nations have had throughout history is jurisdictions coming into their territory, imposing the big footprint, and expecting compliance, but a lot of times it just builds resistance. If it's taken from a grassroots and up approach—consulting the people and letting the leadership hear how the people would legitimize this new fresh approach to the recognition of the repeal of this provision in the Canadian Human Rights Act—it would have a natural up-going and acceptance. You could build that acceptance from the ground up. The important part is that rather than imposing something, you nurture it inside and you have people arrive at the responsibilities that again, I go back to say, the Creator provided to us, that we have to look out for our brethren.

I think that's how we should use the time and the recognition that should be provided to first nations.

The Chair: We'll move on to the government side.

Mr. Storseth.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair.

I want to start by thanking you all for taking the opportunity to come here today. I find this always to be a very enlightening and frank discussion.

It's unfortunate that there is a five-minute restriction, as there are so many questions I'd like to ask you.

I'd like to start with Chief Balfour. You've given us some idea of some of the trials and tribulations you've had in your career to get to the point where you are. I commend you for your hard work and dedication to your people. Without explaining any of the details, if this legislation had been passed a decade ago, would human rights have made it easier for you to get to the point you are today without some of the interference from other authorities that you have experienced?

Chief Marcel Balfour: I'm glad you asked that question. Thank you.

Actually, absolutely not, and the reason is that it's individual in focus from the Canadian Human Rights Act. What I was doing as a representative of my people, as an elected councillor, was pushing for my duty to participate with the government. I was being prevented from doing that. If I were to make a complaint, it would be an individual human rights complaint, but I'm not exactly sure if those services would apply as an elected official anyway in my particular circumstance. Unfortunately, I had to use the Federal Court to be able to do that, and administrative law principles. I think Justice played it correctly and identified the larger issues that were there.

● (1240)

Mr. Brian Storseth: Thank you. And I'm going to stick to Chief Balfour this round.

First I want to ask you if you're happy with the current coexistence of individual rights and collective rights in your community right now. Are you happy with the way they coexist at this moment?

Chief Marcel Balfour: Absolutely not, as the government requires us to discriminate, because we don't have enough resources to be able to provide for our people.

Mr. Brian Storseth: Then the answer is funding.

Chief Marcel Balfour: A large part of it is, but it's not the only part.

What I'm most frustrated with from the perceptive of Norway House right now, and especially after my information meeting of last week, is that people don't even know these fundamental basic rights. I'm starting from ground zero. But I do have the resources in my elders and in our history to pull that together, to be able to make it make sense in the community. There were a lot of questions. People were asking what this really meant, what does this act really do. Within the context of who we are as Norway House Cree Nation, all that needs to be dusted off and revisited.

Mr. Brian Storseth: So would it be fair to say that through your consultations with the people in your community there is some general optimism for this legislation, although much more education needs to be done with regard to this?

Chief Marcel Balfour: No, it wasn't consultation that I did; it was a very last-minute information session I had with one technician from the Assembly of Manitoba Chiefs. It wasn't even from Indian and Northern Affairs, it wasn't even from the Canadian Human Rights Commission. But what I got from that was questioning how we can be consulting with somebody when we don't even know what we're consulting on. There needs to be very fundamental information sharing and an understanding and education first.

Mr. Brian Storseth: How much time do I have, Mr. Chair?

The Chair: You have about a minute and 15 seconds.

Mr. Brian Storseth: Perfect.

I'll ask my last question of you then, Mr. Balfour.

You mentioned the first nations notwithstanding clause to fundamental human rights. Can you explain this? This seems a little abstract, and I'd like you to define exactly what you're talking about with this idea and how it would be used in principle. All in a minute.

Chief Marcel Balfour: Yes, no problem.

I can't. My short answer is I can't. Because, in terms of looking at the law with respect to the Charter, it makes sense to me, but to be able to get into that type of discussion was what, to my mind, either the Canadian Human Rights Commission or somebody should have been doing over the last number of years. I asked for information on how this was discussed over the last 30 years, where are the reports with respect to communities—to be discussing some of these interesting issues. And I got nothing. The Manitoba region of the Canadian Human Rights Commission said there was nothing.

The process of consultation and the discussion of these issues is really about consultation among lawyers and consultants, perhaps with “representative” organizations, such as the AFN or NWAC or whoever, but it's not really fleshing that out.

So I can't, but that's one of the really important components of consultation. That concept and that stuff should have been discussed a long time ago. It should have been an ongoing debate and something presented to you, as parliamentarians, coming from a really fruitful tearing apart and reconstructing of some of these ideas.

The Chair: Before we go to the next question, I want to say I'm going to allow it to run over a little bit because we were a half hour behind in starting. So I'm going to try to break up that time between the two panels we have today.

We'll move on to Mr. Lévesque, please.

[*Translation*]

Mr. Yvon Lévesque: Welcome, welcome.

The interests of the first nations are of great importance to me; these are my brothers. It is clear that your culture and your way of seeing things are different from ours. My colleague asked you if you would prefer striking out section 67 in favour of discussions and negotiations with the government to adopt measures that would streamline the application of Bill C-44.

Some point to the fact that article 25 of the Canadian Charter of Rights and Freedoms is often referred to as a protective provision. It is said that the fact that the Charter guarantees certain rights and freedoms does not adversely affect ancestral rights and freedoms flowing from treaties or other similar documents. Moreover, section 35 of the Constitutional Act, 1982, acknowledges and confirms existing rights.

Grand Chief General, you have been well advised by Mr. Powless. For the good of your nations, do you think that recommending delaying the application of the act while negotiations take place with the department or the government with a view to mitigating certain difficulties would be better than running the risk of having a majority government? Such a government could at some point enact the legislation as it stands currently, and this would give your nations nothing, aside from more difficulties.

● (1245)

[*English*]

Chief David General: Thank you, Mr. Lévesque, for the question. You present us with a whole Pandora's box of possibilities.

I'm very fortunate to have Richard Powless here and a number of my council, who have engaged in this whole discussion of Bill C-44. They're up here on the Hill.

I think that if we were to move forward with this piece of legislation—again I would hold up the jurisdiction as being the major achievement—in the time that you have as the government, I think maybe that would provide some peace of mind. But in the larger scene, I think the wisdom would be that we should take a step back, look at all that's been achieved right now, and realize that maybe we are again—I'm probably saying nothing that hasn't been said before—moving too fast with this. We're trying to address it too soon. There needs to be more discussion. There needs to be more information. As for talking about implementation and not knowing what the impacts, negative or positive, are going to be, as a leader, I feel that providing endorsement for continuing with the process would be a foolhardy approach.

Although one alternative may be to put jurisdiction and a longer timeframe in an amendment to the wording of the legislation right now, I think all 633 first nations need more time on this.

I can tell you, and I won't take too much time, that Six Nations is the largest first nations group, and I'm very proud of the capacity that we have, the minds that we have to put to this item, but even that is not enough. I have tremendous respect for Chief Balfour and his community and other communities across the country who do not have the time and have not had the time to put minds to this issue.

By saying we should move forward, I would be doing them a disservice. We all need more time.

The Chair: Thank you.

We'll now move to the other side. We'll start with Madam Hinton, please.

Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC): Thank you very much for the opportunity to ask a few questions. My colleague Mr. Blaney is going to share his time with me.

I have been listening very carefully. Although I have not been a part of this committee, I did spend a number of years previously working on this very issue.

What I wanted to assure you of, Chief Balfour, is that I spent two years dealing with only this issue, and I spoke with aboriginal people across this country. I was in sweat lodges. I was on back roads. I was in reserves. I was meeting people in restaurants, wherever they cared to meet, to get feedback. Part of that feedback was on matrimonial rights, property rights, education, hierarchy within aboriginal bands, and the effect it had on aboriginal peoples.

Granted, I did not speak to a single chief. That wasn't my job. My job was to speak to band members only, and that's what I did.

That information was compiled. And now that we're in government, I fully believe that everything that I gathered over those two years is being used in this piece of legislation.

So thank you for the opportunity to listen today, and thank you for the opportunity to address you.

● (1250)

The Chair: Mr. Blaney.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you very much, Mr. Chairman, and thank you to my colleague.

Good afternoon and welcome to the committee. I wish to thank you for being here. We have been studying this bill for a few weeks now. We have had the good fortune, and I would say privilege, to hear from several witnesses such as the First Nations Assembly, the First Nations Assembly of Quebec and of Labrador, Chief Fontaine and Chief Picard. There is a great sense of agreement in all of the comments that have been brought to us.

Grand Chief General, I would be remiss in not commending you for your work and your presentation — which we unfortunately did not hear in its entirety because of a lack of time — as well as for the brief you submitted, which very clearly outlines your opinion.

You underscored the importance of balancing collective rights and individual rights. You also talk about your concern over aboriginal rights should this act come into force, you say that you need time to measure the repercussions it will have on your communities.

Grand Chief General, your document talks about the 633 first nations. Throughout Canada, there seems to be a gathering consensus.

[*English*]

The Chair: He won't have a chance to answer if you don't—

[*Translation*]

Mr. Steven Blaney: All right. Thank you, Mr. Chairman.

We are consulting several groups. Aside from the additional delays resulting from the consultation process, and the risk that consultations get bogged down, as to the concerns I have just raised with you, what more could be attained? We have begun a parliamentary consultation process, which, I agree, is not an exhaustive consultation of each and every single first nation. What more would be achieved, when we are seeking to amend and strengthen this legislation in accordance with your recommendations?

I have concluded, Mr. Chairman.

[*English*]

Chief David General: Thank you very much for the question.

In your processes and your responsibilities as parliamentarians, and in ours as first nations leadership, we are all looking at improving the lives and interests and well-being of first nations citizens.

On your question that it's difficult to consult everybody, we need to consider the impact. That is something on which I have heard no discussion from anybody yet. They have not described what the impact will be. We are currently in a process of trying to reconcile our relationship as governments. We've been directed by the courts to reconcile what exactly section 35 means. We're trying to reconcile jurisdictions, resources, and land, and I would not want to see this discussion of individual rights, although they're important, have the opportunity to derail any work or progress that we're making on the discussions of land, jurisdiction, or fiscal responsibility. We need to consider this bill and its impact on some of the other works and discussions that are already in progress and that have had years and years also put into them. As I mentioned earlier, the land claims processes are on the minds of all first nations people.

Again, there is this whole balancing of rights and responsibilities. We also need to see the balancing of benefits and impacts.

● (1255)

The Chair: I'm going to have to finish now.

I want to comment that when the charter was first passed, those were some of the unknowns that also were part of that charter. That was determined later, as the court cases determined what the impact was. So that would happen too. I'm not disagreeing with what you're saying, but I just want to say that those things happen in time.

I want to thank the witnesses very much, and I really do apologize for the delay. It wasn't meant to be, and I appreciate your being here today.

I will suspend now for two minutes to have the next panel come forward, please.

Thank you.

● _____ (Pause) _____ ●

● (1300)

The Chair: We will now reconvene.

We're moving on to panel B, with witnesses from the Native Women's Association of Canada. We have with us Beverley Jacobs, the president; and Ellen Gabriel, who is the president of the Quebec Native Women's Association.

Welcome, witnesses, and thank you very much for your attendance and your patience. We had our 10-minute address earlier, so we'll just move on to questions.

Do you want to make a little bit of a statement, or can we move right into questions?

Ms. Beverley Jacobs (President, Native Women's Association of Canada): Yes. I still have some of my presentation left.

The Chair: Okay.

Committee members, we're going to ask the witnesses if they want to take a few minutes to summarize their previous presentations, and then we'll move right into questions.

We'll start with Madame Jacobs.

Ms. Beverley Jacobs: Good afternoon. Thanks for the opportunity to come back.

I think where I left off was talking about the responses to the consultation issues. In the committee's report on Canadian human rights, they recommended an immediate repeal with a transitional period of 18 to 30 months, and Bill C-44 provides for a six-month transitional period.

As you know, we do support the repeal, but there has to be at least 36 months. That is what we have put together as a transitional period. I think it's an unreasonable expectation for communities to be prepared for a drastic change in legislation, and so far, the way the legal process works, it's far too complex to reconcile anything within six months. We have to be aware and sure that there are adequate resources available in the communities to ensure that this issue is addressed properly.

In the work that we've done, we wanted to make sure there was meaningful consultation. It was apparent during the matrimonial real property process that this was something that really needed to occur. There were serious and validated concerns that there wasn't enough time to ensure that there was a meaningful consultation process, since we only had three months to do that.

So as a minimum, in the early stages of the discussions, NWAC did ask for at least a year of consultation. The aboriginal women we talked to voiced this concern and felt a great deal of skepticism in the process underscoring the fundamental nature of consultation where important legislative change directly affects aboriginal peoples.

In the report of the special representative on the protection of first nations women's rights, a key recommendation was free, prior, and informed consent. This is absolutely crucial when individual and collective rights of aboriginal women are being impacted. The report elaborated that aboriginal women find legislation difficult to understand, that they would have greater capacity to offer constructive feedback if they were informed about the laws that affect their collective and individual rights.

The focus group recommended that an education and awareness strategy be implemented, where aboriginal women's organizations provided tools and resources to educate aboriginal women about their legal rights.

Then in June 1998, INAC acknowledged that there was no explicit departmental policy or directive to guide consultation with first nations. Although the broad, flexible approach used by the department has been advantageous in meeting the diverse needs, there has been a lack of consistency regarding the principles and the sharing of best practices.

The Auditor General's report in 2006 contends that meaningful consultation will reflect positively on aboriginal and governmental relations. Good governance and a trusting relationship between aboriginal communities and governments are essential in improving the quality of life for aboriginal people.

If the Canadian human rights mechanisms are to have any weight in aboriginal communities, full and meaningful consultation must occur. Since aboriginal women and children are most affected by human rights violations under the Indian Act, it is imperative that they are also included in this process.

As I said at our last meeting, we did develop a whole five-year implementation plan. The implementation plan would involve INAC, the Department of Justice, and the Status of Women. We also had formal discussions with the former Law Commission of Canada and the Canadian Human Rights Commission.

We have also had discussions with the president of the Indigenous Bar Association with respect to specific indigenous legal traditions that need to be respected in our processes.

From the proposal that we developed, we heard nothing back from any of the federal departments. We do believe it is a sound plan and that first nations communities have to be actively engaged in implementing the repeal.

● (1305)

This implementation plan addresses many of the concerns expressed about Bill C-44 and the immediate repeal. There needs to be some building upon the previous research with a goal of ensuring the recognition of indigenous legal traditions and exploring the best way to reconcile the domestic legal principles in the charter as well as in the Canadian Human Rights Act.

Canada has been proactive in advancing integration of indigenous legal traditions in some first nations communities with the implementation of various aboriginal restorative justice initiatives. We think that together with first nations, government parties can build upon that approach to also address human rights protections.

We believe there has to be an acknowledgment of the emerging knowledge base of elders in our community relating to indigenous legal traditions as well as looking at the responsibilities within the communities themselves and the leadership in the communities to respond to those issues.

We think there needs to be a bottom-up approach taken by engaging first nations through capacity-building. This will provide communities with the practical means to control and access justice and resources.

That's about it. There was a plan, with year one, year two, year three, year four, year five within our plan. We were hoping that with the development of this, we would work directly with first nations communities, with whom we developed very positive relationships through our MRP consultations. Also, there are best practices out there already that are addressing this issue seriously.

We believe human rights protections require much more than changing the black letter of the law. The implementation process and the allocation of resources are essential to success. There have to be meaningful consultations with all of the NAOs, first nations communities, and individuals throughout the process.

We need to ensure that there is a 36-month transitional period. Anything less would not account for the long-term impacts and root causes of human rights violations.

We undertake on the government to immediately undertake an open, transparent process for assessing the impact on individuals and first nations communities and to commit to an implementation plan that is collaboratively developed by government and first nations communities, including full and meaningful participation of aboriginal women. Through this plan, it will enable a meaningful engagement process to prepare for the impacts of the repeal of section 67.

Thank you.

● (1310)

The Chair: Thank you, Ms. Jacobs.

Madam Gabriel, do you want to add anything to what you said in your first appearance?

Ms. Ellen Gabriel (President, Quebec Native Women's Association): No, I would just ask if everyone's had a chance to read both our memoirs.

The Chair: I'm not too sure about all the committee members, but —

An hon. member: I would hope so.

The Chair: We'll begin our seven-minute round of questions with the Liberal side....

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Point of order, Mr. Chairman.

If my colleagues agree, I move that we ask questions for only five minutes each. Otherwise, we will not have enough time to go over everything, because it is already 1:15 p.m. This way, everyone will have a chance to ask questions.

[*English*]

The Chair: Certainly.

An hon. member: No problem.

Mr. Marc Lemay: Okay. *Merci.*

An hon. member: We need 48 hours' notice.

Voices: Oh, oh!

The Chair: We're wasting time now.

We'll begin with Mr. Russell.

Mr. Todd Russell (Labrador, Lib.): Good afternoon to each of you, and welcome back for the second time.

I find some of this pretty remarkable. The government has raised this issue around consultation, and they continue to ask questions of the aboriginal witnesses we have in front of us: What's your view of consultations? How much is enough? Do we have to talk to every aboriginal person out there? My comment might be that at least you should talk to somebody within the aboriginal community, not necessarily everybody.

In terms of timeframes, I find one thing very hypocritical on the part of the government. In order to get an honest and sincere apology around Indian residential schools, we have to wait four to five years for the Truth and Reconciliation Commission to do its work. But in order to implement Bill C-44, we're saying let's do it in six months, without any consultation. So I think there's a double standard, to say the least, when it comes to the government's response.

The government has also held out aboriginal women as the poster child for moving very quickly to pass and to implement Bill C-44. But what I've observed and heard is that aboriginal women have similar, almost identical concerns to the other witnesses we have.

How do the women you represent feel about the approach being taken by government? It almost seems to be a little bit of a divisive strategy, holding out one segment of the population, because human rights run the gamut, not just on gender, but on different circumstances.

So I would just like to know how you feel about that.

Ms. Ellen Gabriel: I guess it's similar to the so-called consultations of matrimonial real property. We were given three months after the contract was signed, but really, in essence, three weeks, and then it was prolonged.

How many people is proper consultation? Every single last person, because in our culture we are talking about human rights and collective rights. They're more stringent in our traditional ways. It's about spirituality, about taking care of yourself as a person and understanding yourself, about how to respect yourself—your body, your mind, your soul. And then it's how you respect other people—heir body, their mind, their soul. And then it goes out to all the living creatures, the earth that nourishes us, and the creatures that feed us and clothe us. That is what human rights are, for us, because that is our obligation. It's not about “you can't do this or can't do that”.

We have talked about colonization. We have talked about the fact that aboriginal women have lost their rights and their standing in our communities, and we have both stated that we support the repeal of section 67. We don't necessarily support the way it's being done right now, without proper consultation. So for me—at least for the people I represent in Quebec—proper consultation is a necessity for there to be a semblance of respect on the government's part.

● (1315)

Ms. Beverley Jacobs: I'd actually like to respond to your comments about the poster child.

With respect to NWAC, we're working very closely with Minister Prentice with respect to the whole organization, the national aboriginal organization of the Native Women's Association of Canada, and the fact that we have a core funding crisis right now. And aboriginal women being a poster child and using aboriginal women as a pawn, I think, is totally wrong. It's totally wrong because it creates a division between us as women and our communities, and that is not what we want. That is not what the women in our communities have ever wanted.

[*Translation*]

The Chair: Mr. Lemay.

Mr. Marc Lemay: Thank you for being here, once again. I will try to be clear. I will weigh my words carefully. I will try to be brief, concise, but this may be difficult.

It is abundantly clear that this bill, as tabled, must be amended. This is obvious. We will most likely have very specific amendments to make. For example, an interpretive clause, an obligation to consult, are provisions that must be introduced. In addition, to my mind, the timeline before this bill comes into effect should be 36 months, approximately 3 years, because this timeline is in keeping with the ruling made by the Supreme Court to bring into effect section 15 of the Charter of Rights and Freedoms. I believe that we cannot ask for anything less than this.

Ms. Jacobs, Ms. Gabriel, I need to understand one thing. Would you go so far as to ask that our work be suspended until such time that adequate consultation has been concluded, and run the risk of allowing this bill to die on the *Order Paper*, should an election be called over the course of the year, because we are after all dealing with a minority government?

Or rather, would you be willing to adopt the bill with specific amendments, and this is the first time I'm hearing such an interesting suggestion—including an amendment to delay the bill's entry into force? You suggested a timeline of five years; I personally would suggest three years.

I do not want to negotiate this publicly, but would you go so far as to agree to the adoption of this bill, with very specific conditions and amendments? Or would you prefer to run the risk of dealing yet again with another minority government, be it Conservative, Liberal, but... This is obviously a far-fetched hypothesis, but what if a new government were to table a bill that did not include anything about consultations...?

I would like to have an answer. I am of two minds on this issue and would like to hear what you think.

[*English*]

Ms. Beverley Jacobs: I think it's the same issue with respect to MRP, because if we had had consultations with the federal government before any decisions were made or legislation was drafted.... And if there is legislation drafted, we're still wanting to ensure that consultations occur, whether we agree or not, on how it affects our rights, because the impact this has is that when you have a piece of legislation you're legally bound as a government to consult with aboriginal people. That's a legal requirement, according to Canadian law.

So if you have a bill to amend the Canadian Human Rights Act adding specific amendments to repeal section 67 and there are implementation interpretive provisions, allowing that process to occur allows for the input of what we're talking about, the input of those who are most affected.

So that's what we're saying. For far too long, we've had Canadian laws that have impacted on our people, have affected our traditional knowledge, our traditional processes, without our input. We're talking about the Indian Act, we're talking about the Constitution Act. These were all laws, legislation that was drafted, created, but included aboriginal people without our consultation.

So this is what we're saying. That's enough. That's enough, because we want to be a part of this process. If you're going to create law, how are we impacted by it and how was our voice going to be included in that, when our rights are being violated on a daily basis?

● (1320)

The Chair: We will move on to Madam Crowder.

Ms. Jean Crowder: Thank you, Mr. Chair.

I want to thank you both for coming back before the committee again. I appreciate your making time in your very busy schedules after that last hearing.

We've heard consistently about consultation from almost every witness who came before the committee, and it seems to be the central point. Mr. Lemay's question was around whether you consult after you pass legislation or before you pass legislation. Of course I would argue you need to consult before you pass legislation.

Matrimonial real property has come up as an example of a consultative process, and I've heard you speak about it. I am not going to read all of this, because I read it into the record before, but Wendy Grant-John's report says that her process was not consultation; in fact, her recommendation 18 outlines a number of factors that need to be considered in terms of consultation.

What we have before us, in my view, is a box that people are attempting to force people into, saying that this is appropriate consultation—if you support human rights you're going to support Bill C-44; don't worry, trust us; we'll consult after the fact.

You've talked about the steps that you've outlined, but right now, what would you recommend that the committee do next?

Ms. Ellen Gabriel: That's a big question to answer, but I think if you examine some of the recommendations that we have, which include doing research on how this is going impact on communities that have been oppressed by the Indian Act for so many years, it's going to change the way decisions are made in our communities.

We need to have proper methods to help our people adapt, once again, but I think we should also keep in mind that in 2006, I believe, some of the UN commissions, like ECOSOC, were pushing Canada to change and repeal section 67. I don't think that should be the motivation for this present government to push this bill so quickly. This was just last year.

I would like to see the recommendations that we have—both NWAC and Quebec Native Women—because this is going to impact on the membership codes that the band councils are supposedly taking the authority of, but on which they are following the four criteria set by the Department of Indian Affairs. It's going to affect matrimonial real property. It's going to affect a whole slew of issues that I don't think our communities are prepared for. We're lagging far behind in education and far behind in trying to resolve some of the issues of violence in our communities. We're always catching up; we're always in survival mode.

This would at least ensure that human rights will one day apply, but it would also give us those tools to be able to apply them in our communities. That would be my hope.

● (1325)

Ms. Jean Crowder: It's interesting that you cited United Nations conventions. One of the previous witnesses talked about a United Nations convention; we're also in violation of a number of United Nations conventions, and we don't seem to be in a hurry to move forward on those. One of course is CEDAW, which talks about lack of support for aboriginal women—women who are impacted by violence, who don't have access to legal aid, who don't have access to adequate housing.

I would argue that if we're going to pick and choose which United Nations conventions we implement, and if we were truly committed and concerned about human rights, we would take a look at some of those conventions, such as the Convention on the Rights of the Child. Aboriginal children are cited as being the most disadvantaged in Canada. When you look at those numbers, it actually puts us at 78, or something like that, on the United Nations index of well-being.

So I would agree that we should not be picking and choosing the United Nations conventions.

The Chair: We'll move on to the government side. Mr. Bruinooge.

Mr. Rod Bruinooge: Thank you, Mr. Chair.

I just have to go back to a comment made by Mr. Russell. If the Liberal Party wants to mock our government for highlighting the issues facing first nations women, it's welcome to. You're welcome to raise that at any opportunity. If you want to mock us for that, it's fine.

Now, having gotten that off my chest, I would like to perhaps go back to some of the comments you made, Ms. Gabriel.

Compared with your counterpart from Quebec, Ghislain Picard, who is very much against Bill C-44, who is very much against this repeal and in fact called for us to just basically rip it up and go on with some other business of this government, you obviously have a different perspective. You're saying we do need to move forward with the repeal.

You're calling for some amendments, which is part of any parliamentary process. We have a committee here today, and obviously the opposition members are considering options that they want to bring forward, and the government here is looking forward to making this bill happen. But you have actually recommended that we proceed.

Why do you think there's a difference between your perspective and the male counterparts that we see in your province?

Ms. Ellen Gabriel: First of all, I want to correct you. I said I would promote or support the repeal of section 67, but not Bill C-44, because of the lack of consultation, because of the lack of research, and basically because your minister is pushing the wonderful skills of the Canadian Human Rights Commission but at the same time ignoring the report and recommendations of that commission. So I just want to clarify that.

I'm supporting the repeal of section 67, because if we have a Criminal Code that applies to our communities, then why not a human rights code?

The difference between Chief Picard and me is that they're talking about sovereignty. They're talking about what I mentioned before—membership codes, matrimonial real property, some of the issues that I know the chiefs in Quebec are very adamant at trying to keep hold of as part of their authority.

If we didn't have all the problems in our community, I would not—I can't remember the right word—agree to have some of my principles negotiated, because as a longhouse woman and as a speaker for my community during the Oka crisis, in which the Conservative government dealt with us, I probably would not agree. But if I look at what's happening to the children, what's happening to the women, and coming from a community where my cousin's house was burned and nothing could be done, coming from a community where the International Federation of Human Rights criticizes the Conservative government for the numerous abuses that happened, of men who were arrested and burned with cigarettes, and yet nothing could be done because the Canadian Human Rights Act does not apply to reserves, then yes, I will compromise some of my principles as a longhouse woman.

● (1330)

Mr. Rod Bruinooge: So you're suggesting, then, that a repeal should happen. We're in a process now. I know that you know a large amount about how the parliamentary system works. We're in a minority government right now. It seems that there are only small opportunities any time an attempt at bringing forward a repeal of section 67 happens. It happens for very small moments. People need to get around this opportunity and make it happen—that's my opinion.

In light of the fact that we're in a minority government and that opportunity is so finite, would you suggest that it's more worthwhile to put this off because you don't believe in the vehicle of Bill C-44, which is amendable? You would rather put that off in light of what I said about the finite moment or hope for the future?

Just remember, we just went through 13 years of a previous administration, the Liberals, who did nothing on this front, on the system itself. There's no doubt about that. It's a matter of fact; it's not opinion.

Ms. Ellen Gabriel: I get tired of our being a ping-pong ball between all the different parties. I don't want to be part of that.

Mr. Rod Bruinooge: Sure. That is my point.

Ms. Ellen Gabriel: My point is that if what you're saying is that if this is not passed the way the Conservative government has written it, then it's not a priority for the Conservative government after that... you're not going to look into the recommendations that all of our groups are making. We want consultation.

Mr. Rod Bruinooge: That's not what I'm saying.

Ms. Ellen Gabriel: You have some communities that have to hire non-native consultants to come in to help them do their finances. You have communities that have such high levels of poverty that children go hungry. You have levels of alcoholism in some communities that are at 100%.

Mr. Rod Bruinooge: It's a broken system.

Ms. Ellen Gabriel: How are you going to help those communities if you are not going to do proper consultation, provide capacity-building, and provide the tools and funding that are needed for this?

Mr. Rod Bruinooge: This is a broken system, I agree.

Ms. Ellen Gabriel: To me, what is lacking is the will of the government. It just seems to me that this present government is only moving because it has been pressured internationally to change what's happening with regard to the Canadian Charter of Rights, which should be applied to reserves.

If this is what you're telling me, that you will not accept any changes or revisions, then you're saying—

Mr. Rod Bruinooge: I just said that this is an amendable process.

Ms. Ellen Gabriel: Excuse me. In the longhouse we stand up when someone speaks. The person who is speaking stands up and nobody interrupts them.

This is the kind of government and these are the kinds of people you want us to assimilate to become, people who interrupt each other when they're talking? A lot of our elders look and say, “No way do I want to become part of that system.” You have to remember there are people who do not want anything to do with this system of government or governance.

You have here two people who are trying to help in this process, so don't get our backs arched, because we're trying to work with your government.

Mr. Rod Bruinooge: Mr. Chair, if I can just comment—

The Chair: Thank you. No, actually, we have run out of time.

I'll move on to Mr. Merasty.

Mr. Gary Merasty: Thank you, Mr. Chair.

Let me first of all say that I am very honoured to hear your perspectives on this issue and your presentation here today.

Having come from a first nations community myself—and I may end up making more of a statement than asking a question in this whole thing. The questions I've heard from the government side today and in past sessions have been to point out examples of human rights abuses at the community level, blaming the leadership or the communities for those violations. I think those are the wrong questions. Yes, maybe those violations do occur at that level, but the question is—

● (1335)

Mr. Brian Storseth: I have a point of order, Mr. Chair.

For clarification, I would just like to point out that Mr. Merasty, while a very valued member of this committee and very knowledgeable on the subject, is a substitute here and hasn't been a consistent member of this committee over the last month.

The Chair: I don't think that's a relevant point of order.

Mr. Gary Merasty: I read the blues and all that.

The real question is, why do these violations occur? Why are there inequities in our communities? Let's look at some of these things.

Regarding HR violations for those who are disabled, there's no provision in the Indian Act nor an Indian Affairs policy that provides the medical, physical, or emotional treatment services required by those who are disabled on reserve. The only way they get service is if they're apprehended, because they can't get services on reserve. We know that today; I would say, let's act on it.

Housing is another example. Most on-reserve funding is based on on-reserve populations, so when an off-reserve band member applies for a house and gets denied, whose fault is it? The band's or the government's?

Regarding Bill C-31, a young mother gives birth to a child and doesn't identify the father's name. That baby loses his or her status. Whose fault is that? Bill C-31's or the band's?

These are human rights issues; that's the reality. So what I see happening is that the government realizes these shortcomings, as outlined in their cost driver study that says they're drastically underfunding and not addressing these issues. They're trying to redirect blame to the first nations communities, which I think is disrespectful and an abusive act in and of itself.

So let's look at this. An individual files an HR complaint, and let's say it's a person who is disabled and lives on-reserve. CHRA receives the complaint, evaluates the complaint, determines that it's valid, and refers it to a tribunal, and then the tribunal hears the complaint. They find in favour of the complainant, the disabled person, but they also find out that the band gets no funding for this.

So then what happens? They make a binding decision on INAC. Will the minister act immediately? I don't know. I would hope, but the past hasn't really suggested that this would happen.

So the band has expended $40,000 to $50,000 appearing and meeting with the tribunal. No services are provided in the meantime to the person who is disabled. It creates animosity. It finds no fault with anybody specifically, other than with a piece of legislation. So maybe even the complainant, the disabled person, is spending their own money trying to launch this complaint and see it through.

What have we achieved?

Yes, I support the repeal of section 67. I think that human rights should be balanced with collective rights. It should be taken in the charter, rightfully stated by the chair earlier, as an interpretive clause, and everything else that's been talked about.

At the end of the day, we have a government that is refusing to deal with what we know is wrong today—with those examples, which I listed—and instead is trying to do something that may not even correct it, i.e. Bill C-31, as I stated earlier. I think it's an abuse of process, and that's my comment.

My question, if anything, is, do you think it's abusive of this government to not address those issues that are facing us today?

The Chair: I apologize, but unfortunately I have to interrupt because I'm the chair. I have to make sure everybody has equal opportunity, and you won't have time to answer that, so I'll move to the government side.

Mr. Blaney, please.

[*Translation*]

Mr. Steven Blaney: Thank you, Mr. Chairman.

Ms. Jacobs, thank you for meeting with us once again. Ms. Gabriel, we had the pleasure of meeting at the Socio-economic Forum of First Nations in Mashteuiatsh.

Subsequent meetings have been scheduled in upcoming months. We have raised important issues that our witnesses have talked about, specifically issues affecting Quebec first nations, including the housing crisis, which has become an alarming issue.

Nonetheless, I do not believe that these problems prevent us from making progress in other areas, such as the ones we are talking about today. Of course, the process is not perfect, but as the saying goes, the only way to eat an elephant is to take one bite at a time. Therefore, I believe that this bill is one small step that will allow the first nations to live in a society where they have equal rights.

You are involved in the promotion of women's rights in your communities. If we were to repeal the famous section 67, how will that improve women's living conditions, particularly in comparison to past living conditions?

● (1340)

[*English*]

Ms. Beverley Jacobs: I don't know if it will make any difference, really.

I would agree with what Gary Merasty has said—and that's what I had said in my presentation—in the sense that even if you do change the black letter of the law, that doesn't necessarily mean that's going to make any effective change to anyone's lives.

And even when we're dealing with access to justice issues, you change and repeal a section from an act that will allow people to use it who haven't been able to use it before. You've had a justice system for a long time that has failed aboriginal people. That doesn't necessarily mean the process is even going to allow for women who don't have financial resources, resources for bringing an issue to the Canadian Human Rights Commission. So that's still an issue of poverty; it's still an issue of women being able to use a system without having the resources that go with it, because that's part of this.

I think part of what we're saying with the implementation plan is to also look at the resources that are needed in a community to address these issues, because this isn't the only one that's going to come forward. We're dealing with MRP, we're dealing with housing, we're dealing with the effects of Bill C-31, and we learned our lesson from Bill C-31. That's part of this process, the effects of Bill C-31, that resources were supposed to be put into a community with the influx of population of first nations communities, and that wasn't done. And so it created a division in the community between the people who regained their status and the people who had lived in the community all their lives. And it's the women who suffered, because they were the ones who needed to come back to the community and they were the ones who were labelled “Bill C-31”, when everyone is Bill C-31; all of us who have status are Bill C-31.

So that's what I'm saying. We've learned those lessons. We need to be really cognizant of the fact that we're talking about capacity-building, we're talking about resources, we're talking about things that are needed for it to be effective.

[*Translation*]

Mr. Steven Blaney: In any case, I can assure you that those points were brought up by different witnesses who spoke about measures to implement the legislation in the communities.

Ms. Gabriel, do you have something to add?

[*English*]

The Chair: Actually, you have 30 seconds. That's not really fair to you, unfortunately, Mr. Blaney.

Does the Bloc have anything else? Mr. Lévesque, please.

[*Translation*]

Mr. Yvon Lévesque: I am a bit nervous. Following Ms. Gabriel's answer, my colleague asked me if I had any further questions.

At the outset, when I made a statement on Bill C-44, before even hearing what the Quebec Native Women, the First Nations Assembly of Quebec and of Labrador, or the Native Women of Canada had to say, I noted that this bill was a "white" piece of legislation. It is not because I recognize aboriginals to be of a different colour, but this seems a somewhat discriminatory way of differentiating aboriginals from the rest of the Canadian population. Let us just say that this bill is a non-aboriginal approach that does not take into account the culture and living situation of the first nations. This struck me from the very start.

Today, what is striking is Ms. Jacobs' statement on the implementation plan. In the plan she is suggesting, I do not know if there's going to be some sort of protocol at each step during discussions with the government. The plan would not come into effect unless there was agreement on the implementation mechanism. I don't know if we can work this way. If we can, Ms. Jacobs, I would like to hear you elaborate on the plan that you are suggesting.

Ms. Gabriel, before allowing Ms. Jacobs to answer, I wish to ask you the following question. Would you agree with such a plan, with the timeline to implement Bill C-44 that Ms. Jacobs is suggesting? Would this be in keeping with your own vision?

● (1345)

Ms. Ellen Gabriel: I agree with Ms. Jacobs on this plan, but there is more to this. I believe that we must aim for a constitution, or an aboriginal charter of human rights that would include our culture, aboriginal values, and access to our land and resources.

[*English*]

Ms. Beverley Jacobs: My dream is that we will develop a process that addresses everyone's interests, because that's what our culture is about. We have a process in our community called the Great Law, and the Great Law addresses all of these things. If we were to follow all of these things the way they're supposed to be followed, we wouldn't be having human rights violations in our community. We'd be following our traditional values and beliefs in our culture and our tradition.

But there have been impacts from the government, and I'm not talking about Conservative, Liberal, or whoever was in power. I'm talking about a government that has never taken into consideration any of our traditional legal systems and let them flourish.

Let us flourish; let us be who we're supposed to be. That's what we're asking for. That's what I'm dreaming of. Those principles and genocidal policies have impacted the traditional values of our communities.

The Chair: I want to thank the witnesses for their patience at the beginning of the meeting and for their attendance.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
