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—
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Mr. Colin Mayes

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•(1110)

[English]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I will open this Standing Committee on Aboriginal Affairs and Northern Development of Tuesday, April 17, 2007.

Committee members, you have the orders of the day before you. Today we have witnesses from the Native Women's Association of Canada. Beverley Jacobs is the president. Welcome. From Quebec Native Women Inc. we have Ellen Gabriel, president. Thank you for being here today.

I have to inform the witnesses that we're close to being called to the House for votes. I imagine the committee will want to recess for the opportunity to vote.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Do we have a choice?

The Chair: Likely not. The room will not be taken after one o'clock, so if we want to extend the meeting when we come back we have that option.

We'll begin and allow ten-minute presentations from each of you. Welcome. Who would like to start?

Madam Gabriel.

Ms. Ellen Gabriel (President, Quebec Native Women Association): Good morning.

[Witness speaks in her native language]

I am Ellen Gabriel of the Turtle Clan in the community of Kanesatake, the people of the Flint.

Quebec Native Women is a non-profit organization whose history dates back to 1974, when aboriginal women banded together to fight the discrimination they and their children faced because of the Indian Act. Thirty-three years later, our mission continues to be that of advocacy work to defend and protect the rights and interests of aboriginal women and their nations living in Canada.

It has been stated time and again that aboriginal people have a unique history in the Americas, having cultures richly based upon ethics and values respecting self, other people, mother earth and all the plants and animals we share this beautiful planet with, each one giving life strength to one another.

Since European contact, indigenous peoples have experienced massive losses of lives, land and culture, with the ensuing colonization resulting in a long legacy of chronic trauma from unresolved grief across generations. This collective experience

contributes to the present social problems, such as the high rates of suicide, domestic violence, alcoholism, and other social problems.

After over 133 years of living under the Indian Act, aboriginal people find themselves in a state where the values and ethics of our ancestors are in disarray. It is a sad fact that aboriginal women have borne the brunt of the discrimination of this act, which was assimilative in design, but racist at core. Indigenous nations who once valued the respective roles of both men and women are now enacting discrimination amongst themselves, rooted or deeply grounded in the legacy of the Indian Act and residential schools—both tools of colonization.

It is through these types of oppressive legislation, institutions and foreign values that aboriginal nations and their communities today suffer various forms of lateral and physical violence. It is these very governmental institutions and laws that have systemically reduced proud, strong matrilineal societies to a type of third world status, without control of or access to their lands and resources.

Many of our ancient languages teach us how to live with the land, and are also an integral part of informing our life cycles and reinforcing our identity, but they are now on the brink of extinction by the end of this century. But aboriginal peoples have not completely lost these values, as many of our people still speak their ancient languages. They practice ancient teachings and values that contradict the foreign principles passed on to us by the Indian Act.

However, we can easily see the extent of colonization through band councils who create membership codes that continue to discriminate against aboriginal women and their children. These very membership codes were created to follow the criteria incorporated in the Indian Act.

In order to survive in this age of globalization, we must constantly try to educate ourselves about laws, policies and programs that do not reflect our cultural values—or even norms. Communities belonging to nations once considered allies of the Crown are now being coerced into becoming small municipalities, due to self-government agreements.

I'd like to quote Robert Kennedy in his speech on the mindless menace of violence on April 5, 1968.

Too often we honor swagger and bluster and wielders of force; too often we excuse those who are willing to build their own lives on the shattered dreams of others.

Yet we know what we must do. It is to achieve true justice among our fellow citizens. The question is not what programs we should seek to enact. The question is whether we can find in our own midst and in our own hearts that leadership of humane purpose that will recognize the terrible truths of our existence.

We must admit the vanity of our false distinctions among men and learn to find our own advancement in the search for the advancement of others. We must admit in ourselves that our own children's future cannot be built on the misfortunes of others. We must recognize that this short life can neither be ennobled or enriched by hatred or revenge.

During the creation of the Canadian Human Rights Act in 1977, the Minister of Justice then, the Honourable Ron Basford, explained that the section 67 exemption was necessary because the government had made a commitment to aboriginal representatives that there would be no modifications to the Indian Act except after full consultations.

• (1115)

Thirty years later, aboriginal peoples, in particular aboriginal women, are still waiting for the consultations to begin. The decision with which we are faced today is how we can, as aboriginal people, further compromise our jurisdiction and sovereignty versus providing access to justice for the many people in our communities who face continued discrimination.

As we know all too well, the Indian Act is not a governance system. Band councils therefore have very little in terms of safeguards and accountability mechanisms at present. This leaves our citizens even more vulnerable to discriminatory practices. Although it is important to retain our rights, we can no longer allow band councils to do whatever they want without having to face consequences. Perhaps band councils that behave in this manner are the minority, but human rights protections are essential to the dignity of all citizens regardless of where they live.

Quebec Native Women therefore insists that an interpretive clause and a clear explanation of what this means, along with all its parameters, be provided to aboriginal communities.

In our position paper we provided for your members, you will see a list of our recommendations, which I'll read shortly in French. We hope that serious consideration will be made concerning them, as we can no longer accept more laws, however well intentioned, to be placed upon us without full and complete consultation and consideration.

[*Translation*]

I will now read you our recommendations.

- Extend the transition period from 6 months to 18 to 30 months in order to ensure: consultation with aboriginal peoples and their communities regarding Bill C-44 as recommended by the standing committee; preparation and education of aboriginal peoples in order to implement effective mechanisms to resolve complaints; training of competent personnel in aboriginal communities to inform citizens of their rights and recourse.

- Create an aboriginal ombudsman position to ensure that the anticipated measures of Bill C-44 are fair and equitable.

- Provide financial and human resources necessary to develop, implement and operate human rights mechanisms to protect aboriginal peoples in aboriginal communities.

- Include the protection of human rights in any self-government agreement or territorial claim.

- Include an interpretative clause to enable the CHRC to adequately balance collective rights and individual rights, whereby the CHRC could rely on an exemption that would explicitly allow discrimination where a preference or advantage is granted to aboriginal peoples and is not discriminatory in any other respect.

- Consult aboriginal peoples throughout the process of drafting, passing into law and executing Bill C-44.

- Create provisions that do not harm aboriginal and treaty rights.

- Ensure that this apply to the discriminatory decisions made by band councils regarding membership codes.

- Ensure that this apply to decisions made by the federal government under the Indian Act.

- Finally, the Indian Act should be amended to eliminate all forms of discrimination against aboriginal women and their children, in particular, the second generation cutoff stipulated by section 6.2 of the act.

Thank you very much.

Merci beaucoup.

Niawen'kó:wa.

[*English*]

The Chair: Thank you.

Madam Jacobs.

Ms. Beverley Jacobs (President, Native Women's Association of Canada): [*Witness speaks in her native language*]

Greetings of peace to all of you this morning.

I introduced myself in my language. I'm Mohawk, from the Six Nations of the Grand River Territory, Haudenosaunee Confederacy. I'm of the Bear Clan, and my real name is Gowehgyuseh, which means "She's Visiting".

I actually do that in every presentation. I begin like that because it acknowledges who I am—my identity and where I come from—and it also acknowledges where we are in this physical world.

Thank you for the opportunity for us to present on this issue of the repeal of section 67 of the Canadian Human Rights Act. As we know, this was supposed to be a temporary measure. The original intent of this section was to avoid modifying the Indian Act without prior consultation. However, here we are addressing this issue thirty years later, along with how this Canadian Human Rights Act and this section have actually disallowed the most vulnerable from being able to bring any claim of human rights violations forward when they involve any provisions of the Indian Act.

We know the objective of the Canadian Human Rights Act is to ensure that all Canadians live free from discrimination. However, it has excluded one of the most vulnerable groups in Canada. I'd like to thank Ellen for providing us with the history of discrimination against our people. First nations people, and aboriginal and first nations women more particularly, have taken the brunt of this.

The main point that I want to make here with respect to the repeal of section 67 is that there needs to be a strong and meaningful implementation plan. It has to be a key factor to advancing human rights protections for first nations communities, especially women. We believe this will take at least 36 months, so we have a proposed plan that we've presented to government, and we've done that over the last couple of years.

We have provided the plan to all levels of government, including INAC, to Status of Women Canada, and to the Department of Justice. It is something we brought forward a long time ago.

• (1120)

The Chair: I'll have to interrupt the meeting here, as the bell is calling us to the House.

It is a thirty-minute bell, colleagues. Do you want to keep going?

Hon. Anita Neville: Let's keep going for fifteen minutes.

The Chair: You can carry on. We'll hear your presentation, and then we'll return later. We have thirty minutes to get to the House.

Ms. Beverley Jacobs: With respect to the Native Women's Association, I'm not sure how many are aware of the organization itself. It is an aggregate of 13 provincial-territorial member associations, and the goals are to empower aboriginal women by engaging in national advocacy measures aimed at legislative and policy reforms that promote equal opportunity for aboriginal women, including meaningful access to human rights protections.

We are committed to ensuring that the unique needs of aboriginal women are reflected in any and all legislative and policy directives that have the potential to have a significant impact on the lives of aboriginal women and children. We adhere to a culturally relevant gender-based analysis. Basically what that means is that it's about balance. It's about ensuring the balance between men and women in our communities and promoting common goals towards self-determination for aboriginal people, and for women as the role models in our communities and as natural leaders.

We use this framework to assess differential impacts of proposed and/or existing legislation on aboriginal women and children. We believe this process enables us to review the policies through an understanding of historical, cultural, and political and socio-economic marginalization of aboriginal women within Canada. It thus makes it possible for governments to be more effective in responding with informed, equitable options. We will be using this process during our proposed implementation plan, and with any legislative change.

For the last 30 years, with respect to section 67 in the Canadian Human Rights Act the equality interests of aboriginal women have maintained a prominent place in policy discussions about the Indian Act and in discussions about self-government. This has primarily been the result of efforts by individual women and organizations to keep these issues in the public eye and on the federal policy agenda.

One high-priority area for NWAC has been the promotion and the protection of the human rights of aboriginal women in Canada. It is our belief that while often viewed as a champion of human rights in international fora, Canada has failed to ensure that basic fundamental standards of human rights are applied to aboriginal peoples in Canada, particularly aboriginal women and children. This is true in relation to many aspects of social, economic, cultural, political and civil rights.

Several United Nations bodies have been critical of Canada's human rights record and of its treatment of aboriginal people. Specifically in relation to aboriginal women, Canada has been criticized by domestic and international bodies for failing to protect the equality rights of aboriginal women in matrimonial real property issues, to redress such human rights mechanisms as the Canadian Human Rights Act, and for the rates of violence and the low socio-economic status facing aboriginal women.

We have learned as well about the impacts of the 1985 amendments to the Indian Act, called Bill C-31. We know that when amendments are made without consultations and without acknowledging the potential impacts, there are detrimental effects within first nations communities, such as divisions within the community, lack of resources and capacity, and effects upon education. Those are just some examples.

As to concerns with respect to Bill C-44, in the House of Commons we've heard members of Parliament voice a number of concerns. First, there is a concern that this does not address the root causes of human rights violence. From a balanced perspective the mere revocation of the Indian Act exemption will not address the effects of colonization. The repeal of section 67 is only one element in the advancement of human rights protection for aboriginal people.

Next, supporters of Bill C-44 purport that an immediate repeal is required, since aboriginal people have waited long enough, and consultation should not be used as an excuse not to act.

• (1125)

We agree that the repeal of section 67 is long overdue. However, we feel there has to be meaningful consultation as a strong first step of an evolving and collaborative process. We do not view human rights protection as compartmental. It is a process in which each step is necessary to achieve success in the overall goal. Consultation is not an excuse for inaction; it is an essential element in an active process.

In many cases, first nations communities do not have the capacity or resources to expose themselves to liability. As noted earlier, without proper resources and capacity as a result of Bill C-31, we have learned what this has done in our own communities. We don't want this issue added on as a burden in the communities nor resources taken from other programs and services to address issues we know will result from the repeal of section 67.

In turn, we believe that capacity-building and education are key factors for aboriginal communities to implement their own mechanisms of protecting human rights. This would greatly minimize the risk of conflict and promote prevention of human rights violations, unlike the current system of reactive measures.

Members of Parliament have also expressed apprehension about the six-month transition period. So why is the current government expediting human rights protection haphazardly after 30 years without meaningful action? And what validates these concerns, especially considering the lack of support that this government has for the United Nations declaration on the rights of indigenous peoples?

By implementing a community-based process that addresses the key factors of meaningful consultations—adequate implementation, resources, and capacity-building—Canada would be in a better position to support international standards, since they would then be in the process of complying with those standards. This kind of comprehensive process will require at least 36 months to implement.

Another important issue with respect to Bill C-44 is whether it addresses the individual and collective rights. This debate is at the very core of aboriginal and governmental relations in Canada and has yet to be resolved. Due to the complexity and cultural differences embedded in this question, NWAC advances that any conclusions on the matter must come from community consultations.

In the discussions we had with aboriginal women in our matrimonial real property consultation process, many discussed this issue; and to reconcile this issue, most talked about their responsibilities to their communities and to their future generations. Many said that we are individuals from nations. That's where we come from, and we cannot separate ourselves from that.

The core of this issue is addressing conflict through various forms of indigenous legal traditions, which we believe will assist in resolving the debate of individual and collective rights.

• (1130)

The Chair: Madam Jacobs, are you fairly close to the end of your submission?

Ms. Beverley Jacobs: I can be.

We have a plan, and part of it, again, is about consultation. I'll go through just some of the summary of what I've been saying.

First of all, we have to build on previous research with a goal of ensuring the recognition of indigenous legal traditions and exploring the best way to reconcile domestic legal principles within the charter and the Canadian Human Rights Act.

Canada has been proactive in advancing the integration of indigenous legal traditions with the implementation of various aboriginal restorative justice initiatives. Together, first nations and the government parties can build upon this approach in the context of human rights protections. We must foster the current and emerging knowledge base relating to indigenous legal traditions and its implications for the Canadian legal system, focusing on human rights.

There has been some response in respect to human rights protections, namely, the Canadian Human Rights Commission's report. This report emphasizes the need to resolve the issues related to matrimonial real property discrimination, access to justice. We believe that a bottom-up approach must be taken by engaging first nations through capacity-building. This will provide communities with a practical means to control and access justice and resources. It will also encourage traditional legal knowledge and new innovative frameworks.

Thank you.

The Chair: Thank you very much, and I do apologize that we've had to cut you off.

I'm going to suspend the meeting until after the vote.

We've had some lunch brought in, and I invite our witnesses to please help themselves to the lunch. We hope we can be back shortly. Thank you.

• _____ (Pause) _____

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• (1220)

The Chair: The chair is going to ask the clerk to reschedule the witnesses before us, possibly for Thursday, May 17, because there is a spot there. I don't know if that works out, but I'll let the clerk determine that.

Madam Crowder.

• (1225)

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): I was just going to ask that I would hope we would try to accommodate the witnesses' own schedules. If they're not available on May 17, we should do something to accommodate them.

The Chair: We definitely want to be able to ask our questions.

I really apologize for the inconvenience, but this is the way things work here on the Hill, and we have no way around it.

Madam Neville.

Hon. Anita Neville: I'm not suggesting we do it, but I am suggesting, if necessary, to schedule a separate meeting in order to accommodate.

The Chair: Okay, we could do that.

We'll do our best. We'll ask the clerk to talk to you to try to find what is convenient for you and can accommodate your schedule.

Monsieur Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I too am truly sorry about the situation, Ms. Gabriel and Ms. Jacobs.

Mr. Chairman, we asked the Native Women's Association of Canada and the Quebec Native Women's Association to be invited in a specific order. If at all possible, I would like to hear from them—and I say this with all due respect—before the departmental people appear, on April 26.

I would really start asking myself some serious questions if we postpone their appearance to the end of May. It is possible that some witnesses may not yet have confirmed whether or not they are appearing. I do not know whether or not the clerk could adjust the agenda. It is crucial that we hear from the aboriginal women at the start of our work, so that we could hear their opinion before we go any further in our study.

[English]

The Chair: That is scheduled for April 26. You're saying that you would like to have these two groups back before.

Is that the consensus of the committee? I need direction.

Monsieur Lemay.

[Translation]

Mr. Marc Lemay: There is no problem if it is April 26. Is that impossible?

The Clerk of the Committee (Ms. Bonnie Charron): Dates have already been confirmed for the other groups.

Mr. Marc Lemay: I know that—

[English]

The Chair: Monsieur Lemay, would you like the clerk to try to reschedule the minister to May 17 possibly, which is the one day that's open? Or we could have an extra meeting.

Ms. Jean Crowder: Mr. Chair, why don't we ask the witnesses if they're available before we get too far down the path of trying to reschedule.

The Chair: They will need to look at their calendars.

Ms. Jean Crowder: They may know right off the bat if there are dates that they're absolutely not available.

The Chair: Do you know if you're available on the—? No? Okay.

What I'm going to do is leave this with the clerk.

Monsieur Lemay, we heard you, and if it's possible to reschedule so that the minister is after the submissions by these two groups, then so be it, but we'll just have to let the clerk work on that.

Do you need any further direction?

The Clerk: Just along the lines of whether we should have an extra meeting or rearrange—

The Chair: If it needs to have an extra meeting, then—

Hon. Anita Neville: Just rearrange the important meeting.

The Chair: Yes. I think it would be important to accommodate the two presenters to make sure that it's to their convenience because we have inconvenienced them today.

Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Mr. Chair, I'd like to add my personal apologies to the witnesses for the situation today and ask if it would be possible for Ms. Jacobs to provide a written submission. I apologize as well not only for the break-up, but for the noise that was in the background so we weren't able to give it our full attention, and it may have been difficult for you. If I could have a written submission, that would help me to prepare for the next time when you return for the questions.

Thank you.

The Chair: Thank you.

Is there anything else for the good of the committee?

We're adjourned.

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