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Mr. Colin Mayes

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● (1105)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I open the Standing Committee on Aboriginal Affairs and Northern Development of Thursday, April 19, 2007.

Committee members, you have the orders of the day before you, and today's meeting is video recorded. We're dealing with Bill C-44, An Act to amend the Canadian Human Rights Act.

Our witnesses today represent the Canadian Human Rights Commission. We have Jennifer Lynch, chief commissioner; David Langtry, commissioner; Sherri Helgason, director, national aboriginal program, Prairies and Nunavut region; Harvey Goldberg, team leader, strategic initiatives, knowledge centre; and Hélène Goulet, secretary general.

Welcome, witnesses, and thank you very much for being here today.

We'll have an opening address, and then we'll begin questioning. Madam Lynch, are you going to be speaking?

Ms. Jennifer Lynch (Chief Commisioner, Canadian Human Rights Commission): Yes. Thank you.

Mr. Chairman and members of the committee,

[*Translation*]

thank you for welcoming me here today.

[*English*]

Thank you for introducing my colleagues, Mr. Mayes.

As Canada's national human rights institution, it's important that the Canadian Human Rights Commission has a strong line of communication with Parliament, and that is why I am so pleased so early in my mandate—this is my third week as chief commissioner—to have an opportunity to appear before you to discuss as fundamental a human rights issue as the repeal of section 67.

I will focus today on five key areas, and these are as follows.

First is the commission's support for the repeal of section 67. The repeal of this section is long overdue. Its existence has real and negative impacts on people every day, and it must be repealed now. We are very encouraged by the introduction of Bill C-44 and we support its enactment as soon as possible.

Second, the commission submits that an interpretive provision should be created that will help to ensure the Canadian Human Rights Act is interpreted in a manner that appropriately considers and strikes a balance between individual rights and aboriginal community rights and interests.

Third, we submit the transitional period should be longer than the six months proposed in the legislation.

Fourth, we submit that both the commission and first nations need to be properly resourced to ensure successful implementation of repeal.

Fifth, I'd like to clarify the commission's broader mandate as a guardian of human rights.

Now I will expand on these five areas.

[*Translation*]

Point 1 concerns the urgency of repeal. Why is repeal so urgent? The Canadian Human Rights Act was enacted 30 years ago. The purpose of the act speaks powerfully to every Canadian. It reads:

> 2. The purpose of this Act is to extend the laws in Canada to give effect, [...] to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

The rights enshrined in the CHRA - the right to be free from discrimination and where discrimination occurs to have it redressed - are fundamental to our citizenship. In everyday life that means when a Canadian believes that a federally regulated employer did not hire him because of his race he can seek redress. It means when a person who uses a wheelchair is prevented from entering a building because there is no ramp she has a way of getting that barrier removed. It means when a woman is sexually harassed on the job she can have the matter considered by a competent body. It means that when a Canadian believes that federal legislation discriminates against him or people like him, he has a means of contesting the validity of that legislation.

Yet the Canadian Human Rights Act does not mean these things for any First Nations citizens. As a result of section 67, the Act and its noble purpose do not apply to them.

Repeal is urgent because 30 years is too long to wait for human rights. Yet First Nations people have been waiting that long to have their rights recognized. Because of 22 words tacked on to the very end of the Canadian Human Rights Act in 1977 they often have no means of having their human rights concerns addressed.

Section 67 has real and serious implications in their everyday lives. And the repeal of section 67 has the potential of positively affecting over 460,000 people in 600 communities. The Canadian Human Rights Commission has consistently called for the repeal of section 67. We are encouraged that, while there are differences on how to best accomplish repeal, the government, the members of your Committee, the AFN, NWAC and other stakeholders all support the Commission's opinion that section 67 must be repealed.

● (1110)

[*English*]

The second point I'd like to emphasize is the need for an interpretative provision. I'll go into some detail on it.

The need for an interpretive provision is one important area in which differences of view have been voiced. Bill C-44 is silent on this matter. With respect, we submit that it should not be silent.

First nations communities and people have a unique history and special status in the Canadian constitutional and legal system. Their existing aboriginal and treaty rights are affirmed in the Constitution, have been progressively confirmed by the courts, and are recognized by governments at all levels. An interpretative provision is, in our submission, imperative to give application to the inherent right to self-government and is fundamental to developing an appropriate system for first nations human rights redress. An interpretative provision would help to ensure that individual claims are considered in light of legitimate collective rights and interests.

While many agree on the need for an interpretative provision, there are differences on how this should be achieved. Some have suggested that an interpretative provision be added to Bill C-44. In our special report on section 67, called *A Matter of Rights*, the commission recommends that an interpretative provision be developed post-repeal, in dialogue with first nations, to allow for needed dialogue, analysis, and consideration to take place without unduly delaying repeal.

Today the commission would like to recommend a third solution that incorporates, in our mind, the best of both approaches. We propose that Bill C-44 be amended to provide for two clauses.

One would be a statutory statement of principle that would enshrine the principle that the Canadian Human Rights Act should be applied to first nations in a manner that appropriately balances individual rights and collective rights and interests.

Second would be a mandate to the commission to develop, through a process of dialogue with first nations and other stakeholders, the appropriate instrument for applying the statutory interpretative principle in the handling of human rights disputes. This could be accomplished by way of regulation, or perhaps by resort to the commission's statutory powers under subsection 27(2) of the Canadian Human Rights Act. Under subsection 27(2), the commission has the authority to enact guidelines on how the act should be applied with regard to a particular class or group of complaints.

What might be included in a statutory statement of principle? The statutory statement of principle should have as its objective a clear articulation of the desired balance, while not indirectly reinstituting the very effects that the repeal is intended to relieve. This is completely consistent with the recommendations of the Canadian Human Rights Act review panel, which was led by former Supreme Court justice Gérard La Forest, and was included in their 2000 report, *Promoting Equality: A New Vision*.

Our third point for discussion is the length of the transition period. The length of the transition period is another issue on which differences of opinion have been expressed. The commission submits that six months is not sufficient time to allow first nations and the commission to properly prepare for repeal. The challenges of implementation are large, yet they are manageable. A significant amount of engagement and dialogue between first nations and the commission is desirable to manage the implementation.

This is not a simple matter of repealing it and seeing complaints flowing to the commission in the normal course. In modern conflict management approaches, strong complaint processes are important, yet they should be a remedy of last resort. Our legislation is consistent with this and encourages parties to a complaint to try to resolve their dispute within their own milieu before coming to the commission.

The need for local level systems to resolve conflict and provide redress of complaints is critical to the success of repeal. No matter how much the commission alters its procedures and processes to be responsive to the unique status and circumstances of first nations—and the commission intends to do just that—it will always be preferable to resolve human rights issues in the communities and workplaces where they occur, respecting their cultures. To allow this to happen, the commission and first nations must embark on an appreciative process of listening and learning, designing and building, and finally implementing and realizing a new first-nation-integrated human rights and conflict management system based on core principles that can be adapted to the needs of different communities, cultures, and traditions.

● (1115)

It is important to articulate that our vision is for much more than an internal complaints system. Formal dispute resolution, although important, should be a relatively small part of an overall system that would also embrace prevention and education. There is such enormous potential here to develop a whole system that starts with a dispute resolution structure providing multiple options for the resolution of disputes and is supported by other processes and practices that will shift the emphasis towards the front end—prevention of discrimination and education. The core principles to be developed should have as their goal the fostering of a culture that treats conflict resolution as a building block to creating inclusive and productive communities and workplaces.

By establishing integrated human rights and conflict management systems, first nation citizens will better understand their rights and how to realize them, first nation governments will better appreciate the rights they are mandated to promote and respect, and all parties will be able to work together to prevent discrimination and resolve human rights complaints.

First nations already have systems of dispute resolution, including traditional practices such as healing circles and community sanctioning. We honour and respect these practices. We have much to learn from first nations, and we will.

All of this will take time to realize; indeed, it will be an ongoing process. This is why the commission believes that a longer transition period is critical if we are to get this process off to a good start. We submit that this, in addition to the need for time to develop an interpretative provision, will require at a minimum 18 months, and would benefit from a period as long as 30 months.

[*Translation*]

Point 4 concerns resources. I would like to articulate clearly the imperative need of ensuring that both First Nations and the Commission have the resources needed to ensure that implementation is successful. No matter how well an interpretative provision is drafted or how long the transitional period is, implementation will not be successful without adequate resources to build needed capacity. Without that capacity, implementation may falter and this would bring the Canadian Human Rights Act into disrepute. No one wants this result.

First Nations have limited financial and human resources and have pressing problems they must address every day. At present many First Nations do not have the means to participate in the type of appreciative dialogue and collaborative problem-solving I have just discussed. Nor do they have the resources to develop internal redress and dispute resolution mechanisms. That is why the Commission welcomes Minister Prentice's statement to the committee that he would welcome the committee's views on the operational impact of repeal on First Nations communities.

The government has already indicated that resources will be provided to the Commission to carry out our expanded responsibilities when repeal proceeds. For this we are grateful. Should Parliament decide to expand the Commission's responsibilities beyond those in the current bill, we would of course want to discuss the resource implications of such changes with the government in order to ensure that we are adequately further resourced to carry out our responsibilities as mandated by Parliament.

● (1120)

[*English*]

Number five is the commission's mandate. Finally, I would like to clarify that the commission's statutory mandate goes well beyond the investigation and resolution of human rights complaints. The act makes the commission the guardian of human rights by giving the commission broad powers to ensure that human rights are effectively implemented in the federal jurisdiction.

As a statutory agency, independent of the government or other parties, the commission has and will continue to assert a leadership role in human rights by constantly encouraging all organizations under our purview to strive for excellence in the promotion and protection of the human rights of all Canadians in accordance with our act. It was in the exercise of this mandate that the commission issued *A Matter of Rights* in 2005 in order to bring to the attention of Canadians what the commission believes is a gaping hole in the fabric of our human rights protections.

In particular, section 27 provides that the commission may consider recommendations, suggestions, and requests concerning human rights and freedoms from any source and, when deemed to be appropriate, include in a report reference to and comment on any such recommendation.

We are mandated to carry out studies concerning human rights and freedoms as may be referred to us by the Minister of Justice and to include in a report the results of such study together with such recommendations as we consider appropriate.

We may review regulations, rules, orders, bylaws, and other instruments made pursuant to an act of Parliament, and we may comment on any provision inconsistent with the principle described in our purpose section, section 2.

And we shall try, by persuasion, publicity, or any other means that we consider appropriate, to discourage and reduce discriminatory practices.

In the process of implementing the repeal of section 67, the commission will use these powers as appropriate to call attention to progress in implementing repeal as well as impediments that need to be addressed. For example, the commission may decide, after a time period, to issue a special report on the implementation process.

The government and first nations could also request that the commission use one of our statutory mandates just iterated to work with them to delineate operational implications of the repeal, bringing our extensive experience in translating human rights principles into action.

To prepare, we are actively and proactively strengthening our relationships with first nations. We established a national aboriginal program in September 2006, of which Ms. Helgason is the director, based in Winnipeg. The program is mandated to lead and coordinate our ongoing work on this issue. The aboriginal program is being supported by commission officers who have expertise in areas such as policy development, legal analysis, communications, complaints handling, alternate dispute resolution, and conflict management systems.

In summary, we are recommending the immediate repeal of section 67; the incorporation of both a broad statutory statement of principle on the need to appropriately balance individual rights with community collective rights and interests, and a mandate for the commission to develop an appropriate instrument on this matter; a transition period of 18 to 30 months; and appropriate resources to support the implementation.

The time for action is now. We all agree on that. With imagination and cooperation, the commission is confident that repeal can happen soon. And with repeal, we will collectively open a new door and collectively build a first nations human rights system that honours and respects aboriginal and treaty rights and treats all first nation governments and peoples with the full measure of dignity and respect to which they are entitled.

We at the commission welcome this unique opportunity to work with first nations, their governments, peoples, and organizations, and with the Government of Canada and Parliament to build this better future together.

We are all here to respond to your questions. Commissioner Langtry, who holds this portfolio, and I will lead the responses.

Thank you.

● (1125)

The Chair: Thank you very much, Madam Lynch.

I was just going to mention that all of the questions will be directed to you. If you want to delegate other witnesses to respond, then do so, please.

Ms. Jennifer Lynch: Thank you.

The Chair: We'll start off with the questioning from the Liberals. Who would like to speak first?

Madam Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, Mr. Chair.

Thank you to all of you for coming today. Let me also thank you for a very comprehensive presentation. You've covered all the bases here.

I have a number of questions, and I probably won't have time to raise them all, to begin with.

You know that one of the largest criticisms of the presentation of this bill has been the lack of consultation with first nations communities. The minister has a view that consultation has taken place or discussions have taken place over 30 years, and I think it's a different view of what consultation should be from the first nations communities' view.

That said—and I'm not asking you to comment on that— I am particularly interested in your recommendation on a statutory statement in principle and a mandate to the commission to work in dialogue rather than an interpretive clause. I want to know whether you've had any discussions or consultations with first nations communities, and if so, what form they've taken. We've heard very clearly from the Assembly of First Nations that they want an interpretive clause embedded in the act.

So I would be interested in your comments on that.

Ms. Jennifer Lynch: Thank you.

Yes, we have met on several occasions with the Assembly of First Nations, also with the Congress of Aboriginal Peoples and the Native Women's Association of Canada, not just during the development of *A Matter of Rights*, but also subsequent to its release and as recently as last week and this week. We've also held discussions with some provincial and territorial first nations organizations.

Although I know you haven't raised it, but just for clarification, the duty to consult does rest with government and not with the commission.

Hon. Anita Neville: I'm aware of that. I'm well aware of that.

Ms. Jennifer Lynch: That said, we strongly believe that dialogue is very important in order to inform us as much as possible about the key interests of key stakeholders. So we have done so, and of course, subsequently we will continue this.

I think I've answered your question about the fact that we have met and consulted with them. You're also interested in some comment around their interpretive provision.

Hon. Anita Neville: We've heard very clearly from the Assembly of First Nations that an interpretive clause must be part of the bill. You are recommending something else. You've indicated that you've had discussions with them. I'm interested to know—well, we can ask them directly, I guess—what their view is on it, and why did you make this recommendation rather than embedding an interpretive clause right in the bill?

● (1130)

Ms. Jennifer Lynch: That may be an easier question to answer, so I'll answer your second question first.

Because this section of the statute has been in the statute for 30 years and it is now before you to deal with and repeal, we put a very high priority on having it repealed and we put a balancing high priority on the need for an interpretive provision to be built by the people who will need to use it, through dialogue. We believe that a good hybrid solution is to put a statement of principle in the statute that emphasizes the concept of balance, and then to provide time for us to be engaged in the development of an interpretive provision, because that's a matter of importance and expediency for us.

Hon. Anita Neville: If I can clarify, you are prioritizing speed and expediency as a greater priority, a greater need, than embedding the interpretive clause in the act—the speed of repeal, I should say.

Ms. Jennifer Lynch: The answer is no. We see the need for a balance between having this section repealed and developing a workable interpretative provision. We believe that a transition period of 18 to 30 months would be sufficient for us to get the inputs we need in order to build such a provision. So the timing needs to be balanced by the need for a workable interpretative provision.

Hon. Anita Neville: Have you consulted with the Assembly of First Nations on this?

Ms. Jennifer Lynch: Yes.

Hon. Anita Neville: Then my request will ultimately be to the chair, to ask them to come back to speak to this issue. In my view, this is a fundamental, key issue as we move forward with this.

Do I have any time left, Mr. Chair?

The Chair: You have less than a minute.

Hon. Anita Neville: I'm going to pass then and let it go on this next round.

Thank you.

The Chair: Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman.

Thank you for being here at this very important meeting. I also think it's important to hear your opinion on a number of points.

First, I'd like to ask you whether you have read the brief that the Assembly of First Nations presented to us on March 29.

Ms. Jennifer Lynch: Yes.

Mr. Marc Lemay: In that brief, there are two important points, apart from the time period, a subject to which we can return. Appendix A of the brief states that the eventual bill should include a non-derogation clause. In light of your consultations, would you be in favour of that idea, which is Recommendation 1 of the Assembly of First Nations?

● (1135)

Ms. Jennifer Lynch: No, we don't agree. I'm going to answer you in English.

[*English*]

We have reviewed the proposed non-derogation clause and we have some preliminary concerns. However, we think the issue is complex and the proposal requires additional review. We have not had the expertise or legal resources available to be able to provide a response in detail at this time.

We are pleased to note the Senate Standing Committee on Legal and Constitutional Affairs is currently studying whether federal legislation should include a non-derogation clause in its legislation regarding aboriginal matters, so that is ongoing work right now related to this precise point, the question of non-derogation clauses. It's my understanding that they're leaning away from them.

We agree with the need to consider the best ways of protecting aboriginal and treaty rights referred to in section 25, but we feel if there is going to be any non-derogation clause, it should be developed with stakeholders within a reasonable period of time. The legal complexities here are that the AFN is articulating that a non-derogation clause is necessary because in part they are saying that section 25 of the charter does not apply to the Canadian Human Rights Act. That is why the AFN has proposed this non-derogation clause, and the non-derogation clause they're recommending reads almost exactly like the one in the charter, but would apply to the Canadian Human Rights Act.

Although we haven't done a detailed legal analysis ourselves at this point, we would refer the committee to the concerns that Justice La Forest expressed in the panel report about a section 25 type of provision. He stated that a section 25 type of provision would provide a balancing provision, which would expressly recognize the primacy of aboriginal treaty and other rights over the rights in the act, but that the first nation government would have the onerous burden of proving an aboriginal right in each case. He also expressed concern that such a clause could in effect result in bringing back the discriminatory effects of section 67. The reason, if I can go into a little more detail, is that it's broad enough that it could indirectly reactivate section 67.

[*Translation*]

Mr. Marc Lemay: This is an incredibly complex question. I understood your answer concerning Appendix A to the brief of the Assembly of First Nations, but an interpretative provision is proposed in Appendix B. You also talk about such a provision, but I sense, perhaps wrongly, that yours doesn't go as far and that, if that of the First Nations were implemented, it would be as though we didn't repeal section 67.

Am I beside the point or, on the contrary, is that how you see things as well? How do we go about siding with them and heading toward repealing section 67?

[*English*]

Ms. Jennifer Lynch: That is our concern. First of all, the wording they propose is a good basis for beginning a discussion on an appropriate balance between collective and individual rights. However, the language proposed is, in our opinion, very detailed and very expansive, particularly paragraph (f) and paragraph (e).

What we're looking for is an opportunity to assist in and help develop language that will strike a balance between collective rights and communities and the rights of individuals. The language of balance, with respect to the AFN, is not in their language.

That is why we suggest the hybrid option, because we can make a statement of principle within the legislation that uses the language of balance and then work with key stakeholders, through a process of dialogue, to determine the appropriate instrument for applying this statutory interpretive principle in the handling of human rights disputes.

● (1140)

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Madam Mathyssen, you have seven minutes.

Mrs. Irene Mathyssen (London—Fanshawe, NDP): Thank you very much for being here. I appreciate the information you bring to us.

I have a couple of questions.

The provinces and territories have their own human rights commissions, so first nations people on reserves would then, in effect, become the only Canadians who have access to the Canadian Human Rights Commission for complaints against community governance. Is there any reason why a tribal council or a provincial organization couldn't set up their own human rights codes and commissions and provide the rights protection more effectively than having Canada's national commission deal with what is essentially a local matter, a local concern?

Ms. Jennifer Lynch: Thank you very much for that question.

First of all, there is no reason why not. Our report, *A Matter of Rights*, suggested that human rights institutions that are first nations specific should certainly be considered. The commission does not have, nor do we wish to have, a monopoly on human rights redress. Our only objective in promoting the repeal of section 67 is to ensure that all Canadians have access to a human rights redress system. We have no institutional ambitions. If first nations and government determine that they want to move in the direction of establishing statutory human rights institutions, the commission would be pleased to work with them and the government.

It should be noted that this type of evolution is similar to what has happened with the territories. Originally the commission had jurisdiction in Yukon, the Northwest Territories, and Nunavut, but as these jurisdictions developed their human rights mechanisms, jurisdiction was ceded to them.

Another thing to take a snapshot of, because you used the specific language of a human rights code, and that's fair enough language when we're talking about something that would be more what we might call rights-based or recourse-based; in other words, a place for people to raise a complaint and have it dealt with in whatever way, but with a decision being made that resolves it—so the resolution of a dispute. In modern conflict management, that is one of two components of a good human rights/conflict management system. That component is the modernizing or creating of a dispute resolution structure or recourse mechanism.

The other component is the creation of what we might call, in an organization, organizational support or community support for the creation of a culture or environment where people will raise issues of concern and they will be respectfully received and responsibly addressed; where there are mechanisms for dialogue for people working things out and for learning about how to prevent; being respectful when one learns there is an issue, and communicating that throughout the community. This community support or organizational support that I referred to in my opening remarks is moving to the front end and very much needs to belong in each community.

We know from our external work that when you take an integrated approach that also looks at the front end of disputing—if you will, the prevention, education, and internal capacity building—that work is really 95% of the effort. That's why I said it's not a matter of flicking a switch and turning on the complaints system within the Human Rights Commission or saying start your own; it should be a whole approach, and first nations need lots of time and good resourcing for this.

● (1145)

Mrs. Irene Mathyssen: You have already received complaints from reserve residents and status Indians. It's my understanding that it's only when the complaint deals with the Indian Act, specifically section 67, that it applies.

How many complaints do you receive a year from reserve residents and status Indians and how many are rejected because the complaint deals with the Indian Act in terms of—? I'll leave it.

Ms. Jennifer Lynch: I'm a quick study, but I don't have all the statistics. I'm sorry. I'm going to turn to Ms. Helgason to respond.

Ms. Sherri Helgason (Director, National Aboriginal Program, Prairies and Nunavut Region, Canadian Human Rights Commission): Thank you so much for your question.

In answer to your question of how many complaints we receive from reserve residents against first nations on a yearly basis, we've received between 35 to 50 over the last several years.

In terms of your question of how many we turn down because of section 67 currently, in terms of our screening process for dealing with complaints that would invoke section 67, in all likelihood they are either initially screened—that is, they don't proceed to a formal complaint—or because of the knowledge of the section 67 exemption that's currently out right now, people might not even call the Canadian Human Rights Commission to begin with. The complaints that are admissible, that are not currently barred by section 67, are between 35 to 50 each year.

Mrs. Irene Mathyssen: Could you give some hypothetical examples of the kinds of complaints that—

The Chair: We are running a little bit short of time. You will have another opportunity, but it'll be five minutes soon.

Mrs. Irene Mathyssen: Okay. Am I out of time?

The Chair: Yes, I think so. You don't have time to get a proper answer.

Before I turn it over to my colleague, I wanted to ask a question of the commission.

The position of the commission in the 2005 report was that there should be a period of transition that would be used for the development and the enactment of the interpretive provision. It meant we would move forward, but there would be that term for the enactment. Why has there been a change in the position of the commission?

Ms. Jennifer Lynch: The more we dialogue with stakeholders, the more we learn, and the more we see what might be more workable for all stakeholders. That's why we are proposing a hybrid at this time.

The Chair: Okay.

Go ahead, Mr. Albrecht. I only took a minute of your time.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

There are a couple of different areas I'd like to head into.

First of all, let me thank you for being here, and thank you for the emphasis that I see here in terms of prevention and this front-end mechanism, as you describe it, recognizing and honouring and respecting the healing circles and community sanctions and those kinds of things.

I have a question in that regard. Since we've had this in place for 30 years, would there not be some natural automatic educational components that the first nations would have already been aware of as they saw the Canadian Human Rights Act implemented in the rest of Canada? Recognizing that it was a "temporary stay", would they not have already been thinking about an educational component and about preparing for this eventuality?

Do you understand where I'm coming from?

Ms. Jennifer Lynch: I certainly do. Of course, with 600 communities and 460,000 people, there is no doubt that there is that kind of work going on all the time. That's why we used the language of "appreciative", because our purpose at the commission includes being respectful of things that are being done well.

Whenever we're working with any regulated organization, we don't go in and say that it's our way or the highway; on the contrary, we conduct what we might call an appreciative assessment of what is being done well. In fact, we find that one will inform the other, and it would be our experience that during an appropriate dialogue format, we would probably be able to assist the first nations in identifying—or they could themselves identify—enormously successful best practices, good practices, and proven practices that they could exchange one to the other. We know of some already, and that work needs to be done.

● (1150)

Mr. Harold Albrecht: That, it seems to me, would mitigate this lengthy implementation period. Maybe because some of this has already occurred rather naturally, we could especially come more towards the 18 months than the 30.

Let me go on to a little different approach. You commented about the need for balancing individual and collective rights. I think all of us are in agreement; we want to recognize that. The charter and the Constitution already, in my opinion, deal with many of those concerns related to balancing individual and human rights—sections 15 and 25 of the charter, and section 35 of the Constitution Act.

You're suggesting those might not be sufficient in terms of dealing with first nations complaints. In that case, how would an interpretive clause apply to the 600 nations you just mentioned in an equitable way? In other words, would there be a need for an interpretive clause of many different types to suit the specific cultures of the variety of first nations people in Canada? That would be my concern.

Ms. Jennifer Lynch: Of course all the questions are excellent, and this one is particularly interesting to us.

We would envisage developing core principles that could be implemented in different ways in different communities. It would be a litmus test of core principles, not a rigid interpretive provision. It would be something more along the lines of core principles that would enable different communities to engage those principles in a way that works within their own community.

Mr. Harold Albrecht: My concern on that point, I think, would be that, looking down the road, I hypothetically could see the need for an interpretive response to an interpretive clause, and you'd begin to interpret the interpretations. I think that concern has been raised previously due to the fact that the balancing of individual and human rights already is within the charter and the Constitution Act.

I'm just wondering if we're not making it even more muddy by adding these extra layers of interpretation that we will need to come back and refine and revise.

Ms. Jennifer Lynch: Thank you.

First of all, in terms of an interpretive provision, another core use of it, of course, is that it helps the commission interpret when complaints come to us. And having input about the development of an interpretive provision from all key stakeholders is very important to our work.

I'm sorry, I missed the second part.

Mr. Harold Albrecht: It was about the constant need for going to a different interpretation.

Ms. Jennifer Lynch: Right, yes.

The AFN is concerned that section 25 of the charter, to which you've referred, doesn't apply outside the charter. Section 35, some legal analysis would say, should be sufficient. So we already have them, although there are some complexities there as to the application.

● (1155)

Mr. Harold Albrecht: I think it's probably a matter that we're just seeing it from a different perspective, and I'm prepared to accept that.

Ms. Jennifer Lynch: Yes, I think you are.

Mr. Langtry might have something to add.

Mr. David Langtry (Commissioner, Canadian Human Rights Commission): Yes, thank you.

Certainly, it's true. Obviously sections 15, 25, and 35 of the Constitution Act, 1982 would have application. We're not saying that those are not sufficient. The reason there was a concern of having an interpretive clause, as the chief commissioner has indicated, is to govern the conduct of the cases in doing a balancing between the aboriginal treaty and other rights of first nations and aboriginal peoples with the individual rights as set out in the Human Rights Act.

Our concern is that one should not trump the other, which is the concern of embedding, if you will, a section 25 type of claim, because of the other rights. It could mean band council resolutions under the Indian Act, therefore we would not be able to consider those in a complaint.

The interpretive provision that we're talking about being outside of the act is simply that the guiding principle is that we need to balance the collective rights and interests with the individual rights found under the Canadian Human Rights Act. So it's not for an interpretive provision that would vary amongst the 600 communities. It's how the Canadian Human Rights Commission, which would also be binding on the tribunal in considering—but only on the commission and the tribunal—takes those charter rights and balances them with the individual rights.

So it's the collective versus the individual.

The Chair: Thank you.

Madam Karetak-Lindell, please.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): Thank you very much for being here this morning.

I want to go further into collective rights versus individual rights, and also go back to the solution you have in your report about having a statutory statement that would then determine your mandate.

I'm a little uncomfortable with that, rather than having an interpretive clause right in the legislation, for a couple of reasons. One is that I think it's again putting off putting in the interpretative clause. Having the interpretative clause right in the legislation gives a comfort level, I think—for AFN, definitely, and for the people this legislation is going to affect.

The other part I'm not that comfortable with is that if you don't put an interpretive clause in the legislation itself, the balance is shifted in determining where you look at collective rights versus individual rights.

I know I'm not probably getting that point across properly. I'm just trying to figure out what words I could use.

If you don't put the interpretive clause in BillC-44, I'm worried that the balance is not going to be there. I'm worried that it's a shift to words interpreting collective rights versus individual rights more on the individual side; that it would not be in the middle is what I'm trying to say.

In all the discussions I've heard around the table, everyone is leaning, I think, towards individual rights trumping collective rights, only because they don't understand the impact and how important collective rights are to aboriginal people. That's the point I'm trying to make; that I don't think the balance is there, only because people don't understand what it really means in the life of an aboriginal person when collective rights are being talked about rather than individual rights.

Perhaps you can expand on that: my arguments that it should be right in the bill, versus the third option that you have before us.

Ms. Jennifer Lynch: Thank you. Just as a recap of it, the language of balance is something we are recommending be in the bill. So it's a question really of—

Ms. Nancy Karetak-Lindell: I'm wondering whose understanding it is going to be based on.

Ms. Jennifer Lynch: This leads us to the interpretive provision discussion and your question.

Commissioner Langtry is going to respond.

● (1200)

Mr. David Langtry: It is certainly a fair question and one of the reasons we're saying it should be the hybrid, to which end the legislation itself provides that there be the development of an interpretive provision that is a balancing of the collective rights and interests with individual rights, but then provides a direction for the commission to develop it in dialogue with first nations, so that it can be captured.

The hybrid position, just to go back to a question previously asked by the chair—the new position from our 2005 report—is based on, as the chief commissioner indicates, conversations we have been having with first nations, saying there is the need for balancing and there is the need for an effective balance between the two.

There have been examples. There was a decision in 1998, in a question that went to the tribunal, in the Jacobs case, which was a non-section-77 complaint that came forward, wherein the tribunal indicated that there are legitimate collective rights that could be upheld. In the Jacobs case, the collective right to uphold the culture and language of the Mohawk people was recognized in the facts of the case. The individual rights, they felt, had not provided a reasonable accommodation to the questions.

But our purpose, and the reason for the longer transition period, is to allow us to be in conversation with the first nations in order to develop this. Our intention is not to develop it on our own in a vacuum; it is, really, to work with the stakeholders to ask what an appropriate balance is, so that one does not trump the other; that it's neither one nor the other, but that middle ground, if you will, recognizing both.

The Chair: Thank you.

Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): Good afternoon. I missed part of your presentation, unfortunately, but I have read your submission.

I'm going to pick up on the last line of questioning that Mr. Albrecht and Ms. Karetak-Lindell had entered into. I guess the vein that I would like to pursue is more along the lines of the interpretive clause, again.

Those who may have been following our previous hearing perhaps will recall the submission we had from the AFN in relation to this repeal, and the interpretive clause they put forth. There have been a couple of different versions of an interpretive clause over the years; however, this is the most, I think, relevant one in light of the fact that it's the most recent submission from our largest aboriginal organization in Canada.

I'm not sure if you've had an opportunity to look at the interpretative clause that was submitted. Have you?

Ms. Jennifer Lynch: Oh yes.

Mr. Rod Bruinooge: Okay, good.

In relation to *the* interpretive clause that's been presented, my questions for the AFN were similar to the ones I'd like to ask you. Those would be in terms of schedule B of this interpretive clause, which allows for entitlement to the first nation government to give preference to hiring employees and contractors, and preference to its members for allocation of land, resources, and economic benefits.

What would be your understanding of how this could perhaps be a limiting factor to the benefits of the human rights code? Would this preferential system in essence be able to trump, I guess, what benefits would flow from the repeal of section 67?

Ms. Jennifer Lynch: Thank you.

With respect, there are current mechanisms in the Canadian Human Rights Act that do balance collective and individual rights in some instances. A case almost exactly on point is our section 15 and our section 16.

Section 16 deals with special programs and provides us with an opportunity to recognize and ensure collective rights already under the Human Rights Act. Under this section, the commission has developed a policy on special programs that provides advice to employers, subject to the Canadian Human Rights Act, on what constitutes a special program.

We use section 16 already as the basis for the commission's aboriginal employment preferences policy, which supports that: “It is not a discriminatory practice for an employer to give preferential treatment to Aboriginal persons in hiring, promotion or other aspects of employment, when the primary purpose of the employer is to serve the needs of Aboriginal people.” This aboriginal employment preferences policy is an example of how the commission has developed mechanisms to balance individual and collective rights. At the same time, the policy provides a framework to balance the discretion of the first nation to uphold the collective right of preferential hiring with individual rights.

So we have already exercised our legislative mandate in order to —

● (1205)

Mr. Rod Bruinooge: Do you have cases that you've engaged in on that front? Has a human rights case been brought forward where you've had to employ that?

Ms. Jennifer Lynch: Ms. Helgason can answer that.

Ms. Sherri Helgason: We're aware of cases that have been brought where a first nation exercised its right to give preference in hiring to a qualified aboriginal person. We can't disclose the details of those cases—complaints of course are held as confidential—but the policy has been invoked upon occasion.

Mr. Rod Bruinooge: Okay. And—

The Chair: You're out of time, Mr. Bruinooge.

Mr. Lévesque, please.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Mr. Chairman, let's say we're in full legal flight. My training is limited to labour law, and I'd be tempted to suggest to you that you allow our guests some time to go get something to eat. Then we could continue. I don't know what you think about that.

Ms. Jennifer Lynch: Thank you.

Mr. Yvon Lévesque: Do you want to continue? Yes? All right.

[*English*]

The Chair: Yes, carry on.

[*Translation*]

Ms. Jennifer Lynch: You're very kind. Thank you very much.

Mr. Yvon Lévesque: I'm going to ask a very brief question to enable my colleague, who knows the law much better than I, to speak. Earlier you mentioned that you had consulted the Aboriginal communities. I'm asking you the question because the various associations that have appeared before us deplored the fact that they were given insufficient time to consult. We know that some communities that have moved forward in developing their community structure won't be too troubled by the repeal of section 67 and that others will be enormously troubled. This may cause major conflict. That's why I'm asking you the question.

At what level did you meet with the First Nations people?

Ms. Jennifer Lynch: At what level?

Mr. Yvon Lévesque: What feeling did you have during those meetings?

Ms. Jennifer Lynch: The level of the people or the level of the subject?

Mr. Yvon Lévesque: The line level.

Ms. Jennifer Lynch: Thank your for your question.

[*English*]

Our role is not formally one of consultation. It's important for us to underline that, because consultation is the duty of the government. We want, though, to have good working relationships and to perform our work in a way that is most acceptable to the stakeholders we regulate through the Canadian Human Rights Act. So as a matter of courtesy and curiosity, we have gone to these key stakeholders to find out what their concerns and issues are, what their ideas are. And we have told them about ours, as well. We have shared the content of our submission, as recently as yesterday, with the Assembly of First Nations, as an example of the level of dialogue we have had.

● (1210)

[*Translation*]

Mr. Marc Lemay: How much time is left, Mr. Chairman? Two minutes?

[*English*]

The Chair: Keep it very short.

[*Translation*]

Mr. Marc Lemay: I read your 2006 report. You say in that report that the Commission intends to begin discussions on specific questions such as conflict resolution techniques adapted to Aboriginal traditions or culture and to ensure that relevant information is accessible on its Web site. Is that done?

[*English*]

Ms. Jennifer Lynch: The secretary general is looking after the operations of the commission.

[*Translation*]

She's going to answer.

Mr. Marc Lemay: Good morning, madam.

Mrs. Hélène Goulet (Secretary General, Canadian Human Rights Commission): Good morning, Mr. Lemay. Thank you, Mr. Chairman.

We are building a Web site that will contain all the relevant information. As you know, we've requested resources with a view to the repeal of section 67 of the act. We haven't yet received those resources from the government.

Mr. Marc Lemay: We'll have to talk to the person who's hiding. His hands are hidden.

Mrs. Hélène Goulet: We're going to have to talk to the Treasury Board. We're doing what we can right now with a small program that is headed by Ms. Helgason and the resources we have. We're moving forward as quickly as we can in the context of the resources we have right now, but we're preparing to launch the Web site.

Mr. Marc Lemay: I don't think I'll be the only one to say that it should be stated in Bill C-44 that an interpretative clause has to be drafted. The question I'm asking you is very specific. How are you going to draft an interpretative clause in collaboration with the First Nations, when they've already developed one? That's what they want, and it's Appendix B of the brief that they have presented to us. Have discussions already started on that topic? It can take a long time to develop an interpretative clause.

Mrs. Hélène Goulet: Yes, it takes time to develop an interpretative clause, but that interpretative clause will be used to guide complaints resolution at the Commission. That clause can't go so far that it prevents implementation of our act. So the balance that should be struck will have to be discussed with people. Ultimately, the Commission will have to have an interpretative clause that belongs to it, after consulting and dialoguing with all the stakeholders. When the act goes into effect, we'll have to be ready to receive complaints and interpret the act in order to settle those complaints.

Mr. Marc Lemay: Are there already any examples of interpretative clauses in the world? Pardon me.

[*English*]

The Chair: Mr. Warkentin, please.

[*Translation*]

Mr. Marc Lemay: Are there already any interpretative clauses in the world?

Mrs. Hélène Goulet: I unfortunately can't answer that question.

[*English*]

Ms. Jennifer Lynch: On the question of whether or not there are interpretive provisions anywhere in the world that might inform, I think Mr. Goldberg might well, with his deep knowledge, be able to give us an example.

Mr. Harvey Goldberg (Team Leader, Strategic Initiatives, Knowledge Centre, Canadian Human Rights Commission): I'm not aware of any legislation in other jurisdictions that would approach this specific kind of problem, but I should point out that this is a common issue in international human rights law, the whole issue of how to—sometimes it's put in terms of balancing western rights against the right to development, or the right of people in the third world. A lot of thought has been given to this, to the notion that rights are interdependent and indivisible, and that you always have to work to balance one right with another. It's not a unique issue to the aboriginal situation, so there is a lot of international and Canadian experience.

A good example of Canadian experience is the way the courts have balanced the right of freedom of speech under the charter with the right to be free from hate. The Supreme Court has showed the balance there, how you protect those rights. So I think a lot of experience is relevant to this, which the commission and others could call upon.

● (1215)

The Chair: Thank you.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chairman.

Thank you very much for coming and bringing your testimony this morning. We appreciate it.

I'm going to continue on the whole issue of collective rights and the whole issue of an interpretive clause. I'm imagining, but I'm looking for clarification on this. I guess the interpretive clause would be a clause that defines those collective rights that might trump individual rights in certain circumstances. Is that generally the idea of the interpretive clause?

Mr. David Langtry: Not really. It wouldn't say that these rights will trump, because in individual cases, what you always look to do in a balancing is to try to minimize the adverse impact on one or the other. You're looking for a middle, so it's the interpretation, hence the word. It's the overall guiding—

Mr. Chris Warkentin: So that I might better understand, in terms of a hypothetical example, how the wording of interpretive clause might go forward, what type of things would you see included in the interpretive clause? I don't want to get into a lengthy discussion, but just so we might better understand.

Mr. David Langtry: The interpretive clause would recognize the rights that are there, and how the commission, in considering a complaint, would look to a balance, how best to accommodate both so there's a minimum impact, but it would be an individual case. As was said earlier, the interpretive clause as proposed by the AFN would be a starting point for us to begin the discussions.

Our concern is that because of the complexity of this area, whether it's section 35 and the consideration being given in the other place on the issue of non-derogation, it requires that working together to find out how you might say we can strike the balance, because an individual right to property, for example, real property, competing with the collective right—

Mr. Chris Warkentin: I understand that. Maybe that's what the biggest issue might be, the issue of property rights. But I think there's a concern out there that at the end of the day we don't want to see rights being taken away, or a second set of rights—a downgraded set of rights—for people who are living in aboriginal communities. I think that's a concern, and I guess we'll have to work toward a resolution to ensure it doesn't happen.

Mr. David Langtry: Other than that currently we have a balancing in the legislation already, through our section 15 in particular, whereby there can be a bona fide occupational requirement, or a bona fide justification that can support an individual discrimination.

Mr. Chris Warkentin: I think Mr. Bruinooge has just a couple of additional questions.

Mr. Rod Bruinooge: How much time do we have?

The Chair: Two minutes.

Mr. Rod Bruinooge: Two minutes? I might have to extend this into my next round of questioning, so I'll start it off and give you some time to maybe consider what I'm attempting to get at.

Of course our government is interested in matrimonial real property rights on reserve. Some of you may have heard anecdotally about situations whereby a first nation man may marry a non-aboriginal woman, have children, live on reserve in a home, and the marriage may break up. Then that non-aboriginal mother and her children are perhaps removed from the home because of a decision of a band council. This, I think, goes right to the heart of the preferential allocation of land and resources.

I guess my question would be this. Would this non-aboriginal woman and her children be more protected with an interpretive clause or without, in your opinion?

Mr. Marc Lemay: It depends.

Qu'est-ce qu'il dit?

Mr. Rod Bruinooge: I didn't ask you, Monsieur Lemay.

Some hon. members: Oh, oh!

Mr. Marc Lemay: You have a good lawyer now.

Ms. Jennifer Lynch: Of course, every case has to be determined on its own merits. So with respect, there is no answer.

● (1220)

Mr. Rod Bruinooge: I think there's a pretty clear answer, actually.

Ms. Jennifer Lynch: Mr. Langtry.

Mr. David Langtry: I appreciate that you're saying you think there's a clear answer. I'm not sure, because if there were no interpretive clause, then it might be that the collective rights could in fact trump the individual rights. If there were not an interpretive clause, it could be said that under the Canadian Human Rights Act the individual discrimination, if it were grounded on either marital status, family status, or sex as a basis of discrimination, might trump the others.

The interpretive clause is endeavouring to strike a balance. There are individual factual situations one could conjure up as to what the circumstances are—there may be other considerations for an off-reserve, Bill C-31-reinstated woman who's looking for housing back on reserve—and how this is managed. If she's reinstated, she might have a longer membership than people living on reserve. But there may be other considerations that come into play.

So I think it is a fairly complex one, particularly in this context, which is the other reason we're concerned about the interpretive clause being built into the legislation. It's a very complex area and requires much thought, legal interpretation, legal assistance, and dialogue with first nations.

The Chair: Could I intrude to ask something?

You said a word that I picked up on. You said “might”. You said it “might” happen. My question would be, do you think, even if you work out an interpretive clause, that ultimately the courts are going to determine what the actual rights are, or the interpretation of those rights—collective and individual? The AFN is asking for more time to determine individual rights and collective rights, and yet ultimately, do you think the courts are going to determine a lot of the perimeters of the rights anyway? So why take more time?

Mr. David Langtry: The reason for more time is for the passage. We're certainly not suggesting that the bill not be passed. As you know, the legislation, upon royal assent, has an immediate application to the federal government and federally regulated employers. So it's the application to aboriginal authorities; the longer time is for the sake of trying to avoid the likelihood of it.

There are other factors involved in the longer time. We also want to see the development, the education, the awareness, and the alternative dispute mechanisms being created before its application in first nations. The other aspect is so that we can work out the terms of an interpretative clause, having said that there will be one, because of its being on individual situations.

Our guideline-making power went to the Supreme Court in 2003 in a Bell Canada case; it does get tested. That was in a pay equity guideline situation. Respondents, or a complainant, will contest these. The minister acknowledged that too in the testimony: that likely this is something that will be challenged and defined and redefined by the courts.

The Chair: Thank you.

Madam Mathyssen, please.

Mrs. Irene Mathyssen: Thank you, Mr. Chair.

I'm quite interested in this line of questioning. Clearly, first nations have asked for more time to create this kind of dispute resolution mechanism, because it gets very complex. Good heavens, we're talking about a marriage breakdown and the whole issue of the status of those children. To simply say we have to consider just the situation regarding the home—Those become homeless children if we're not considering that situation in a balanced way. I understand that quite clearly.

I am on the status of women committee, where we discussed this whole issue of what happens to that woman and her children. These are children, and they need to have a home; they can't simply be disposed of somehow or other. Very clearly, we need to come to some terms here.

You must have given some thought to the consequences of repealing section 67, because clearly there are going to be consequences. I want to come back to my hypothetical cases from the question I wasn't able to ask before. Could you provide some hypothetical examples of the kinds of complaints that might be filed against the Department of Indian Affairs if section 67 is repealed? What do you anticipate?

● (1225)

Ms. Jennifer Lynch: Thank you.

To begin with, we will work to give you some subject matter areas, and not hypotheticals per se, for the obvious reason that were we to make up a hypothetical and that very complaint came to us, it could be difficult for—We can't pronounce on those. Ms. Helgason will talk to you about some of the subject matter areas.

In terms of numbers, it's really impossible to know, if we open the door, whether that's opening floodgates or whether there will be a learning period—an awareness period, and so on. Let's say we projected even a 14% increase. That 14% might be in numbers of cases; however, in terms of the complexity and the substantive issues, it could be a twofold increase. I'm just taking that number out of the air.

It's just that this case or that case, with the balancing and the complexity of the topic itself, could vastly increase our workload. It's very hard to put the finger on the pulse of the workload and say how fast it will quicken.

Concerning the subject areas that could come before us, Ms. Helgason is going to reply to your question.

Ms. Sherri Helgason: Thank you so much.

Well, I can try. Hypothetical examples are just that, but there are many instances out there that could form the basis of complaints that have not yet come to us. This is just a very brief account.

You've asked about potential complaints against government. There are sections of the Indian Act itself, for example, that are shielded from human rights scrutiny, that govern who's eligible for status, who's eligible to be a member. A person currently can't file a complaint on the basis that those membership criteria or status criteria are discriminatory on the basis of race, colour, age, sex, family status—things of that nature. That's one example of a kind of complaint: the eligibility for status, for membership.

In addition, section 67 exempts from scrutiny such decisions regarding housing, education—such things as, let's just say hypothetically, Commissioner Langtry mentioned. A woman who was reinstated through Bill C-31, who had been living off-reserve for a number of years but has been a band member, might apply for housing. If she's denied that housing or is put very low on the list, she currently can't bring forward an allegation that the decision has been made in a discriminatory way.

Or take, for example, an application for education or funding for education. A person can't bring a complaint that they've been denied in a discriminatory way.

There's a plethora of examples. I would be pleased to discuss this further.

The Chair: You're out of time. I'll move on to the government side.

Mr. Rod Bruinooge: Well, since we've been engaged in hypotheticals, we may as well continue.

I find it important to return to the concept of matrimonial real property, as it's something our minister and our government are very interested in. I don't think it's a surprise to anyone that we felt it was necessary to bring about a repeal of section 67 before entering into a meaningful legislative consultation and debate in relation to any bill that might come forward respecting matrimonial real property. This is definitely an important step.

I need to return to the idea of marital property on reserve and how these assets would be split in marital breakup. Currently within the reserve system, the chief and council have the final authority on allocation of resources. Part of the reason we as a government have wanted to proceed with legislation to bring about matrimonial real property rights for first nations women is that that there are a number of cases many of us have learned of in which families aren't necessarily treated in a way we would accept in Canada as being appropriate.

When women and children are unfortunately not able to live in the home they resided in prior to the marriage breakup, and not only have to leave that home but also aren't provided with a secondary property—Of course, off-reserve there would be an immediate judicial splitting of whatever the assets were able to achieve in terms of value; perhaps a different property could be purchased, or one of the spouses would leave. This is really the crux of why I feel so passionate about ensuring that the Canadian Human Rights Act be applicable specifically in terms of allocation of resources, land, houses.

I wouldn't disagree with Mrs. Helgason about membership. I think that's a valid point. I don't think necessarily there is much of an argument for individuals who are not even first nations to bring about a human rights case to try to gain access to membership. But dealing specifically with matrimonial real property comes right down to the heart of the very issue of the interpretive clause.

I guess my question would be, do you imagine perhaps a different interpretative clause that could, in its very text, remediate this conflict that I have?

● (1230)

Ms. Jennifer Lynch: That's a good question. We have not brought with us drafts of interpretive clauses to give to you. This issue is one on which we agree there is an urgent need for resolution. We also recognize that the solutions to the issue need to be consistent with the inherent right of first nations to self-government.

Commissioner Langtry, do you have something you might add?

Mr. David Langtry: It's obviously a difficult question to answer, whether you could accomplish something like that under an interpretive clause. We remain of the view and we certainly hope that a resolution of the consultations and the discussions between NWAC, AFN, and INAC that are ongoing will lead to fruition.

As you well know, there is the dichotomy, especially in marital property regimes, under the Constitution as to the division of powers. Usually the property matters on marital breakdown are a provincial jurisdiction. But also, because of the overriding responsibility or power given to first nations to determine property on reserve, it would seem to me that in the absence of an agreement and a stand-alone act, which frankly we would support—and I'm speaking outside, probably, of the interpretive provision—I don't think it would be covered. That would be my initial sense.

Under an interpretive provision, because an interpretive provision is simply how the commission and the tribunal will reconcile individual and collective rights, the issue of distribution of matrimonial real property or matrimonial property is of a more fundamental nature, which, if it were brought within the context of discrimination within the act, would be dealt with in a complaint way.

That's my initial reaction. I hadn't really given it consideration, because of the separate process right now with the marital real property question that's ongoing in the country.

● (1235)

Mr. Rod Bruinooge: The interpretive—

The Chair: I'm sorry, that's the end of your questioning.

Do you have questions, Madam Karetak-Lindell?

Ms. Nancy Karetak-Lindell: In one way I'm encouraged that the other side is talking a lot about the interpretive clause. Maybe they realize that we need one.

Going back to some examples I'm hearing, that's where I was leaning in talking about balance. As soon as you put the word “aboriginal” in , people assume right away and come to some conclusion that there's a discriminatory case here. Every one of us, especially those who have sat on status of women, can talk about many women who are not able to get the home, no matter who they are. That's a problem with our society. It's the women and children today, no matter who they are, who, in statistics, will not get the fair end of the deal in a marital breakdown.

To assume it's only because of aboriginal communities and the way things are set up that this is always the case is what I'm worried about: the preconceived notion that there is already discrimination going on that is against non-aboriginal people. That's what I'm worried about: people not understanding collective rights versus individual rights and going back to property.

You're talking about second and third interests. To me, those kinds of conversations are very disturbing, in that they make me realize people don't understand collective rights. Until we get to the stage of being able to protect collective rights, I don't know where the balance is going to be.

Also, in the transitional time, we cannot exercise our rights if we don't know them. I can speak for Nunavut. That is the case; we're not under this section. But people do not exercise their rights because they don't know enough about them. That's why we really need to push for that transition time to be 30 or 36 months. You can't have people exercising their rights if they don't know them.

When you talk about that transition period, are you also talking about education and letting people know that certain practices are not acceptable in today's society?

Ms. Jennifer Lynch: A considerable amount of research has been done on why people don't come forward. Some people do not come forward because they don't know their rights, or don't know how, or there's no method for how; also, from fear of retaliation, or of not being a team player, if you will—a lot of reasons.

Education is extremely important; yes, it definitely is.

Ms. Nancy Karetak-Lindell: But my point is that it's not only in the aboriginal community that you don't see people bringing forth complaints about their rights.

Ms. Jennifer Lynch: Oh, absolutely; it's endemic to society. That was a societal comment I was making.

The Chair: Let me just ask the question, because we're talking about a timeframe: what is the magic number? You said from 18 months to 30 months. Why is it that? Why not 36 months? Why not 48 months? How do you come up with that timeframe? What makes you feel that is sufficient?

Ms. Jennifer Lynch: We're speaking of a range principally because this is balanced and also has to do with what resources there are. The more resources there are, the more quickly one can move towards obtaining the inputs we need and developing the education programs.

We're aware that other organizations are proposing different lengths of time. I don't know that I have a more precise answer for you. The reason for the 18 months came from the case of Corbiere, and yet our sense of it is that because of the diverse number of people and communities, the more maximal period would be what we're looking for, the 30 months.

● (1240)

The Chair: Thank you.

Is there anything further? We have about five minutes, and then we're going to move into committee, just so that you're aware.

Mr. Bruinooge.

Mr. Rod Bruinooge: For the sake of argument, I want to respond just quickly to some of what Ms. Karetak-Lindell said. My point would be to let the communities say whether they have complaints; that's what this process is all about. If the people in the community want to put forward their human rights complaints, we'll see.

Perhaps there are individuals on reserve who have these issues. We'll find out when the Canadian human rights code applies.

Ms. Nancy Karetak-Lindell: I'm just saying that things change as soon as the word "aboriginal" goes in there.

Mr. Rod Bruinooge: No, it doesn't. It doesn't at all.

The Chair: Mr. Lemay.

Mr. Rod Bruinooge: Anyway, Mr. Albrecht is going to finish the time.

Mr. Harold Albrecht: The transition period for implementation has come into question. Also, one of the issues that have come up in previous discussion is the need for consultation.

A statement Ms. Karetak-Lindell just made reminded me again that there's a very large diversity across first nations people. How would we know when we had done adequate consultation? Would it be after we've spoken to the three or four major groups that represent first nations people? Would we need to go community by community? I'm concerned that we hide behind and make the process so long that we may never get to our ultimate goal, with the amount of consultation that's needed prior to moving ahead.

Then the second question would be, when the Canadian Human Rights Act was first enacted in 1977, did it come into force immediately on the day it was enacted, or was there a transition period to let Canadian people learn about the issues?

Ms. Jennifer Lynch: Thank you.

To begin with, the consultation process was three years for section 15 of the charter. Secondly, what we're talking about in developing an interpretive provision is not capital "C" consultation as required by the government, but rather the level of dialogue and of education we need, and of lending our expertise to communities to develop local redress mechanisms, because this is so much a better way, and it is the way of the future—the way of now for us at the commission with all of our regulated industries and departments and agencies.

I know you said one more thing.

Mr. Harold Albrecht: I think you already said that there were three years of consultations. When the act came into place, was it immediately enacted and the next day it was in force?

Ms. Jennifer Lynch: Mr. Goldberg.

Mr. Harvey Goldberg: I have to check to be certain. As I recall, the legislation was passed in February, the chief commissioner was appointed the following September, and they didn't start taking complaints until the next year. So it was about a year before they started taking complaints.

The Chair: Mr. Lemay is last, and then we'll adjourn.

[*Translation*]

Mr. Marc Lemay: I'm still divided on the subject of positions, particularly following the Parliamentary Secretary's questions. When I look at and read—and I've read it a number of times—the Canadian Human Rights Act, it's an act that enshrines individual rights. We'll be required to include in it, or to find a way of including in it, an interpretation of and respect for collective rights, because that's what Aboriginal people are requesting from us. They think it's important that collective rights also be protected; the survival of a number of First Nations is at stake. That's what they told us.

You expect to need a transition period of 18 to 30 months before you are ready. I'd like to give you more time rather than not enough. Do you agree with me that this an act concerning individual rights in which we must now include collective rights? I don't know what you think about my assessment, but in my view it will take at least 24 months before you're ready. I don't know whether you agree with me that it would be better to give you 30 months rather than 18, but once it's set down in the act, we can't go back. Do you agree with me?

● (1245)

[*English*]

Ms. Jennifer Lynch: On your premise that the statute is more for individual rights, the statute actually names prohibited grounds of discrimination. It also contains mechanisms that balance collective and individual rights, such as sections 15 and 16, especially section 16, which deals with special programs, which I mentioned before. I can give you more details.

I'm not agreeing with your original premise completely. We would agree that the longer the period of time we have, the better will be the whole system that is in place for local redress, education, and prevention. Of course, we'll adapt as quickly as we can, and we're ready to do that with the appropriate resources.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Thank you very much.

I want to thank the witnesses for being here today.

This has been very interesting and informative for the committee. We're looking forward to moving forward and doing what's best for aboriginal people with regard to Bill C-44. So thank you for your attendance.

I'm going to suspend for three minutes.

●

(Pause)

●

● (1250)

The Chair: Members, we need to deal with some committee business here. I'd like to go through it fairly quickly.

We had a notice of motion from Madam Crowder, but she is not here today. We'll postpone it.

The second item I have is that the clerk has received a brief, and the question has come up as to whether these briefs are confidential. I want a determination from the committee. If the briefs are sent in to the committee, are we going to treat them as confidential?

We advertised and asked for briefs to be sent in on Bill C-44 from anybody who wants to contribute information that they are not going to be here to give as witnesses. We received some briefs with some statements, I think, in the briefs that there was a concern that they wanted to keep that information confidential. And so the question came up whether or not we can do that as a committee.

As we are a public committee, is all the information we receive public? The second thing is, can we determine that we will receive these briefs maybe in camera so that they are not public?

I am looking for some direction.

Mr. Lemay.

● (1255)

[*Translation*]

Mr. Marc Lemay: No, no, Mr. Chairman, we're not going to head in that direction. We're going to conduct a public study of Bill C-44 because it's too important for us to start engaging in—I'm weighing my words—a certain amount of discrimination, that is to say hearing from some witnesses in camera and others in public. In my opinion, if someone wants to talk, he can do it clearly and publicly. So if he wants to send us his brief, he'll have to expect that it's public. Enough concealment, particularly when it concerns a bill as fundamentally important as Bill C-44.

[*English*]

The Chair: Are you just going to say ditto?

Mr. Harold Albrecht: I am, but if someone has sent a brief thinking it would be confidential, I think we owe it to the person to offer that either they keep it and we won't look at it, or that they do it in public.

[*Translation*]

Mr. Marc Lemay: Starting today, we're going to inform everyone that evidence will be public. If someone has sent us a brief and wants it to remain confidential, I suggest we return it to him, telling him that, if he wants the committee to consider it, that report will be public. That person will then be free to decide whether or not he wants to send it to us.

[*English*]

The Chair: Okay. That's exactly what Mr. Albrecht has said. The chair just wants some clarification, and the chair fully agrees with the decision of the committee. So that's what we shall do; we just needed some direction on it.

Just to let you know, the budget for Bill C-44 was adopted, and we have the approval for the budget amounts to conduct this study or review this bill.

The other thing that was brought up for attention is that we advertised that the committee was dealing with Bill C-44 and was looking for people to have input via sending in briefs and comments. There's some question whether the way we advertised was sufficient to notify all interested parties. Somebody brought forward the possibility of expanding it and getting better coverage through Canada NewsWire. There's a cost to that of $1,000. What we did is simply put it into the press gallery. If they want to deal with it, they will. If they do not, they will just put it on the pile. And it's there on our website.

Does the committee wish to spend that $1,000 to put it on the Canadian wire service, just to make sure?

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: We're going to conduct a test, Mr. Chairman. The department probably has all the Web addresses of the Aboriginal communities. I suggest we send this notice to the First Nations. I have reservations about the idea of spending $1,000 in order to receive briefs from people whom we can't hear. I agree that we should inform as many people as possible, but perhaps we should go through the department.

[*English*]

The Chair: Before I go to Mr. Bruinooge, let me say I've been advised that this type of thing has come up before, and getting all the addresses from the department sometimes is a real challenge. Just so you know, it might take longer to do that and cost more.

Mr. Bruinooge.

Mr. Rod Bruinooge: My argument against this would be that in fact, Mr. Lemay, what you're proposing is that marketing dollars be spent to advertise this committee hearing, and you're choosing one medium. It's one among many. Who are we, as a committee, to decide what medium is the best to get the word out? Some could argue that perhaps there are better ways than putting it on the wire services. Then we need to get into debate about how we market this. I'm not sure that medium is the best one. Perhaps it's better to do some other marketing scheme.

● (1300)

The Chair: I want to advise the committee that we followed standard procedure, what is normally done. This is all I'm asking: somebody brought forward a concern that they felt the message wasn't put out there sufficiently to inform the stakeholders.

Madam Neville.

Hon. Anita Neville: Thank you, Mr. Chair.

I brought forward the concern, I think. My concern is not in any way to short-circuit the process. I was part of Bill C-7, which did short-circuit the process or did not do a comprehensive notification to communities on many aspects of Bill C-7. I think money spent up front is money saved at the other end. It would be money well spent to notify people or to expand the notice.

I don't view this as a marketing thing. I think it's information, and there are often private networks that go on, but I think it's expanding the notice of opportunity. Then we can't be held at fault for doing it.

The Chair: Let's get some determination by the committee.

Mr. Albrecht.

Mr. Harold Albrecht: Mr. Chair, basically I think we have adequate notification.

But let me just ask the question: if we followed standard procedure, was it clearly indicated there that briefs submitted are public? If not, I think it should be in the future, for all committees: that briefs submitted are subject to public viewing.

The Chair: We will make note of that for the future, but it was not specified when the notice was put out. And we've only had one brief that had a concern about it. As a direction from the committee, we will notify the person that if the brief is going to be submitted to the committee, it will be public. That will be done.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: I have two concerns regarding the witness list. I would ask the clerk to check them. It appears that neither the people from the Barreau du Québec nor those from the Indigenous Bar Association of Canada have answered. I don't understand.

Do we reinvite them? I don't know what's planned, but it would be important for them to appear before our committee.

The Clerk of the Committee (Ms. Bonnie Charron): The Indigenous Bar Association will appear on the eighth and the Barreau du Québec on the tenth. I received confirmation this morning.

Mr. Marc Lemay: That's perfect.

[*English*]

The Chair: And I have that as the last item, Mr. Lemay. It's the rescheduling of the witnesses from the Tuesday meeting. They want to be separate, and we were wondering about extending a meeting of May 10 by one hour to allow them to be separate and give them that ample time.

Do you want the clerk to notify your offices and see whether that will work for you, and then deal with it? Would that be all right? Would you want to put in another hour and then have both these witnesses and have them more independent, at different times?

[*Translation*]

Mr. Marc Lemay: What do you mean by one more hour? Does that mean that we sit until 2:00 p.m.?

Le président: Yes.

The Clerk: That's a suggestion from the witnesses.

Mr. Marc Lemay: Why? Pardon me, but I don't understand.

The Clerk: We're talking about May 10 here.

Mr. Marc Lemay: On May 10, the meeting would last three hours?

The Chair: Yes.

Mr. Marc Lemay: Are we going to start at 10:00 a.m. or hold it between 11:00 a.m.

The Clerk: —and 2:00 p.m.

Mr. Marc Lemay: Really?

The Clerk: It's not confirmed; it's only a possibility.

Mr. Yvon Lévesque: Have you considered the possibility of starting at 10:00 a.m.?

Mr. Marc Lemay: That's impossible because other committees are sitting.

But why would we adopt that schedule? Is it because there are a lot of witnesses on May 10?

● (1305)

The Clerk: We've already received confirmations for that day. The witnesses who appeared the other day appear to be available only on the tenth.

Mr. Marc Lemay: What witnesses are you talking about?

Ms. Mary Hurley: Witnesses who appeared before us on Tuesday.

Mr. Marc Lemay: Oh, you're talking about Aboriginal women. Now I understand, but it wasn't clear. All right.

[*English*]

The Chair: So are we going to go for the extra hour?

Some hon. members: Agreed.

The Chair: Thank you.

For the press release, what is the determination about the extra $1,000?

[*Translation*]

Mr. Marc Lemay: I agree. I don't object to investing $1,000 for the public to be informed about such an important bill. That would be money well invested.

[*English*]

The Chair: Let's have a motion; then we can deal with it.

I have a motion by Madam Neville. Is there discussion?

Mr. Bruinooge.

Mr. Rod Bruinooge: My argument would be that there are other ways to spend that $1,000. There are other services that do similar things to what the Canadian wire service does in Canada. They have different pricing. Perhaps we could take out an ad in one of the AFN's national publications. This is another way to spend that $1,000.

My argument is, if we're going to spend $1,000, then I think we need to actually analyze the marketing scheme we're employing.

[*Translation*]

Mr. Marc Lemay: All right.

[*English*]

Mr. Rod Bruinooge: If we want to do that, fine, but I would argue that we advertise in a different medium.

The Chair: Mr. Albrecht, quickly.

Mr. Harold Albrecht: Mr. Chair, I don't disagree that this is a very important study and we need to have all the input we can. But is it more important than the other studies we've done or that other committees have done? If we followed procedure, my argument would be that we have done all we can. I'm sure these groups are all getting the word out.

The Chair: Madam Neville.

Hon. Anita Neville: I think it's an important study and I think it's a particular group we want to reach that may not read the traditional press. I have no problem if Mr. Bruinooge has other suggestions for how to reach the community. I just want to ensure that it's done in as comprehensive a way as possible. Any suggestions are fine with me.

Let's authorize $1,000. If it's not spent, it's not spent. If more is required, come back for more. And let him put his thoughts in as to how it should be done.

The Chair: The challenge with that is that we're asking the clerk to make the decision and are not giving ample direction, I think. It's a lose-lose situation for the clerk.

Hon. Anita Neville: Okay, I'm sorry.

The Chair: Right now, the motion is that it be spent on the Canadian wire service. That's the way the motion is, so we'll deal with that.

Are you ready for the question?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Okay, thank you.

The meeting is adjourned.

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