House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 048 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, May 1, 2007

Chair

Mr. Colin Mayes

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● (1105)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I call to order the Standing Committee on Aboriginal Affairs and Northern Development meeting of Tuesday, May 1, 2007.

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

The witnesses today are from the Assembly of First Nations of Quebec and Labrador, Ghislain Picard, regional chief; and from the Chiefs of Ontario, we have Angus Toulouse, Ontario regional chief. Welcome to the committee.

We're going to allow ten-minute submissions from each of you and then we'll move to questions from the committee members. Who'd like to start?

Mr. Picard, you can begin if you wish.

[*Translation*]

Vice-Chief Ghislain Picard (Regional Chief, Assembly of First Nations of Quebec and Labrador): Thank you very much.

[*Greetings in Innu*]

Firstly, I would like to mark the death of Ms. Bertha Wilson who, as a member of the Royal Commission on Aboriginal Peoples, was a champion of issues that are dear to our heart. We were obviously deeply saddened to learn of her death, which was announced this morning.

I am going to begin with a quotation:

> No longer will we in Ottawa develop policies first and discuss them with you later. The principle of collaboration will be the cornerstone of our new partnership.
>
> Cooperation will be a cornerstone for partnership between Canada and First Nations. This requires honourable processes of negotiations and respect for requirements for consultation, accommodation, justification and First Nations' consent as may be appropriate to the circumstances. Upholding the honour of the Crown is always at stake in the Crown's dealings with First Nations peoples.
>
> The aboriginal peoples have the right to directly participate in... decision-making processes that are likely to affect them or their rights. When the status, rights or territories of aboriginal peoples are directly affected, any change to the political... framework of Canada requires the free and informed consent of the First Nations concerned.

Thank you for the opportunity to present to you on this important bill.

My comments today will be brief.

The quotes I read a moment ago are attributable to, in the order that I read them, the former Prime Minister, speaking on behalf of the federal government in 2004; the First Nations - Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments, May 31, 2005, and the Assembly of First Nations of Quebec and Labrador principle No. 16 from a set of 26 principles adopted by Chiefs in 1998.

I started with those quotes because Bill C-44 was not developed jointly with first nations, at least not so with the members of the AFNQL. Despite its virtuous intent, it is another example of imposition on first nations without our consent, despite the fine promises of the Crown to the contrary. The AFNQL is not aware of any facts that would support the minister's claims and those of his officials that this provision has been debated on many occasions over the years.

I will read another one in the set of the AFNQL's 26 principles. Significantly, it is the first principle on the list.

> The aboriginal peoples of Quebec have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms, with no obstruction of discrimination, as recognized under international and internal law.

There is no doubt, therefore, that the AFNQL supports the full range of fundamental human rights of our peoples. Indeed, our very raison d'être is to advance our human rights as first nations peoples.

Ideally, Bill C-44 or a revised version should pass only being fully discussed with and receive the consent of first nations. The protection of individual human rights of first nations people should be a subject of discussion, negotiation and agreement between the first nations and Canada. The interrelationship of individual and collective rights requires a comprehensive approach. Bill C-44 is just one more piecemeal good intention that has as much chance to go bad for first nations as it has to be good for us.

● (1110)

[*English*]

The commissioner of the Canadian Human Rights Commission presented before you a couple of weeks ago a suggestion that a statement of principles to act as a set of guidelines could be produced through its discussions with the first nations after the bill comes into force. Presumably, the principles and guidelines will ensure the CHRC's good intentions to respect aboriginal and treaty rights while they pursue the protection of individual rights.

Excuse my cynicism, but first nations are still trying to heal from decades of paternalistic good intentions. Negotiating principles and guidelines of dubious legal force or legitimacy after the horse has left the barn does not seem like the best approach.

I know that all the parliamentary caucuses have already declared their intent to support the passage of Bill C-44, albeit with the possibility of amendment. I would have liked to confirm to you today the FNQL's full support of an approach that was jointly developed, or to say that our first nations members had been consulted or accommodated. Alas, I cannot say that because the federal government shirked its constitutional obligation and political commitment in that regard.

One option that the FNQL member nations might have considered, had the time been taken to consult us, would be to amend the bill to recognize the power of first nation governments, the band councils, to allow the CHRA to apply or not. There could have been a sort of notwithstanding clause, similar to the one in Canada's Constitution, that allows legislatures to suspend application of their charter of rights for five years on specific legislation.

I could have been further backed up by the ultimate power of the people to decide by referendum within six months if they want the CHRA to apply. The referendum provision could have been mandatory on band councils that would opt to enact the notwithstanding clause. It might have been an interim step in the journey toward proper recognition and implementation of the first nations' inherent right to self-government.

It seems to me that this committee has at least a couple of options to do the right thing, to do what the federal government failed to do. Indeed, if you believe like I and many others do that Parliament shares with the federal government the discharge of the Crown's legal obligations to first nations, you will adopt either one.

First, you can either suspend further progress on the bill until the federal government and the first nations report back that full consultations have been conducted, the consent of the first nations has been obtained, and consequently specific amendments, a new bill, or a new approach are required. Alternatively, this committee can recommend to Parliament that it conduct such full consultations and seek the conditions for first nations' consent.

● (1115)

[*Translation*]

By adopting either approach, you will be assuring first nations that nothing is being shoved down their throats, even if you think it might be good for us. You will be signaling to first nations that Parliament is taking a non-partisan and thoughtful approach that respects the highest law in the land, the Constitution. It will give adequate time for first nations to analyze and debate amongst ourselves if our collective rights are threatened by the application of the CHRA and if so, how that might be mitigated.

There is no compelling reason or urgent situation demanding that this bill be passed at this time. Let us jointly take the time to do it properly.

I must make two final important points. First, the AFNQL has not been, is not and will very likely never show favour to any federal political party. We're non-partisan. The first nations government to government, nation to nation relationship to Canada is primarily realized through its government, not by political parties. The danger of being sidelined for years if we were to favour one party over another is too great. My earlier references to the former Prime Minister's commitment to first nations in 2004 and to the accord his Minister of Indian Affairs signed on behalf of Canada with the Assembly of First Nations in 2005 have nothing to do with their political party allegiances. Rather, they are recent high water marks in our relations that must be honoured as solemn commitments of the Crown to the first nations.

I conclude by noting the need for adequate resources to first nations to manage any impacts of the bill. History again shows us that no federal bill directed broadly to first nations has ever been adequately resourced, which is another plank in the federal long-term assimilation strategy. The study of possible impacts and the guarantee of adequate resources must be determined jointly with first nations prior to the bill becoming law.

I would be pleased to answer questions. Thank you very much.

[*Brief closing in Innu*]

[*English*]

The Chair: Thank you, Mr. Picard.

Mr. Toulouse, please.

Chief Angus Toulouse (Ontario Regional Chief, Chiefs of Ontario): Good morning.

I'd like to thank the committee for this opportunity, albeit brief, to make a presentation on the important matter of Bill C-44. My comments today are based on a more comprehensive written brief, which I would urge the committee members to review. It should be in the clerk's hands within the next day or so; it's in translation, so hopefully it will get here in the next day or two.

As the Ontario regional chief, I work closely with the Chiefs of Ontario Secretariat, which is a coordinating body for the 134 first nation communities located within the boundaries of the province of Ontario. Ontario has the largest status Indian population of any province or territory in Canada. Therefore the position taken by the Chiefs of Ontario in relation to Bill C-44 should be given significant weight by the committee and the federal government.

The position taken by the Chiefs of Ontario with regard to the bill is a general one: the inherent right to self-government and other constitutional rights attached to individual first nations and not to the Chiefs of Ontario organization. Therefore, individual first nations may come before the committee and take different positions based on their particular right and history.

Before dealing with the specific issue of Bill C-44, I'd like to take this opportunity to share with the committee the priority concerns of Ontario first nations. These concerns have been identified through an ongoing strategic exercise. In summary form only, the priority concerns are as follows: 1. Rebuild our nations; 2. Negotiate respect and recognition of first nations jurisdiction; 3. New jointly developed federal land claims policies; 4. Respect first nations treaties, lands, and resources. Each priority is described in the written brief.

With these Ontario first nation priorities in mind, I'd now like to turn to the specific issue of Bill C-44. Subject to the following six conditions, Chiefs of Ontario, in principle, can endorse repeal of section 67 of the Canadian Human Rights Act.

Condition one is consultation and accommodation. Bill C-44 should not proceed without a thorough consultation process, open to all interested first nations. The federal government has admitted that there was no specific consultation leading up to Bill C-44. Careful consultation and accommodation are a legal and a moral requirement. There is no urgency to Bill C-44, as the section 67 of the Canadian Human Rights Act issue has been pending for 30 years and first nation actions not directly connected to the Indian Act are already exposed to the Canadian Human Rights Act.

In the context of the consultation, the federal government should be required to provide a detailed legislative policy and fiscal impact assessment of Bill C-44. This is a matter of basic due diligence, which the federal government has refused to do to date.

The second condition is the interpretive provision. The bill must include an interpretive provision to balance the tension between individual and collective rights. There is a serious risk that the individual rights of the Canadian Human Rights Act will have a serious negative impact on the collective rights and traditions of first nation governments. The interpretive provision must also protect the Indian Act from the real risk of wholesale gutting because of exposure to the Canadian Human Rights Act. All serious legislative and policy proposals on the repeal of section 67 since 2000 have included an interpretive provision. That is the bright line in this policy area.

I'm referring in particular to the following: first, the Canadian Human Rights review panel, “Promoting Equality: A New Vision”—2000; second, joint ministerial advisory committee report on governance legislation—JMAC 2002; third, BillC-7 , First Nations Governance Act, FNGA, 2003; fourth, the Canadian Human Rights Commission, “A Matter of Rights” - 2005.

● (1120)

Without an interpretive provision, repeal of section 67 is like throwing a grenade into collective rights, and also into the Indian Act.

Condition three is the realistic transition period. The transition period for implementation of the bill should be changed from the proposed six months to three years. Again, the bright line from all serious proposals since 2000 is that a transition period of approximately 18 to 36 months is required. First nations are entitled to a reasonable opportunity to adjust programs, practices, and legislation.

The predictable result of Bill C-44 will be administrative chaos. I acknowledge the standing offer of the Human Rights Commission to assist first nations with the transition process. However, the reality is that the commission will be preoccupied with its own transition and will not have the capacity to assist the 600-and-so first nations in just six months.

I note that the six-month transition process of Bill C-44 is doubly flawed. Section 3 refers to transition in connection with undefined aboriginal authorities. It is unknown if such authorities include first nations governments and related entities.

The fourth condition is regarding adequate financial resources. The federal government must provide first nations governments with adequate new financial resources to deal with all aspects of Bill C-44 implementation. The new open-ended liabilities that flow from Bill C-44 include the following: training and capacity; legal costs defending complaints; and the costs of settlements and awards. These liabilities may be staggering in the long term. First nations governments are not in a position to assume new, unfunded liabilities. The growth of the first nations funding envelope has been capped by the federal government at approximately 2% since 1996. As a result, many first nations, especially in the north, are near or past the point of bankruptcy.

The fifth condition is the non-derogation clause. There should be a non-derogation clause protecting aboriginal and treaty rights.

And the sixth condition is first nations human rights jurisdiction. There must be a binding recognition by the federal government that first nations governments have the independent jurisdiction to develop their own human rights regimes, including regional and national human rights institutions. Long before Canada existed, first nations governments enjoyed a rich heritage of protecting collective and individual rights. The regime under the Canadian Human Rights Act may be treated as a fallback for first nations that choose not to exercise their jurisdiction in relation to human rights.

These six conditions are all critical. Most of them reflect the bright line of serious policy development since 2000. In its current form, Bill C-44 is a radical and unexplained departure from that bright line.

In landmark decisions such as Guerin, Sparrow, Delgamuukw, and Taku and Haida, the Supreme Court of Canada has made it crystal clear that the federal government is subject to a constitutional fiduciary obligation to consult and accommodate first nations when a federal proposal is likely to have a negative impact on asserted or established first nations rights.

The extent of the duty depends on the significance of the underlying right and the significance of the likely negative impact. Bill C-44 is very likely to have a very significant impact on significant first nations collective rights. The likelihood of significant impact is magnified many times by the absence of an interpretive provision. It is likely that unmitigated application of the Canadian Human Rights Act will directly interfere with the action of first nations governments on first nations territory. It is also likely the Canadian Human Rights Act will lead to the disabling of significant portions of the Indian Act. One scenario is that the protective land provisions of the Indian Act will be eliminated, opening the way for fee-simple mortgaging and the loss of reserve land.

In view of the likely significant effect on important rights, the Supreme Court of Canada jurisprudence is clear. At a minimum, a very significant and careful consultation and accommodation exercise with first nations is constitutionally required.

● (1125)

As Bill C-44 represents a radical departure from the bright line of policy discussion since 2000, the federal government cannot rely on past discussions to justify the bill. Most past discussions contradict the approach of the bill.

While I'm respectful of the work of the commission and while I understand the pressure to endorse Bill C-44, I cannot agree with the last-minute revision contained in the presentation to the committee. A statement of general principles will not protect the rights of first nations. There is no guarantee that later unspecified guidelines would make any difference in the face of the black and white terms of the Canadian Human Rights Act.

What is required is a binding interpretive provision developed in consultation with first nations. Before the passage of the bill, anything less would be a foolish act of faith in a federal government that has already shown its true colours by reneging on the 2005 Kelowna accord and scuttling the draft declaration on the rights of indigenous people.

In conclusion, Bill C-44 is a punitive and ham-fisted approach to the sensitive and complex issue of the repeal of section 67 of the Canadian Human Rights Act. The federal government has ignored the bright line of serious policy work since 2000 and proposes to implement the Canadian Human Rights Act without reasonable protection for the collective rights of first nations and the fiscal crisis of first nations.

Bill C-44 is consistent with a negative agenda towards first nations that is aimed at levelling collective rights and destroying whole parts of the Indian Act. The federal government position that there will be no extensive consultation on Bill C-44 is untenable as a matter of Canadian constitutional law and reflects dishonour on the Crown and all Canadians.

As described in detail in our written brief, the repeal of section 67 can only be contemplated if six key conditions apply. I respectfully urge the committee to do the right and lawful thing, which is to reject the punitive Bill C-44 and to adopt amendments and a timetable consistent with the six conditions. In doing that, it will be an incremental step towards rebuilding the relationship with first nations.

The adoption of Bill C-44 as is will be another nail in the coffin. The results are predictable: embittered relations with first nations; possible litigation based on the failure to consult and other grounds; administrative chaos; and an ever-deepening financial crisis for first nations.

That's the presentation I have for you this morning.

Thank you.

● (1130)

The Chair: Thank you, Mr. Toulouse.

We'll move on to the question portion of our meeting.

Before we begin, I want to say that because we bridge the lunch hour, we bring in food for lunch. Committee members and witnesses are welcome to help themselves to that lunch.

Mr. Valley, please.

Mr. Roger Valley (Kenora, Lib.): Thank you, Mr. Chairman. I didn't know you were going to feed us, so that's good news to me.

Thank you for the opportunity to speak at this committee again.

My first question will be for Chief Picard. I'm going to quote something you started with at the very beginning. You said it's clear that the statements from 2004 regarding the former Prime Minister were the start of doing business differently. You said: “No longer will we in Ottawa develop policies first and discuss them with you later.”

I'm very conscious of the comments you made about being very careful to be non-partisan. But as I see it, we were starting to form a relationship that was going to change the way business was done and a new relationship was starting. Again, I respect your wish not to be partisan, but could you tell me, from seeing a new start in 2004, what do you see right now?

Vice-Chief Ghislain Picard: Again, from our perspective in Quebec, we have spent years trying to promote what we consider to be a lack of justice in terms of the issues that we defend and promote as first nations in Quebec—not only in Quebec, but in the rest of the country as well. It seems to me that we are only repeating the statements that previous leaders have made. When you look at the situation in the majority of aboriginal communities across the country, it seems to me that there comes a time when you say enough is enough. We've been caught up in the situation where we seem to be playing that game where we favour one party against another party or parties. To us—and this is quite true in terms of the thinking behind many chiefs in Quebec—what we have to challenge is the capacity of the institutions such as Parliament or the National Assembly in Quebec to face their obligations.

One example I could take is that the Quebec government always refers to a resolution that it passed in 1985 recognizing aboriginal nations in that province. That resolution was adopted unanimously by all parties in Quebec. Yet when it comes time to implement that resolution, that's where we seem to be caught up in this game between what the Liberals have promised and what the other parties don't do. To me, the issues that we defend certainly merit that kind of consideration, that this is beyond party politics and party allegiances.

● (1135)

Mr. Roger Valley: Thank you. I agree with you.

Chief Toulouse, you mentioned 134 communities that you serve. I think you know that I serve 41 in the Kenora riding, and half of those are remote sites and they face some challenges. The problem I'd like to ask you about is that there's no or very little consultation. I sometimes think what's worse with this government is that it's selective consultation. I've seen it in my riding. When they have a question to ask, they're very careful who they ask. I really worry about that selective consultation, because it will get them the message that they want delivered and it will not reflect the message of the people.

Why do you think they're reluctant to consult on a broad basis and with everyone who's involved?

Chief Angus Toulouse: I'm not certain why there's a reluctance to consult. I know there's a huge need or a huge requirement by the first nations to be engaged on this very matter. There are too many times, because of the Indian Act, that there have been codes or policies that have been developed at the first nation level that are going to impact negatively or create this chaos that I spoke of. There needs to be time for the harmonization to take place of the existing codes or the laws that are there now with the new approach of repealing section 67.

That's what we were talking about in Ontario. There's this need to sit down with the first nation communities throughout Ontario, and as you mentioned, Mr. Valley, the remote communities in northern Ontario are out of sight, out of mind. They're really going to need to be consulted because of the way they've done business or looked after their people since they've been there. They've demonstrated that there is a need, at times, for the collective will to be understood, as opposed to the individual rights that may be there. There is full support for the individual human rights of any first nations person to prevail.

Mr. Roger Valley: Thank you. I want to follow up on that point.

I don't mean to refer to just one group, but you mentioned northern Ontario where there are fly-in communities that are out of sight, out of mind. All across Canada different communities have different levels of expertise or resources they can draw on.

It may be a bit of a tough question, but I want to know how it's going to impact on the local band offices in these remote sites that have very few resources and require outside resources for a lot of things, like professional and legal advice. I want to know what it means right in that local band office when something like this happens. I'm going to guess at it, which is always dangerous for us, but—

The Chair: You only have 30 seconds.

Mr. Roger Valley: I guess it's a lack of confidence in what the government's doing.

I don't think he'll cut you off, but he will cut me off.

What does it mean at the local street level and in the local band office? Again I'm guessing, but I think it's a lack of confidence.

Chief Angus Toulouse: You have to remember that as first nations people we've always had a collective approach to many of our issues. We have had a collective approach to the way we've lived on this land for thousands and thousands of years. There was this tremendous need for a collective understanding of why certain decisions were made for the benefit of all the people.

Right at the ground level, at the band office, there is no legal counsel. There are not enough policy analysts. There are no individuals who can assist the community in trying to deal with the issue of education, for example.

Each community struggles with providing an education program for each of the students. There is a need for a collective approach to the loss of the culture and language. Language is a foundation of who we are as a people, and I think it needs to be taught in the schools. The problem I see at times is that there may be occasions when they cannot afford to bring in a teacher to teach French, for example. That is a human right or basic right that an individual has.

That kind of concern is there right now, when first nations barely have enough resources within the current funding structure to meet their first language, which is their aboriginal language, be it Ojibway, Cree, or whatever. Then they're asked to provide additional kinds of services that may not be available to them, resource-wise.

I'm not sure if I answered the question.

● (1140)

The Chair: Thank you.

Mr. Lemay, please.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I would like to thank you for being here this morning.

I listened carefully to the representatives of the Assembly of First Nations of Quebec and Labrador and I have been through his brief with a fine-tooth comb.

Rest assured, Mr. Toulouse, I will read your brief carefully once it has been translated and sent to us. You have my word.

I have a concern. In about 10 minutes, when members on the government side have the opportunity to ask questions, they will probably ask the same question, but from a different perspective.

We have been told that Bill C-44 is the fruit of 30 years of discussions. I was not here 30 years ago. I imagine that neither of you were either, but you have been chief and grand chief of your respective first nations for a number of years.

My question is very simple. We have been told that extensive consultations were undertaken, as a result of which, it was decided to review the act and repeal section 67, which is a symbol of discrimination against aboriginal peoples.

My question is for both of you, it does not matter who answers first. In what way were the Quebec and Ontario Assemblies of First Nations consulted? Were you consulted? What shape did the consultations take? Aside from the Assembly of First Nations and the grand chiefs, were there any other consultations? Were the so-called—and I do not like the term—isolated communities in Northern Ontario consulted? Kashechewan, in Ontario, springs to mind. We could take the example of Winneway or Kitcisakik in Quebec.

Have there been, to your knowledge, any consultations on repealing the infamous section 67 since 1977? If yes, what shape did they take?

Vice-Chief Ghislain Picard: Allow me to try to answer.

You are right in saying that we have been talking about these issues for 30 years. Furthermore, there does seem to be a problem and that problem certainly needs to be addressed. However, the consultations only addressed broad questions. Today, we have before us a bill on which the communities have not really been consulted. As you all know, in some cases, it is the wording that really counts.

As we both mentioned, adequate funding is also a very important issue. I was delighted to address the question that was raised earlier. There are striking examples of the bind in which first nations governments and band councils often find themselves when they have to implement new legislation or amend existing acts. Take the example of the 1985 amendment to the Indian Act. It reinstated Indian status to women who had lost their status upon marrying a non-aboriginal.

I imagine that many of the chiefs who preceded me could provide you with examples of how a lack of resources effected the implementation of this amendment. Overnight, the band councils had to prioritize certain services. I draw your attention to this because when the amendment was introduced in 1985, the band councils were never really given any extra funding to address the legitimate needs and claims of the significant number of people who returned to the community. In my opinion, the same applies here.

● (1145)

Mr. Marc Lemay: Mr. Toulouse.

[*English*]

Chief Angus Toulouse: The reviews and studies that have taken place so far do not constitute adequate consultation. There was no previous formal direct consultation with first nations that would have allowed for some discussion on an interpretative provision to allow first nations to talk about the detail that needs to be talked about in harmonizing what it's going to mean at the first nation government level when it provides programs and services.

So as far as we're concerned, no consultation has adequately taken place. Those reports that are listed aren't on consultation, even though it's been suggested that it's been around for 30 years.

[*Translation*]

Mr. Marc Lemay: Can I have another minute?

[*English*]

The Chair: One minute, please.

[*Translation*]

Mr. Marc Lemay: Grand Chief Picard suggests that the committee stop its work and consult your associations. I am inclined to think that you are essentially asking us to do the same, Grand Chief Toulouse.

There is something that is really bothering me. Everybody seems to agree that the section has to be repealed. But how much time is needed for genuine consultation? One month? Four months? Eight months? A year? Should we set aside our work on the issue and resume our work in September? Unfortunately, I do not have the experience that you do with your communities. I know it is difficult to put a figure on it, but I would like us to try. Either one of you can answer, or both of you, if you so wish.

[*English*]

Chief Angus Toulouse: The various reports that have considered this over the last number of years have suggested allowing a three-year process for first nations to be engaged and to describe in detail how it's going to work. So it would take another six months to three years to focus specifically on this.

The Chair: We're going to move on to Mr. Albrecht on the government side.

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

Thank you to both of our witnesses for appearing today.

I don't think there's any question that all of us around this table are eager to see the lives of all aboriginal people improved all across Canada. While there's been some interplay in terms of the political aspect of it, it's true that some of these statements made by the former Prime Minister sound great. Unfortunately, the previous government had a long time to implement some of their good ideas.

I think what we're struggling with right now is the fact that this government is intending to act. Once we come close to action, we're all getting a little bit nervous as to what the final result would be, but I think it's clear that we do need to move ahead on this.

Mr. Toulouse, you used the term “there is no urgency” to repealing section 67 of the Canadian Human Rights Act. Are you confident there are no issues now, in terms of human rights violations in first nations communities, that possibly could be averted simply by having this section applied to all first nations, and then if they're not averted, at least those who are subject to these discriminatory practices would have the right to come forward?

● (1150)

Chief Angus Toulouse: What I would say, though, is that proceeding with this is going to create more chaos. It's going to create more conflict. What I was pushing on is ensuring that there's an interpretive provision that talks about those good things that are there and completing this work in a timeframe in which it's concentrated on. We have to get going on it. I know what's being said, but let's get going on it. Let's do it within the next three years and get it done.

Mr. Harold Albrecht: Okay. One of the things that constantly comes up in our committee hearings is the implementation lag time. Another is the interpretive clause. The struggle that I have in dealing with an interpretive clause—and either of you can answer this—is how we can possibly have an interpretive clause inserted into this legislation that would adequately address the individual concerns of 600 different first nations communities across Canada. Do this current Constitution and the sections 15 and 25 of the charter not do an adequate job of balancing the collective and individual rights? We're all concerned that those balances be honoured.

Vice-Chief Ghislain Picard: I think probably the best answer to that would be that we have here.... We're probably limited to the scope of this bill, which, in my view, probably presents some limitations in terms of the concept of what a basic human right is. My feeling is that there might be different interpretations when it comes to the aboriginal communities. Different concepts, different contexts could apply.

What I'm trying to get at is that, yes, we feel there's no urgency in the matter because there are other basic rights that have been refused to aboriginal communities, such as the right to education. In this sector alone, budgets have been capped for years. Why doesn't there seem to be any urgency there? I feel that if we are provided proper space, proper time to adequately consult, then certainly we can....

Mr. Harold Albrecht: Thank you for your answer.

The one comment or the one phrase you use repeatedly through your presentation, and you just used it now in your answer, is adequate or full consultation. Again, I'm wondering if you could just describe what that would look like. There are 600 first nations communities across Canada. At what point would we know that full consultation has occurred and that we can move ahead?

My concern is, quite frankly, that we're really holding the process back and possibly hiding behind this nebulous idea of full consultation. If you could help me understand that, it would be good.

Vice-Chief Ghislain Picard: I think if we can ensure that there's a common starting point here, that would probably be more acceptable to our communities. I come before you this morning with this bill, and obviously I didn't have the time or resources to adequately consult our communities. It's difficult to give a timeframe of how long it would take, and what would be deemed appropriate consultation, but we're saying here—and it was mentioned earlier—that this issue has been on the back burner for 30 years.

Obviously, it is a concern for us, too, that we adjust to the environment around us, but it doesn't mean that we would do it at any cost. The kind of approach that we've been forced into certainly means that at the end, we have no choice.

● (1155)

Mr. Harold Albrecht: Is there time left, Mr. Chair?

The Chair: You have a minute.

Mr. Harold Albrecht: In terms of the consultation specifically on Bill C-44, I think I can accept your statement. There were previous attempts to repeal section 67—we have had Bill C-108, Bill C-7, and Bill S-45—and we also had consultation sessions held across Canada in 1999 as part of a formal review of the Canadian Human Rights Act. That did include extensive discussion about section 67. So in those previous attempts to look at this section, in those discussions, have your communities been involved? We have to get to the heart of what we're trying to do here. Bill C-44 is the current focus, but the principle of repealing section 67 has been looked at numerous times over the past number of years. Have you had input in those previous inventions of this particular action?

Vice-Chief Ghislain Picard: The only answer I could provide there is that, again, I will refer to our specifics in Quebec and Labrador. Consultation at our level has been very limited—

Mr. Harold Albrecht: In 1999, when this Human Rights Act—

Vice-Chief Ghislain Picard: —and the other consideration is that we're speaking about 30 years passing from the first time that this issue was brought up. Obviously, the situation has evolved. Sometimes that's not been in the way we would like, but nevertheless it has been 30 years.

The Chair: Thank you.

Mr. Russell.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair.

Good morning to each of you.

You know what they say: The bill is “good intentioned”, but we know where the road paved with good intentions goes, and we see some of that reflected, I guess, in the comments. Virtually every single aboriginal leader who has come before us has said that this bill is deeply flawed. There's not only the matter of physically acting. I would say to my colleagues, you must act in the right and proper way. You can act to assimilate. You can act to undermine communal rights. You can act to undermine the inherent right of self-government of aboriginal communities.

As I understand it, there is a right to consultation. It is not necessarily that nebulous. The court has ruled that when something is affecting the aboriginal people or communities, they have to be consulted.

I wanted to ask this question. There seems to be a little difference in the two positions. Of course, everybody has the right to have their own position. I would say to Mr. Toulouse, you say there are six conditions that should be met for this to go forward. If all of those conditions were to be met by some amendment through this committee, if that were even possible, would you feel adequately consulted? Would that then satisfy the communities that you represent? I'm just surmising. If we could meet all those six conditions through an amendment in the bill, would that be satisfactory to you?

Mr. Picard, your situation seems a little different. You're saying we haven't met the basics in terms of consultation, and therefore we need to go back and start from a right-relationship perspective, understanding the bigger picture around collectives and inherent rights and things of that nature.

So could you just comment on that?

● (1200)

Chief Angus Toulouse: Generally speaking, we support human rights. There's no problem with the provision of human rights.

I'm sorry, I didn't get the other part.

Mr. Todd Russell: If we could meet all six conditions you have put before the committee, would that be satisfactory, or would there still be a breach of consultation?

Chief Angus Toulouse: Understanding the urgency, and understanding the need for the repeal of section 67 and the protection of human rights.... As far as we're concerned, if those six conditions were to be met, which would allow for a three-year process that would at the end of the day have something everybody could be comfortable with and understand, is something we still stand by that can deal with this matter.

Mr. Todd Russell: Go ahead, Mr. Picard.

Vice-Chief Ghislain Picard: I certainly join with my colleague on the issue of human rights and the need to provide adequate protection. The only thing I could add is that so many times in the past we've seen a bill presented before Parliament, and so many times we've come before this committee and a number of committees to express concerns. Yet at the end of the day, the bill is enacted and the bill comes into force with very little input from first nations.

This is something I could have said this morning. I didn't say it, because I've said it too many times in the past. Ultimately, what I was attempting to provide for is adequate space and time to consult with our people.

One proposal I made this morning is to consider a notwithstanding clause. This is something I could have validated with our member communities in Quebec by asking if this was something that could be of interest. Does it provide adequate room for us to move forward rather than entertain the status quo? This is just an example of the kinds of proposals we could have considered.

The Chair: We'll go to Mr. Bruinooge, please.

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

Thanks to the witnesses today for your presentations.

Perhaps I'll start in order of the presentations, the first by Mr. Picard.

In your presentation, you talked about the Crown—Canada—requiring honourable processes of negotiation and respect for the requirement for consultation, accommodation, justification, and first nations' consent. Like Mr. Albrecht, I would ask for you to define how that would occur.

As a legislator, I am presented with the issue of human rights not being present on first nation reserves. As a government, we have decided that we would like to remedy that. Perhaps you could explain to us how you would envision the proper methodology for that to occur.

Vice-Chief Ghislain Picard: Well, I think we all know, not only on our side of the table, but on your side as well, that the aboriginal community in Canada represents a wide diversity. Many of our communities have to deal not only with the federal government, but they have to also deal with provincial jurisdictions. We also have different situations that we face.

It's difficult for me to provide a precise timeframe in terms of how this consultation would take place. Certainly in our case, in Quebec and Labrador, we have the structures that are in place that could provide adequate assistance in order to consult our communities. But again, we always have the issue in terms of adequate resources to do so.

Have we been given that opportunity in the case of this bill? No. Again, I want to reiterate the fact. Don't put us here in a situation where we seem to be negating basic human rights. It's not the case. We're only concerned with the way this process is taking place.

● (1205)

Mr. Rod Bruinooge: Mr. Picard, you did just say that you don't have a real understanding of how that would occur. You could suggest some of the practices in your home province that you've engaged in in the past. I think you're really getting to the heart of the issue. There isn't a process that is agreed upon by all people in first nations or within government that dictates how that consultation would work.

We've seen, since 1977, that there was consultation on this particular issue in 1985, in 1992, extensive consultation in 2000, and then again in 2002.

As somebody who has been elected in Canada to address issues that are occurring in Canada.... And I think all members of the opposition would agree that we would like to see the extension of the Canadian Human Rights Act on reserve, for particular issues that I'll probably get into in my next round of questioning. In light of the fact that this construct of consultation is very nebulous, how can I as a legislator not act because I don't have that concept in front of me in terms of consultation? We've all tried to figure out what it is. Thirty years—is that enough? I don't know. But today we have the opportunity. That's why we're wanting to proceed. We want to hear from you and build into our discussions what you're suggesting and what Mr. Toulouse is suggesting.

To suggest, as you did in your speech, that we just stop is something I can't do. My electors have sent me here to act, and that's simply what I endeavour to try to do.

Vice-Chief Ghislain Picard: Again, there are always consequences to decisions that we make and actions that we take—from a government perspective, I'm guessing, and the same from our perspective. If we have taken the time to come before you and present our case—and I'm certainly only speaking on my behalf here—then I also know my constituency, the people I represent, and I know where they stand on the issue. Otherwise I wouldn't have spent the time to come before this committee to make it a point. I think it's very important for you to understand that as well.

Because of this ambiguity between this whole notion of collective versus individual rights.... And let me state again that we are not opposed to individual rights here. We only want to provide adequate comfort between that concept and the concept of collective rights, which is very important to our communities.

All we're talking about here is adequate time, adequate space, proper consultation, and ultimately then we can come to a point where we all agree on a process leading to the enactment of this bill in a proper fashion. That's really all we're saying.

● (1210)

The Chair: I'm going to have to close your comments now.

Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chairman.

I would like to apologize for being late, gentlemen. It is the Liberals' fault—they brought up the issue of the residential schools. We could not miss the opportunity; we had to plead your case.

I would like to know whether you would be looking to propose amendments to the act at the end of the three-year consultation period, and whether you would require additional funding for the consultations.

Vice-Chief Ghislain Picard: I do not think that we are the first witnesses to appear before the committee and suggest that additional time be spent on consultations. The position of the Quebec native women, for example, springs to mind. They spoke of having enough time to carry out consultations properly. In their case, and in the case of their members and various community organizations, resources are obviously very limited.

We are not saying that human rights are not a priority; however, first nations governments and band councils are constantly put in a very uncomfortable situation when they have to choose amongst priorities for their communities. Examples abound, but I will spare you the details.

As to whether we will have amendments to propose, I would imagine that we will, given the concerns that we have raised about the bill.

[*English*]

Chief Angus Toulouse: If I may, section 67 protects the implentation of the Indian Act. There are human rights within the first nation communities—as an example, wrongful dismissals that are being dealt with at first nations administrations. The repeal of section 67 addresses the protection of an archaic piece of legislation called the Indian Act. There are basic human rights that are being observed. It's not like there is total anarchy and there are no laws and rights being recognized at the first nations level. Quite to the contrary, there are many rights that are recognized and dealt with.

If we are really serious about wanting to deal with first nations issues, one of the issues, which was raised in recognition of human rights, is child welfare. There is 22% underfunding currently. There are real, immediate measures that would ensure equality at the first nations level, which can be taken into consideration.

There is the 2% cap that has been in place, which again is discriminatory. The federal government continues to pick and choose priorities for us when we have identified.... If we are going to deal with the poverty of women and children, let's deal with that. Let's deal with some of the child welfare issues. Approaches have been put forward by first nations organizations and communities to deal with the outstanding issues that are there.

● (1215)

The Chair: Thank you.

Moving back to the government side, Mr. Blaney, please.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you, Mr. Chairman.

Mr. Toulouse, I just want to reassure you, members of the committee are aware of the significant needs of first nations, namely when it comes to housing in Quebec. At the moment, we are considering Bill C-44, and to date, we have heard from a number of groups. I'd also like to extend a welcome to Chief Picard who is also concerned with these matters; I know this because I was at the First Nations Socio-Economic Forum.

We are hearing from groups and hearing concrete recommendations on Bill C-44. This is, after all, a consultative process and the bill has not yet been passed, we should remember that. The committee will be issuing recommendations, reviewing clauses and referring the bill to the House. Although it may not be perfect, there is a process in place, one that is established under our parliamentary system.

The Native Women's Association of Canada, in its brief, suggested that section 67, which was at the time added as an interim measure, has in a way stopped the most vulnerable from filing human rights complaints when they involved a provision of the Indian Act. Thirty years have gone by and we now have to deal with this problem.

I heard what you had to say this morning, and I am conscious that the consultative process may not be perfect, but as Mr. Lemay mentioned earlier, efforts have been made over the last 30 years to correct the human rights gaps. I am wondering whether we should continue to wait or rather take this opportunity to improve the rights and living conditions of first nations. We are not talking about taking a giant step here, but rather a small step to move in that direction.

We know that first nations are doing important work when it comes to collective rights, but I would be curious to know whether steps have been taken to promote the individual rights of aboriginal people in their communities.

Vice-Chief Ghislain Picard: It's fairly simple as far as I'm concerned. Respecting and enhancing collective rights may be a way of dealing with individual rights. However, no one will disagree with the need to strike a balance which, otherwise, would probably not exist. We need to spend the time to reflect on the impact the Charter will have, once it is adopted under Bill C-44, on communities that may not have the means to enforce its provisions.

Let's take the example of Quebec. In several cases, people have taken the means at their disposal to make certain illegitimate claims, land claims or claims involving access to services . I could go to any region in Quebec and give you examples of this type of thing. One could easily imagine that the existence of such a charter in communities could be grist to the mill for the type of individual or group I am referring to.

The perfect example of this would be the roadblock on the 117. Several weeks ago, certain groups decided upon a cause. One group publicly made claims which would normally be something our groups are responsible for. What is there to stop communities from pointing to the Charter to say that there has been a human rights violation? I think we may be opening the door to that type of situation.

I could also point to land claim negotiations between my own nation and the Governments of Quebec and Canada. From year to year, because this has been ongoing for years now, it has not been unusual to hear people make public pronouncements on their status or their rights and the fact that there was a violation in the context of these negotiations. What would stop existing groups and future groups from referring to this Charter to point to an obvious breach of human rights?

● (1220)

[*English*]

The Chair: Thank you.

You're out of time, Mr. Blaney.

Madam Crowder, please.

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

Thank you, Chief Picard and Chief Toulouse, for appearing before the committee. I apologize for stepping out; I was dealing with a motion in the House.

Much has been made about the duty to consult. I would argue, since so many people are coming before the committee saying they do not feel they've been appropriately consulted, that they have not been appropriately consulted.

In the matrimonial real property recommendations there are some specific recommendations around consulting. I just want to read this. It says:

> The department should develop, as soon as possible, specific policies and procedures relating to consultation in order to ensure that future consultation activities can identify and discharge any legal duty to consult while also fulfilling objectives of good governance and public policy by:
>
> 1) Ensuring First Nations have relevant information to the issues for decision in a timely manner;
>
> 2) Providing an opportunity for first nations to express their concerns and views on potential impacts of the legislative proposal and issues relating to the existence of a duty to consult;
>
> 3) Listening to, analyzing and seriously considering the representation and concerns of First Nations in the context of relevant legal and policy principles, including their relationship to other constitutional and human rights principles;
>
> 4) Ensuring proper analyses by the Department of Justice of section 35 issues relating to any proposed legislative initiative are thoroughly canvassed before, during and after consultations;
>
> 5) Seriously considering proposals from mitigating potentially negative impacts on aboriginal and treaty rights or other rights and interests of First Nations and making necessary accommodations by changing the government's proposal;
>
> 6) Establishing, in consultation with First Nations, a protocol for the development of legislative proposals.

Now, it seems to me that's a fairly clear outline of what might be included in a duty to consult. I wonder if you could comment on that.

I'm happy to share this copy, and I apologize, I brought the English version only.

Chief Angus Toulouse: The points it references are the points that I think first nations have expressed for quite some time. From our point of view, "consultation" means something very specific. It means that we need to do things in a fair and respectful manner. When somebody asked earlier, what are you going to do in the three years, I guess some of what needs to be communicated is what would go into the interpretive provision, which is starting to talk about the entitlements of first nation government programs and services; how it gets to the member entitlement of first nation government to give preference to its members in training and hiring employees and contractors; entitlement of a first nations government to give preference to its members in the allocation of land, resources, or other economic benefits to its members. So there are many different issues at the local level, at the first nation level, that speak to the individual's entitlements or rights and that need to be discussed and need to be ironed out and need to be shared with the whole community.

I guess this is what we've been saying. It's not to wait another three years, and to say at the end of the three years, sorry, we want another three years. No, it's to actually get to do the work. It's to actually have the resources to clearly spell out for all the first nations members to understand and appreciate what their rights are.

● (1225)

Vice-Chief Ghislain Picard: It seems to me that the list you presented has just about everything, the basic requirements, to adequately consult our communities.

As I was listening to you, I was reminded of a protocol that we developed in Quebec, with great difficulty, trying to present to both levels of government, saying this is the guide for us. After listening to you, I was able to reference some of the points to some of our requirements, some of the requirements that we have adopted. Maybe it's limited, because obviously the reality of first nations might express itself differently in some regard. But there are some basic limits that are there, for sure.

The Chair: Mr. Bruinooge, have you got something?

Mr. Rod Bruinooge: Mr. Toulouse, I want to go back to some of the points you were bringing up. In particular, I wanted to ask you in relation to your topic on consultation. We had some constitutional advice as to what consultation is required as per the Taku and Haida rulings, and it was indicated that this was specifically in relation to resource-driven agreements. For instance, if the Government of Saskatchewan decided to run a hydro line right down through the middle of a first nation community, it was incumbent on them, the Government of Saskatchewan, to properly consult and negotiate to ensure that the community was in fact onside. But quoting Taku-Haida and that obligation to consult, as you did, you indicated that there would be litigation likely on the failure to consult if the government did proceed with its implementation of this repeal of section 67.

So I guess I was just going to get you to explain to me what judge you think in Canada would hear a case on the delivery of human rights to first nations people on reserve, and see that as being some sort of affront to first nations people.

Chief Angus Toulouse: What I have indicated is that we are not against Canadian human rights. We appreciate and respect the need for Canadian human rights. What we're saying is not that we believe there should be no Canadian human rights. Absolutely, there have to be.

What we're saying, as far as the consultation is concerned, is what member Jean Crowder was just referring to. What we're talking about are these six points: one, ensuring first nations have relevant information on the issues for decision in a timely manner; two, providing an opportunity for first nations to express their concerns and views on potential impacts of the legislative proposals and issues relating to the existence of a duty to consult; three, listening to, analyzing, and seriously considering the representations and concerns of first nations in the context of relevant legal and policy principles, including their relationship to other constitutional and human rights principles; four, ensuring proper analysis by the Department of Justice of section 35 issues relating to any proposed legislative initiative, so that they are thoroughly canvassed before, during, and after consultations; five, seriously considering proposals for mitigating potentially negative impacts on aboriginal and treaty rights or other rights and interests of first nations, and making necessary accommodations by changing the government's proposal; six, establishing in consultation with first nations a protocol for the development of legislative proposals.

Talking about it is a process that talks about how we're going to respectfully share the jurisdictions here in Canada. As a society, first nations people will be contributing members to the economic prosperity of this country. What we're talking about is ensuring that our rights are the same as pretty much anybody else's, other than at the community level, which allows us to develop our own first nations human rights act, if you will.

● (1230)

Mr. Rod Bruinooge: I'm sorry; I just can't imagine a judge overturning a repeal, thereby taking away human rights from first nations people. I just can't ever see that happening.

Chief Angus Toulouse: All we're asking for is that there be some conditions, and I'll list those conditions again. The first condition I talked about is the need for consultation and accommodation, and that we have that understanding. An interpretive provision is what we're talking about as a second condition. The third condition is a realistic transition period to allow for those provisions to be understood and taken hold of. The fourth condition is adequate financial resources to implement this section, and a non-derogation clause.

Mr. Rod Bruinooge: When the CRHA was originally brought in, there was about a seven and a half month transition period, in 1977. Do you think that was adequate?

Chief Angus Toulouse: Obviously not; it didn't get anywhere.

Mr. Rod Bruinooge: Clearly, it's been in place for 30 years now. I don't see any number of people saying that this seven and a half months was inadequate, but I guess you're suggesting that it was.

Chief Angus Toulouse: What I'm saying is, meet the six conditions we've laid out, put the three years in place, and we're supporting the repeal of section 67, if it's something that can be supported by this committee.

Mr. Rod Bruinooge: Okay, thank you very much.

The Chair: Mr. Valley, please.

Mr. Roger Valley: Thank you, Mr. Chairman.

I want to thank you, Chief Toulouse, for pointing out something in the communities that is important to say again, that there is not anarchy out there; the communities are functioning.

I'm fortunate to represent some of the best communities in Canada, and I have some that have a lot of challenges. Things can always be improved, but it's not anarchy out there, and we don't want to portray that right now.

We all want to make sure we can protect all Canadians. We have heard from you that there are options open for this.

My question is where the real damage is being done in this matter. Is it that this government is not willing to consult? Mr. Picard mentioned that we all have to work together. That's one thing we notice. We as the opposition have to work with the government, or nothing is going to happen; we're not going to accomplish anything for Canada or for our constituents.

I think one of the real failures of this government is that they haven't realized they have to work with anybody. I can tell you that sooner or later, they are going to be back on the opposition side and are going to have to work with others. They need to learn that lesson.

I ask my question to both of you. Where is the real damage being done here? Is it by not allowing for proper consultation? Is it not allowing your voices to be heard? Is it the damage to government-to-government relationships for everything that comes forward? Is it the hesitation about what they are going to do next?

Do you have an opinion on that?

Chief Angus Toulouse: We've attempted to communicate with the government to talk about our priorities in Ontario, as an example. There are obviously priorities we see that can improve the lives and protect the human rights of individual first nations in all our communities without having to rush into something like this.

As you've indicated, Mr. Valley, it is not anarchy in our first nation communities; there are laws that are being observed and enforced as we speak. To me, if there's a will by the government to sit down and talk about some of the conditions that we're raising, then we see that there could be progress to be made.

We're willing to look at this in a manner that's consistent with a timeframe...and I just threw out the three years, only because rushing into something isn't going to provide the kind of outcome....

First nations, a lot of times, aren't equipped financially to have the analysis and to provide input immediately, so there's a need to allow the first nations to get some resources to deal with this issue.

There are human rights in first nations communities. Again, I just want to stress that section 67 exempts only the implementation of the Indian Act. First nations didn't create the Indian Act, as you all well know. What we're saying is to take the time to do this together, in terms of creating a mood that is more conducive to good planning, and not create a huge jackpot and a whole bunch of chaos by saying that this is the way it's going to be without taking the time to have an appreciation as to how we're going to implement many of the sections.

Why would the government force first nations to go to court, especially on an issue that can be addressed and is as broad-based as this kind of a dialogue can be? I don't think it's necessary for us to be pushed into the corner of having the courts as the only alternative to deal with this matter.

● (1235)

Mr. Roger Valley: Go ahead, Mr. Picard.

Vice-Chief Ghislain Picard: The only thing I could add is that the denial of basic human rights is an everyday thing in aboriginal communities. To me, it's really unfair to take this example and try to interpret that, or interpret our positions, as a possible denial of human rights in our communities.

I have to repeat what I said earlier: the right to education is very limited, as is the right to adequate housing, to health, and to others. It is an everyday thing for most aboriginal communities. That's why our presence here might be misinterpreted.

To me it's very important that I go on record as saying we are supportive of human rights, but at the same time we are also supportive of collective rights for our people.

As a matter of fact, the lack of progress on the collective rights approach might have some impact on the individual rights of our communities as well, so I think it's very important that we know that as well.

The Chair: Thank you.

We will go to the government side for further questions.

[*Translation*]

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

Do you wish to speak, Mr. Chairman? I can share my time with you, if you wish.

I understand the frustration of my opposition colleagues, since they were unsuccessful in taking action and advancing the rights of aboriginals. I believe that the bill on self-governance was poorly presented and did not come to fruition. Fortunately, we now have a new opportunity to act thanks to the bill that we are considering today. I have a question for the Grand Chief. I would like to know your thoughts on the following comments.

Thirty communities have already signed self-governance agreements that are not subject to the Indian Act. This means that the Canadian Charter of Rights and Freedoms must be unconditionally applied. To my knowledge, no transition period was set out in the agreement. Mr. Toulouse, you talked about the chaos that would ensue upon passing this bill. For the 30 communities I mentioned, there were no earthquakes, dramatic repercussions, or any major financial impact. I would like to understand on what basis you make your statement, because the experience of these 30 communities is that collective rights can continue to be fully exercised, and individual rights are still protected under the Canadian Charter of Rights and Freedoms.

● (1240)

[*English*]

Chief Angus Toulouse: Some of those self-government agreements you spoke about had extensive negotiations, extensive consultation, extensive dialogue for many years—some for as much as 30 years. They had specific discussions leading up to how individual rights were going to be viewed and collective rights. So in their whole consultation process in negotiating self-government arrangements, they had opportunities to dialogue over an extended period about the effect of it and how the interpretative provisions, if you will, were going to fit in, and how they were going to work on those. So that's the work they did leading up to self-government agreements. Those are the discussions they've had.

So in those particular instances they did have specific discussions around the very issue.

[*Translation*]

Mr. Steven Blaney: Do you wish to add something?

Vice-Chief Ghislain Picard: I agree with my colleague and support his comments. On the other hand, self-governance agreement negotiations also involve a major overhaul of the financial relationship between the Government of Canada and the communities concerned.

Of course, these considerations were taken into account, which is not necessarily the case for communities that are not a part of this framework. There is more than one type of financial agreement between our communities and the federal government, depending on the specific circumstances of the respective communities. Once again, I wish to repeat what my colleague has said: in many cases, these discussions are not concluded overnight.

Mr. Steven Blaney: Therefore, there were prior talks, but following the adoption of the bill, problems did not necessarily crop up.

Mr. Chairman, do I have any time left?

[*English*]

The Chair: It was a question I asked the witnesses from the Canadian Human Rights Commission when they were in attendance.

On some of the issues around human rights for aboriginals, Mr. Picard, you talked about adequate housing. But what is adequate housing and how is it going to be determined? On reasonable access to education and appropriate health care, how are they going to be determined?

Those things are unknowns. As we move forward, how are they going to be determined? Will it be in a court of law? Can we really negotiate what they would be? The unknowns are the challenge.

Mr. Toulouse, you mentioned the concern you have about those unknowns and about moving forward without more consultation. For instance, when aboriginal communities were given the right to collect taxes for improvements on leased land, there was no provision for the communities providing service within those municipalities to be paid for the service they were delivering to those lands.

The former government went ahead with the legislation, with those unknowns out there. There were court cases. Our community was involved in one to determine what a proper servicing agreement was for those properties, because the aboriginal community was collecting the improvement tax or property tax on those leasehold properties.

Do you really think there can be enough consultation to give a definite understanding or legal framework around these issues?

● (1245)

Chief Angus Toulouse: As I indicated earlier, if afforded the time to work on this, with adequate resources, yes, we can deal with those issues. Again, those other reports talked about a three-year timeframe to deal with outstanding matters. It's still something that I am saying.

Along with the conditions I've raised, I think we can move forward.

Vice-Chief Ghislain Picard: My feeling is that all of the examples you referred to are clearly measurable, in my view.

In terms of what is considered to be adequate housing, obviously, to me, it's what any Canadian knows as being the acceptable average. If it's three to five per house, when you compare it to the situation for aboriginal communities, which is almost double that, then there is obviously an equivalency that is not met.

In terms of consultation, we have more than one example in our recent history where people on our side considered they were properly consulted. I referred earlier to the royal commission, and it's a form of consultation. It took five years and more than 500 recommendations, yet ten years later we are still waiting for one of those recommendations to be implemented.

It seems to me that we're always at the losing end. We always express a willingness to adhere to processes that pretend to consult with our people, yet there are very few results.

The Chair: Thank you.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: I've been listening for the last hour, and I have heard everything. I want to ask you a very specific question.

Under the Canadian Human Rights Act, all employers or service providers subject to federal regulation are prohibited from discriminating against anyone based on race, national origin, colour, creed, age, gender, sexual orientation, marital status, family status, physical or mental disability, past or current addiction to drugs or alcohol, and even against a woman who is pregnant or about to give birth.

If Bill C-44 were adopted tomorrow morning, section 67 of the Indian Act would be repealed. As such, would your communities be ready to deal with possible lawsuits stemming from the provisions of the act I have just read to you?

Vice-Chief Ghislain Picard: Mr. Lemay, earlier, I gave you a few examples, and I believe our communities would be vulnerable in some of these situations. Those examples will not disappear once the act is enforced, and it may even provide additional ammunition to this type of group so that certain demands and claims possibly labelled as illegitimate may be advanced. It is a situation that has already begun to surface in our communities.

● (1250)

Mr. Marc Lemay: Chief Toulouse, do you wish to add something?

[*English*]

Chief Angus Toulouse: Is there going to be a significant change the minute we have this new bill? I can't see that it's going to change into something the next day. Right now, as I said earlier, with respect to first nation governments and first nation organizations, for the most part, as far as individual first nation members go, they are treated fairly at the community level. The bigger issue is how we ensure that collectively, the first nation people are getting what other Canadian or other provincial individuals are getting. I think this is probably where we're wanting to look at the inequities that are there.

Child welfare is the example I used earlier. This is going to be our concern. Why is it that our first nation children are getting 22% less than anybody else in relation to child welfare issues?

That is going to be our big concern: our situation in relation to any other person in Canada and in each of the provinces. It's not so much that there will be change and that we are going to see a whole bunch of cases started or initiated by community members against the band council immediately. No. I think what we are going to see, really, are the inconsistencies that have been there historically—again allowing the discrimination of the Indian Act towards our people—in relation to different standards that are applied to and are met for other people in this country.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Can I shut questions down now? Has everybody had an adequate opportunity?

Thank you very much to our two regional chiefs, Mr. Picard and Mr. Toulouse, for your attendance. We really do appreciate that.

We are adjourned.

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

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

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