House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 049 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, May 3, 2007

Chair

Mr. Colin Mayes

Standing Committee on Aboriginal Affairs and Northern Development

Thursday, May 3, 2007

● (1105)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I open the Standing Committee on Aboriginal Affairs and Northern Development of Thursday, May 3, 2007.

Committee members, you have the orders of the day before you. Today, we are continuing our review of Bill C-44, An Act to Amend the Canadian Human Rights Act.

The witnesses today from the Assembly of Manitoba Chiefs are Chief Viola Eastman; and Irene Linklater, director, research and policy development. From the MKIO, we have Grand Chief Sydney Garrioch; and Michael Anderson, research director, natural resources secretariat. From the Atlantic Policy Congress of First Nation Chiefs Secretariat Inc., we have Chief Lawrence Paul, co-chair; and John G. Paul, executive director. From the Manitoba Southern Chiefs' Organization, we have Grand Chief Chris Henderson, who I think will be a little late in attendance.

Welcome to all the presenters. We'd like to have opening statements from each of you for close to ten minutes, then we'll proceed with questions.

We'll begin with Madam Eastman or Madam Linklater, whoever will present the submission.

Chief Viola Eastman (Canupawakpa Dakota Nation, Assembly of Manitoba Chiefs): Perhaps I could ask for clarification. Is it only opening remarks or my whole presentation?

The Chair: Opening remarks, or a presentation for 10 minutes.

Chief Viola Eastman: It's my 10-minute presentation, okay. That's good, thank you.

[*Witness speaks in Dakota Sioux*]

It's a great honour for me to be here today on behalf of the Assembly of Manitoba Chiefs and Grand Chief Ron Evans. I'm here representing my people, and I carry with me timeless values, the teachings of my culture, my language, and the laws to guide me in my role as chief of my community and my role as co-chair of the AMC First Nations Women's Council.

Today I bring a message to convey both concern and optimism: concern for the limits of the draft legislative amendment as it is, which raises a range of issues for first nations people, and optimism that the recommendations spoken today are heard, listened to, and respond to our concerns so that improvements be made.

AMC's presentation seeks to honour the Crown. Crown-first nations relations recognize that we each hold benefits together with responsibilities in order to sustain lasting nation-to-nation relationships. Our nation-to-nation relations have been formalized by some of the nations by treaty and formalized by others who have not concluded treaty, because as Dakota nations we didn't sign treaties with the Crown.

Canada's legislative review must discuss a balancing of first nations' individual and collective rights on the issue of human rights, and full and meaningful consultation with first nations. First nation fundamental and natural laws include our world balance for the individual and collective in spirituality, culture, language, society, lands, government, justice, and all other relations. We are party to Crown and first nations law-making relations. To proceed otherwise is to repeat historical mistakes. Unilateral actions have ended in disasters. Canada's laws and policies for justice and human rights have not made positive change for both of us. This submission raises serious concerns and also brings ideas on ways and means to seek redress, to resolve differences, and to move forward.

Now I have the submission. Everybody has a copy of that. I'm going to turn to certain sections of our submission.

First of all, AMC is a politically representative organization of first nation citizens, regardless of their residency, whether they're living on-reserve or off-reserve or in rural areas in Manitoba. In accordance with the AMC constitution, the AMC grand chief, who is Ron Evans, is elected spokesperson by the chiefs of the 64 current first nation member communities situated in Manitoba by the vote of each member chief, who in turn is duly elected by the citizens of their first nations.

Treaties and continuing nation-to-nation relations exist in the spirit of coexistence, mutual benefit, and full respect. However, this relationship remains at risk due to continued unilateral actions by the Crown's federal department through the adoption of legislation and policies by its federal cabinet without consultation with indigenous first nations in Canada. Canada's unilateral efforts have failed miserably.

During our early nation-to-nation history and relations and treaty negotiations, the parties considered the question as to which nation's law would apply. The understanding of the elders is that each nation and their governments, the indigenous governments and the new Canadian government, would pass laws together, not against each other as adversaries. It is clear that in the beginning there was a true nation-to-nation partnership. These interpretations are based on oral history, documented recordings of treaty negotiations, court cases, and Canada's legislation.

I'll just skip now to AMC's position.

● (1110)

Man-made laws on fundamental human rights must be consistent with a first nation world view, for without acceptance they will not be successful. Canada's laws on human rights must be consistent with customary international law in order to be valid. Indigenous human rights laws that are consistent with customary international law cannot be extinguished by Canada and cannot be displaced or repealed by either the CHRA or the charter.

Notwithstanding that the CHRA and charter are Canadian laws, the repeal of section 67 requires free, prior, and informed consent of indigenous first nations peoples. AMC agrees with the Canadian Bar Association's observation that the application of the CHRA to the Indian Act should not prevent a full-scale and properly funded first nations-directed replacement of the entire Indian Act regime—this is linked to page 8 of my submission in the legal review—and should support the transition and the consultation for 18 to 30 months. That prepares a solid foundation for the first nations and the governments in terms of the Canadian Human Rights Commission administration of the act and the Human Rights Tribunal adjudicative functions.

AMC supports deferred legislation with a first nations consultation period of 18 months that prepares a solid foundation, with a six-month transition period to first nations and governments, on the Canadian Human Rights Commission administration of the acts and the Human Rights Tribunal adjudicative functions.

The interpretative clause must be part of the legislation, not a policy or guideline to the CHRA, to guide its application to the actions or omissions. Capacity-building and resources need to be confirmed

From there, we'll go to consultation.

AMC agrees with the findings of the United Nations Committee on the Elimination of Racial Discrimination. On March 9, 2007, it stated the following:

> The Committee urges the State party to engage in effective consultations with aboriginal communities so that mechanisms that will ensure adequate application of the Canadian Human Rights Act (CHRA) with regard to complaints under the Indian Act are put in place following the repeal.

AMC developed an approach to consultation—set out in the position paper—that is meaningful and constructed in the context of equality and respect for both parties in all decisions, policies, and legislation that affect the Manitoba indigenous population and its lands, territories, resources, and communities. AMC is supportive of a consultation that adheres to free, prior, and informed consent relating to first nations peoples.

On human rights, AMC indicated its concurrence on many of the recommendations proposed by the Human Rights Commission report, recognizing that first nations have a unique status and constitutionally protected rights and interests, and that a statutory interpretive clause relating to the application of CHRA in a first nations context is required for both first nations individuals and the first nations governments.

With regard to implementation issues, the proposed federal amendment right now is short and vague, which raises a large range of issues of concern as to the meaningful implementation of the legislation intent as is.

I know at home the concerns raised by the First Nations Women's Council, of which I am co-chair, during the information forums on the perspective of first nations on matrimonial real property on reserves. They were not being consulted. These concerns, communicated to the Department of Indian Affairs minister in a letter of January 10, illustrate as well the need for a well-thought-out implementation.

● (1115)

As expressed in the March 5, 2007, letter from the AMC grand chief to the Minister of Indian Affairs and Northern Development, the Manitoba first nations women gathering on MRP and Bill C-44 does not support the tabling of legislation without prior first nation consultation.

The AMC analysis in part reads as follows: “The scale of this fundamental change nationally requires immediate joint Canada-first nations oversight and ongoing collaborative review during the first 18 months, and phased stages during the remainder of the five-year period.”

Given the decreased regional allocations and operations of the department, there should be a financial commitment identified. Reliance on the CHRC to address all necessary implementation elements will overextend the role of the CHRC.

On aboriginal authorities, the meaning of that is silent. The term requires a definition specific to first nations institutions.

Capacity and financial support are essential for first nation governments to be able to establish that institution, and capacity and financial support are essential for first nations individuals. We require enabling development of an interpretive clause in consultation with first nations.

An independent body needs to be created to review the impact of INAC challenges that might negatively affect first nations individually and first nations governments collectively.

AMC supports the application of the CHRA to first nations and related institutions, with a transitional period of between 18 and 30 months in order to allow consultation on and enact the proposed interpretive provision; and preparatory actions to ensure that first nations and the commission have in place the measures necessary to do the following: effectively, efficiently, and quickly resolve complaints within 30 months; review policy implications for first nations; take preparatory measures required; and perform a legal review of the implications to the Indian Act itself.

Duty to consult. First nations participation will be included as a distinct and separate process that is first nation specific on any consultation processes generally, and consultation respecting the interpretive provision, to achieve a sustainable solution for all first nation citizens.

Collective and individual rights balanced. The amendment must not undermine inherent rights or abrogate or derogate from the constitutionally protected individual and collective rights. AMC supports consultation that will address the proper balancing of collective and individual rights through community-based solutions that strengthen first nations institutions.

The interpretive clause. AMC agrees with the AFN's recommendations that Bill C-44 be amended to include an interpretive clause so that the Human Rights Commission tribunal and court will be guided in their application of the CHRA to the unique collective inherent rights, interests, and values of first nation peoples and communities. An interpretive provision is necessary to more specifically guide an adjudicative analysis in order to strike an appropriate balance between individual and collective rights.

Confirmation of first nation institutions. Human rights are fundamental to first nation societies. Therefore the function of human rights institutions should be governed by first nation institutions and peoples jointly engaged from time to time.

In conclusion—I'm finally concluding—the AMC, on behalf of the first nation citizens and governments, looks forward to fundamental human rights access to all in concert with individual rights and traditional collective and constitutional rights of first nations people.

● (1120)

That's my presentation, Mr. Chair and committee members. Thank you.

The Chair: Thank you, Chief Eastman.

I note that the next brief is in English only, and I want to advise our Bloc members of that.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Has Chief Eastman been advised that we did not receive the French version of her submission? Is this the document in question? It didn't seem to correspond to the references she mentioned.

[*English*]

The Chair: We'll distribute that now.

Thank you very much, Chief Eastman.

We'll move to Chief Sydney Garrioch. Welcome, Chief. We'll give you 10 minutes for your presentation.

Grand Chief Sydney Garrioch (Manitoba Keewatinook Ininew Okimowin): Mr. Chair, *bonjour*, good morning to everyone. I'd like to thank the standing committee for having us present in regard to proposed Bill C-44, an amendment to the Canadian Human Rights Act.

We did give a written submission to the clerk and we apologize for not having a translation. I'd like to introduce Mike Anderson from MKIO, as well as Richard Hart, executive director, Manitoba Keewatinook Ininew Okimowin, who is here as an observer.

We are representing the 53,000 first nations in the 30 northern Manitoba first nations communities as an MKIO presentation. I must say at the outset that the MKIO first nations oppose Bill C-44. MKIO does not accept that the Canadian Human Rights Act should apply to the review of the acts and decisions of the first nation governments, their people, officials, and our employees.

MKIO also rejects the principle that the Canadian Human Rights Commission or the Canadian Human Rights Tribunal should have jurisdiction over the actions and decisions of the elected leadership on behalf of their first nations governments.

MKIO wants to share four principles that are important to the committee's consideration of Bill C-44: the treaty relationship and the joint commitment to nation-building; our laws are in our language; Keewatinook Ininew Okimowin; and consultation and consent.

The treaty-making process acknowledges and recognizes our Creator-given sovereignty and authority within our traditional homelands. Each MKIO first nation continues its jurisdiction on the law-making process in accordance with its customs, traditions, principles and beliefs. MKIO first nations have also entered into other treaties and agreements with governments, including a modern-day treaty known as the Manitoba Northern Flood Agreement.

MKIO first nations and MKIO are working to fully implement the intent, the terms and provisions of those treaties and agreements and to establish the governing process and its structures provided for within these treaties and agreements. MKIO first nations exercise community decision-making processes based on our customary laws, culture, and beliefs. For example, the Pimicikamak Cree Nation and other MKIO first nations have passed very comprehensive laws regarding elections, development, passage of laws through direct community involvement, the management of lands, wildlife, and other things.

Collectively, the MKIO first nations exercises its authority of the Keewatinook Ininew Okimowin, which translates from the Cree language as “northern people's government”.

MKIO first nations cannot and will not accept that Her Majesty or the Government of Canada has or ever had the capacity to unilaterally alter or terminate our sacred relationships through subsequent domestic legislative and constitutional enactments. The MKIO first nations do not recognize that the Government of Canada acquired any rights through the treaties or Constitution of Canada to make or impose a system of foreign laws upon our people, whether through the courts, commissions, or tribunals. Her Majesty consulted with our nations in order to reconcile our aboriginal titles and sought our consent to share ancestral lands and resources with settlers.

Consultation must take place and our consent is required before changes to the terms of our treaties or the imposition of Canada's domestic laws will be accepted by our nations or our people. Consultation and consent are the binding principles of the treaties, and the treaty relationship can only be modified or affected through following consultations with the joint consent of the treaty signatories.

I will pass this to Mike, and I will finish with the recommendations on the last page.

● (1125)

Mr. Michael Anderson (Research Director, Natural Resources Secretariat, Manitoba Keewatinook Ininew Okimowin): Thank you, Grand Chief.

Thank you, Mr. Chair and members of the committee.

In respect to Bill C-44 the Manitoba Keewatinook Ininew Okimowin must advise the committee that after analysis and review we believe Bill C-44 does not recognize the inherent sovereignty of the MKIO first nations as described by Grand Chief Garrioch.

Bill C-44 does not reflect the sacred and joint relationship established by treaties entered into between the MKIO first nation and Her Majesty's government.

Bill C-44 infringes, interferes with, and does not recognize the contemporary systems of government, decision-making, and community organization established in accord with the customary law, principles, values, and beliefs of the MKIO first nations and which systems we continue to exercise and develop on our own terms.

Bill C-44 does not recognize and leave room for the exercise in further development of first nation government authority, as reflected in the existing system of laws established by individual MKIO first nations, through government-to-government agreements involving first nations and through the continuing development of Keewatinook Ininew Okimowin.

Bill C-44 represents an unjustifiable infringement of rights recognized and affirmed by section 35 of the Constitution Act of 1982, in part through the Crown's failure to engage in a Crown consultation in accordance with the doctrine established by the Supreme Court of Canada.

Bill C-44 will impose Canada's vision of human rights and Canada's standards for reconciling human rights with government and corporate actions. It will arbitrarily narrow timeframes during which the elected leadership of first nations must prepare for consideration and resolution of complaints by the Canadian Human Rights Commission and tribunal. It will impose an uncertainty in first nation authority and community decision-making processes through the jurisdiction of the Canadian Human Rights Tribunal over matters that would otherwise be addressed by elected first nation leadership and through community-based decision-making processes. Bill C-44 will impose a review of customary laws, beliefs, values, and principles of first nations by the Canadian Human Rights Tribunal without a statutory requirement to take into account how the MKIO first nations perceive individual and collective human rights as well as concepts of transparency, access, and accountability.

Bill C-44 also fails to recognize that a source of many human rights issues of importance to first nations arise directly from federal government policies, including the significant and persistent underfunding of social services, housing, and infrastructure that are administered under the authority of first nation governments and are beyond the capacity of first nation governments to remedy.

An example of this that I'd like to share is the Supreme Court's consideration of the critical housing shortage in first nation communities when it examined the case in Corbiere. The Supreme Court realized that in order to address the housing shortage sufficiently for first nation electors to go home and live on-reserve and vote would require instructions to government that the Supreme Court wasn't prepared to provide.

In order to reconcile that conundrum, it developed an analogous ground of aboriginality residence to recognize that it was not possible to resolve the shortage of housing on a first nation community within the current policy framework, and it developed an analogous ground for the determination of discrimination under charter cases. That's one example of many where the Supreme Court itself has been unable to visualize a pathway to reconcile many of the issues that may give rise to complaints that might be brought to the attention of the commission, and then from the commission to the tribunal.

We also would note that when the expert panel on water was considering the issue of the adequacy of resourcing for first nation water and waste water systems and was in fact instructed by the minister not to consider the matter of funding in their terms of reference, the expert panel persisted in its report to discuss that the Government of Canada must place a priority on adequately resourcing water and waste water systems on-reserve in order for adequate services to be provided.

Those are two examples we wanted to bring to the committee's attention in respect to this particular issue.

Grand Chief.

● (1130)

Grand Chief Sydney Garrioch: I further state that MKIO's approach is to seek resolutions where first nations governments and our citizens develop and exercise systems to protect the human rights of first nations citizens in accord with their customs, traditions, principles, and beliefs; to address and resolve the persistent inequities between the first nations communities and non-aboriginal Canadians in respect of access to basic community services that may give rise to complaints by first nations citizens; and to ensure that relationships established by treaties and agreements are honoured, upheld, and enforced.

Recommendations that the Standing Committee on Aboriginal Affairs and Northern Development should report on and recommend are as follows.

First, the Government of Canada should honour its treaty and constitutional obligations by (a) recognizing the inherent authority of first nations governments and institutions established in accordance with the customary laws, principles, beliefs, and languages of first nations; and (b) recognizing that the distinct relationship between Canada and first nations is rights-based and is intended to reconcile the original aboriginal title.

Second, Parliament should reject the proposal that the Canadian Human Rights Act shall apply to acts and decisions of first nations governments and their officials and employees.

Third, the Canadian Human Rights Act should continue to contain an explicit exemption in respect of any provisions of the Indian Act or any provisions made under the Indian Act.

Fourth, the Canadian Human Rights Act should be amended to conclusively provide that it does not apply to first nations governments or any matter that affects or is in relation to the inherent authority of first nations or the application of the customary law of first nations.

Fifth, Parliament should recommend that the Government of Canada engage in consultation with first nations on means to protect and address the human rights of first nations citizens.

I want to further state that MKIO takes the position that the committee review process is not part of the Crown consultation process. The consultation must be done by government as distinct from Parliament, although Parliament may wish to monitor the Crown consultations.

Thank you for listening to our presentation.

● (1135)

The Chair: We're going to move to Mr. Lawrence Paul or Mr. John Paul. Are you both going to speak?

Mr. John Paul (Executive Director, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): He's “L”, so I'll go first, as “J”.

● (1140)

The Chair: Okay.

Mr. John Paul: Thank you for giving us the time to come.

My name is John Paul. I'm the executive director of the Atlantic Policy Congress of First Nation Chiefs, and I'm here today with our co-chair, Chief Lawrence Paul, from the Millbrook First Nation in Nova Scotia, to address Bill C-44.

Our organization represents 37 Mi'kmaq, Maliseet, and Passamaquoddy communities and one Innu first nation community, in five provinces, down into the United States, in Atlantic Canada, and in the Gaspé Peninsula of Quebec. Our organization shares a mandate to do research and analyze and develop alternatives to federal policy affecting its first nation members.

As you are aware, Bill C-44 seeks to repeal or remove section 67 of the Canadian Human Rights Act, which states, “Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.”

Our position is that our communities don't support this as it currently stands. Our chiefs recently, in January of this year, passed a resolution expressing our non-support for the bill due to our serious concerns on its potential impacts.

Our chiefs' primary concerns are as follows.

No meaningful consultations have been held with first nations, as required by recent Supreme Court rulings.

It conflicts with principles in law, outlined in rulings of the Supreme Court, that protect our collective communal interests and rights.

It will have significant impacts on first nation governments in Canada. The Micmac, Maliseet, Passamaquoddy and Innu peoples have long-standing tradition, cultures, and laws and seek to protect and rejuvenate them. Any solution must take into consideration this very unique situation with our first nation governments.

The effect of the bill would make individual rights take precedence over collective aboriginal and treaty and other rights of first nations.

No interpretive clause is included in the bill. It does not reconcile individual versus collective rights.

With six months, the proposed implementation or transition phase is totally unrealistic and far too short.

First nations currently are underfunded and lack resources to manage this new exposure to serious financial liability or undertake measures to minimize potential risk. For example, first nations would face exposure to liability as a result of significant housing shortages, programs, and services for the disabled, land allotments or rights, membership rules, residency bylaws, and the provision of basic programs and services on-reserve to all residents, not just band members.

Examples include things like non-insured health benefits provided by Health Canada, including post-secondary student support provided by INAC.

There is a high potential for complaints to be brought by band members on the basis of various grounds with regard to the existing housing policies and other such decisions made by band governments. It's not likely that the housing backlog and these other issues are going to be resolved in six months.

There is no capacity development funding for first nation communities regarding the application or implementation in the bill. The bill allows for a six-month window of immunity. However, without a significant influx of additional financial resources to minimize potential exposure to risk of complaints, it is irrelevant whether the immunity period is six months or longer. Unless first nation capacity and other implementation issues are addressed before this bill is passed, first nations will be flooded with complaints, with no resources to effectively manage or address them.

It violates principles set out in the UN draft declaration on the rights of indigenous peoples on cultural genocide, and it will have many, many unanticipated consequences like those that came out of Bill C-31 and the Corbiere decision. And it's unclear about the constitutional impact of this repeal.

I'd like to turn it over to my co-chair, Chief Lawrence Paul.

Chief Lawrence Paul (Co-Chair, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): I bring greetings from the Mi'kmaq, the Maliseet and Passamaquoddy in Atlantic Canada. Good morning, committee members.

Our organization fully supports the recommendations made previously by the Assembly of First Nations in its submission on Bill C-44 to this committee, including that consultations are legally required. First nations have not been consulted on this bill. In order to be consistent with various court rulings, first nations must be properly consulted on the proposed repeal of section 67 of the CHRA and, more specifically, on the development of an interpretive non-derogation clause, on the potential impacts on aboriginal and treaty rights, and on implementation issues before any legislation is tabled to repeal section 67.

As for the development of an interpretive non-derogation clause, there should be no repeal of section 67 until a non-derogation clause has been included to protect the constitutionally protected rights of first nations from further erosion.

We should also address some of the implementation and capacity issues. There should be no repeal of section 67 until suitable arrangements are in place to provide first nations with adequate resources, mechanisms, and institutions to fulfill new responsibilities and manage these new risks.

And we should conduct a constitutional analysis of the impact on aboriginal and treaty rights. So there should be no repeal of section 67 until the federal government conducts an impact assessment to determine the potential impacts of that repeal on aboriginal and treaty rights.

The federal government should recognize and/or establish first nations institutions to consider complaints against first nations governments, agencies and institutions.

Also, the federal government should not proceed with any repeal of section 67 until an analysis of operations is completed.

So it's our position that the federal government should not proceed with a repeal of section 67 until first nations have been adequately consulted.

In respect of the proposed repeal of section 67, we wish to thank the committee for giving us this opportunity to express our concerns on issues with C-44, and we strongly urge you to seriously consider the significant legal and financial impacts of this bill on both the Government of Canada and first nations governments and not have it pass into law.

I have appeared before the standing committee on many occasions down through the years, going back to Lester Pearson, the Diefenbaker era, the Trudeau era, the Mulroney era, the Chrétien era, and now this other era. Our batting average so far, in coming before this committee and bringing our complaints to it, is zero. I hope this time we will go down in history as having our concerns on Bill C-44 heard, and that we will have an impact in having our concerns listened to before this is passed into law.

I would make a recommendation, personally, that if C-44 is going to be passed into law, it only pertain to our first nations people, our governments, chief and council, and our first nations band members.

We know that the fiduciary or trust responsibility, and the land set aside by Her Majesty through the federal Government of Canada, is for a band and its membership. We foresee many problems, many court challenges. We see more poverty for our first nations.

We have land: the British North America Act was enshrined in the Canadian Constitution by way of section 35. The first part of the federal statute called the Indian Act states that there is land set aside by Her Majesty, the Queen, to the federal Government of Canada, for the benefit of the band and its band membership.

● (1145)

I'll give you one example. If this bill is put into law, if a non-Indian or non-first-nation comes to the chief and council and wants a house on our first nation, and we say, “No, this land is protected by a trust and fiduciary responsibility by the federal government”, they will say, “Yes, it was, but now it isn't, so we're going to lodge a complaint against you to the provincial and federal human rights tribunals and take you there, because you're discriminating against us.”

These are the fears that we have, and I hope this committee takes into consideration these concerns of ours, because we do not have the resources or the financial ability to constantly fight these kinds of complaints at either the provincial or the federal human rights tribunal.

Thank you very much.

The Chair: We have been joined by Grand Chief Chris Henderson. Welcome to the committee.

Would you like to give a presentation before we begin the questioning?

Grand Chief Chris Henderson (Manitoba Southern Chiefs' Organization): Yes, and thank you, Mr. Chair.

First and foremost, I want to apologize for my lateness. I had a prior meeting with one of the respected senators.

I'd like to say good morning to the distinguished members of the standing committee, and I of course want to say good morning to my colleague chiefs and to my colleague grand chief, Dr. Sydney Garrioch, who's also from Manitoba.

I won't offer too much by way of a submission, because I believe you've heard it all. My colleagues have offered compelling and eloquent statements, and I believe that is more than sufficient. Therefore, I will keep my submission very brief to allow for an exchange of questions and answers.

Within Manitoba, we have 66 first nations represented by three organizations. The Assembly of Manitoba Chiefs represents all the first nations of Manitoba, and then two regional bodies represent the regional first nations broken down by regions. Manitoba Keewatinook Ininew Okimowin, or MKIO, represents the northern first nations, and then in southern Manitoba the Southern Chiefs' Organization represents the first nations of southern Manitoba. I am here representing the southern first nations of Manitoba.

Concerning Bill C-44and the repeal of section 67 of the Canadian Human Rights Act, I would respectfully offer a view differing from that of our national organization, the Assembly of First Nations. I know they are in support of the repeal of section 67, but at this point in time I would be inclined to support the position and view and submission of MKIO, our northern brothers and sisters in Manitoba. They are rejecting Bill C-44 in its current form and composition. At this point in time I would also support that position on behalf of our southern first nations in Manitoba.

This is primarily because, first, there has been no meaningful consultation and allowance for accommodation regarding this proposed legislation. As well, if this bill were to be passed and enforced as law within Canada, I do believe and I do take the position that the negative ramifications concerning our inherent aboriginal and treaty rights would be far too great. I believe there has to be a delicate balancing act concerning the rights of the individual versus the collective rights that are held by our indigenous peoples in Manitoba.

At this point in time I would support the position of MKIO. The SCO, the Southern Chiefs' Organization, therefore cannot support Bill C-44 at this moment in time because of those two primary reasons.

Again, the first reason is lack of consultation and meaningful accommodation with those affected first nations that are purported to be served by the legislation. As well, there are the potential negative impacts and consequences on our inherent aboriginal and treaty rights, again concerning the individual rights and collective rights of our first nations.

I don't want to say too much more than that. As I said earlier, you've heard it all from my colleagues. I do appreciate the opportunity to be invited here by the standing committee. I say thank you, and I do apologize again for my lateness. Please accept my sincere apologies.

I look forward to the respectful dialogue between the distinguished members and my colleagues on this side of the table.

Thank you. *Kitchi megwetch.*

● (1150)

The Chair: Thank you, Chief Henderson.

We will begin our questions with Madam Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Let me begin by thanking you all for very substantial and thoughtful presentations here this morning. I am going to be sharing my time with my colleague from Manitoba, if we have the time.

I have many questions, but I'm going to keep my questions focused on one area. Every one of you in one way or another has raised the issue of consultation and the lack thereof. How would you see a meaningful consultation unfold or take place? What would be a meaningful consultation prior to the introduction of such a piece of legislation, which is really a far-reaching piece of legislation?

The question is for everybody to make a comment.

The Chair: Okay, then we will go from my left to the right. Chief Eastman.

Chief Viola Eastman: Meaningful consultation, to me, would be consulting with every community and the people and their first nations, because they will be affected by it. So it's consultation with members of first nation communities.

Hon. Anita Neville: Locally?

Chief Viola Eastman: Yes.

Grand Chief Sydney Garrioch: The consultations from an empirical perspective are to provide the information for assessment. They review the information and discuss it among themselves, examine the matters with which they are confronted to know exactly what proposals are in place, and develop a dialogue. And if you need consultation, you'll get feedback of how to go about certain things.

That would be at the community and regional levels, and professionally as well. There are certain levels at which you need consultation for it to be meaningful. All the interest groups have to be informed as to where and when the consultation is going to happen.

Those are things that we want to express, from our perspective in MKIO, on consultation.

Grand Chief Chris Henderson: Thank you, Madam Neville, for the question.

I believe the standard of consultation has been quite rightly established by the hearings concerning the Royal Commission on Aboriginal Peoples. If that standard can't be met, I believe something similar should be considered and established.

I know in Manitoba another set of consultations concerning changes to the provincial justice system was taken back in the early nineties regarding the inquiry on the justice system concerning aboriginal people, the AJI. They did a decent job in terms of getting out to the communities, getting out to people's home communities, to engage people on their experiences with the justice system and what kind of changes they would like to see. Certainly the RCAP hearings undertook very similar aggressive hearings across the country.

So I would hope that the powers that be here in Ottawa would give due consideration to that type of standard of consulting, dialoguing with, and listening to first nations people.

● (1155)

Hon. Anita Neville: Thank you. Chief Paul or Mr. Paul.

Mr. John Paul: Thank you.

Because of the implications of what could come out of this change, I think it becomes very important to engage all of our people, because every person is going to be impacted one way or another, whether they're a five-year-old or a 70-year-old, whether they're living in northern Manitoba or Vancouver or Halifax. Every one of us is going to be impacted by this. You have to understand that. So in that context, the standard of consultation really goes way up there, to ensure that all of our people have input and all of our people have a say in terms of this legislation, because it is legislation that will fundamentally affect all of us and our people into the future.

If we make mistakes or if you make mistakes on this now, we will pay for them for the next decades in terms of what comes out of this. There are legal obligations that you have to address. The standard bar has been set very high, and I think that in this one you have to go to the highest standard possible to ensure that our people fully understand, as Sydney said, how this is going to play out.

The Canadian Bar Association said at its presentation that it's like a bunch of dominoes. This is one domino that could cause implications that you do not know, and that's the worry we all have. It sounds simple, but the standard of consultation, I think, has to be comprehensive and complete and fulfill all of the legal requirements that exist.

The Chair: Thank you.

Mr. Michael Anderson: Mr. Chair, I had a couple of comments, if I might.

The Chair: I'm only going to allow one comment per group, if you don't mind.

We'll go to Madam Keeper.

Ms. Tina Keeper (Churchill, Lib.): Thank you, Mr. Chair;

I'd like to thank everybody for their presentations. They were excellent. And I would like to especially thank Mr. Lawrence Paul for sharing with us his long history in terms of these issues.

I would like to ask this, following on what Mr. Paul just said. We are talking about human rights here and ensuring human rights.

Mr. Anderson, you talked about a couple of big items that are issues across the country for first nations—housing, water, and the list goes on and on. It seems to me that if we're talking about ensuring human rights, we're starting in the wrong place. This doesn't seem to be the right way to go about it, because we don't have a level playing field to begin with. There's a lack of services. There's a lack of adequate programs. Children are suffering.

So could we speak to that, about where it is we should be starting in terms of ensuring human rights for first nations? Is this the right place to be starting a bill like Bill C-44? Or is there somewhere else we should be starting in terms of ensuring human rights for first nations in Canada?

Mr. Michael Anderson: Is that a question directed to me?

Ms. Tina Keeper: Yes, it is to all our presenters.

The Chair: We've used up our seven minutes, but I'm going to allow you to answer.

Mr. Michael Anderson: Thank you, Mr. Chair and Ms. Keeper.

The recommendation made by MKIO that this committee recommend that Parliament engage first nations in a crown consultation in respect of the means to protect and address the human rights of first nations citizens is intended to consider the underlying root causes of those matters that would give rise to complaints. Establishing a mechanism for persons to complain about issues that are unresolvable doesn't resolve the issue.

We note that the tribunal has sweeping powers, for example, to make orders and to seek enforcement of the orders by making application to the Federal Court. A first nation subject of such an order may not have the ability to resolve the issue that underlies the complaint, as you pointed out, whether it's housing, water, child and family services, and so on.

So the issue is that in order to protect the human rights of first nations citizens, which is the focus, the treaty partners need to engage each other, focus on the well-being of first nations citizens at the community level, and address the causes that give rise to complaints prior to establishing a mechanism to deal with complaints that are inherently unresolvable.

● (1200)

Ms. Tina Keeper: I think you've mentioned—

The Chair: We'll go to the Bloc, please.

Go ahead, Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque: Good morning, ladies and gentlemen.

Since 1977, section 67 of the Canadian Human Rights Act has contained an exemption in respect of provisions of the Indian Act. Section 67 was adopted in 1977 because negotiations were under way between First Nations and the government over the reform of the Indian Act.

Representatives of the Assembly of First Nations of Canada, of the Assembly of First Nations of Quebec and Labrador and of the Native Women's Association of Canada argue that section 67 should be repealed. More consultations are needed. Minister Prentice informed the committee that negotiations have been under way since 1977 and that numerous discussions and consultations have taken place on section 67. All have helped shaped this bill. In his opinion, the general consensus that has emerged from the discussions and consultations is that section 67 should be repealed.

The repeal of section 67 was recommended by the Canadian Human Rights Act Review Panel in 2000, as well as by the Canadian Human Rights Commission in its 2005 special report and by the Native Women's Association of Canada.

Unlike previous government bills that called for an interpretative clause, Bill C-44 contains no such provision.

How, in your opinion, could an interpretative clause facilitate the application of the act in communities and help balance individual and collective rights? I'm all ears.

[*English*]

The Chair: Ms. Linklater.

Ms. Irene Linklater (Director, Research and Policy Development, Assembly of Manitoba Chiefs): I'm going to speak to the first point, to answer your question on how an interpretive clause is going to look with respect to balancing individual collective rights when it comes to an interpretive provision for human rights protection. But before I do, there's the issue of whether there has been consultation or not since 1977, when the Canadian Human Rights Act purposely exempted the Indian Act, and also on-reserve, by virtue of the problems that were encountered in the Bill C-31 provision.

I know that's the information that's been presented. Those are the reasons the exemption was stated in the first place. By that exemption, Canada assured first nations people that any amendments to the act would be done with full consultation with the people. We do not see that there has been full consultation when the consultation to this date has only been done with national political organizations or a number of other groups. From the information you provided, we don't know who has been consulted, because it has not been done with our communities and does not meet the test of consultation for pre-planned, informed consent that was stated previously.

Looking at the interpretive provision, we are not going to be able to provide you with an answer today on what the specific elements should be with respect to a provision to look at an interpretive clause, to look at the balancing of human rights, and at our individual and collective rights. That in itself requires proper research, consultation, and discussion from us as well and looking at it as a component of the necessity for consultation.

That is our answer to that question, and I hope I have properly heard the question. Thank you.

● (1205)

[*Translation*]

Mr. Yvon Lévesque: Chief Eastman maintains that this consultative process would take between 18 and 30 months. If I understood Chief Garrioch correctly, he stated that aside from laws that recognize his nation's Creator-given sovereignty, federal or provincial laws are not recognized in any case.

Since you believe in Creator-given authority, could consultations possibly lead to the introduction of clauses that would facilitate the application of the Canadian Human Rights Act in your communities?

In your opinion, would 18 to 30 months give you enough time to come to an agreement on the repeal of section 67?

[*English*]

The Chair: There's one minute left for an answer to that question.

Mr. John Paul.

Mr. John Paul: As she said earlier, one of the things is that this problem has persisted over time. The set-up of the way it was exempted originally came from a previous government action that created this scenario. Now we're coming back twenty or thirty years later to try to correct a mistake that the government made before. All we're saying is that another wrong isn't going to correct it.

In terms of the interpretive clause, one of the things we always run into is that we never agree on what the interpretation is of different things in terms of government. The reason we're calling for an interpretative clause is to ensure that we're all clear about it and what happens in terms of any legislation—in particular, this one that we keep saying will impact everybody, in one way or another.

Thank you.

The Chair: Madam Crowder.

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

I would like to echo my colleagues' thanks for your journey here today and being willing to come before the committee on this very important issue.

A number of you have talked about the unintended consequences of previous legislation. I'm going to reference specifically Bill C-31, subsection 6(2).

The department has done an analysis on cost drivers. I want to quote a bit from it because it talks about how big the impact has been, just in terms of the government's own assessment. This was titled "Legislative Change/Disruption", and it says:

> A successful court challenge against the registration sections of the Indian Act, in particular the "6(2) cutoff", is likely in the near future, according to the Department of Justice. There are over 45K applicants whose claims to registration have been denied, and an additional 30K whose claims have gone dormant. These individuals will quickly be included in the backlog, and increase by ten times its current size. Depending on the impact of the legislative change, there may be a requirement to review all of the 250K C-31 applicants held at Headquarters, or even a review of many of the registrations completed by the regional offices as well, which could number in the hundreds of thousands of cases.

The reason I raise this is this. What I've heard many of you talk about is that one of your big concerns is that you haven't had the kind of consultation that would prevent a situation like the Bill C-31 subsection 6(2) cut-off. This is denying people access to their rights.

I wonder if you could comment on the kinds of unintended consequences and impact that bills such as Bill C-31 had on your nations.

Thank you.

● (1210)

The Chair: Madam Crowder, could I ask you to identify the document you're referencing?

Ms. Jean Crowder: Yes, it's a document written by Jacqueline Cuffley called "Cost Drivers". I can leave it with whomever if they need for the verification unit.

The Chair: Thank you.

Chief Viola Eastman: I'll just pass this on to Chief Garrioch.

Grand Chief Sydney Garrioch: Thank you, members of the standing committee.

There are a number of issues out of that question. On the Indian Act, repeal of that section of Bill C-31, we were not consulted on how it would create an impact on our people. It kind of determined the reinstatement for the first nations on their status. That's one issue.

There's also extinguishment of the treaty rights that our first nation had in their system. As well, there was a cut-off—assimilation—to that as well, as part of the exercise.

Out of this matter of the Indian Act, with potential reinstatement, the issue will become the backlog, the capacity at both levels, at the INAC system for review and reinstatement of those first nations that may qualify under the criteria to be eligible to be registered, as well as the community to be registered at that level, how it's going to impact on the program, the existing underfunding as well as the capacity at the first nations government system. It will have a great impact. It will delay, it will obstruct, and it will do tremendous undermining of the system of government programs and services. It certainly will create tremendous frustrations, not only for the government but for the people themselves.

With regard to this issue, if there is a potential amendment, how many of those complaints will be filed across the nation? Will it be 50,000, or 500,000, or become one million? How is the exercise or process to work? What is the capacity of the government to achieve and potentially resolve those complaints that may come about? And that's a good example of the Indian Act amendment, how it affected us on that legislation.

Thank you.

The Chair: Are there any further comments?

John Paul.

Mr. John Paul: I agree. I think there are very serious implications, and on the numbers, all you have to do is do the math, do the financial math. It doesn't matter what number you use for basic services, whether it's social, health, housing, education, or just basic fundamental services, if you just do the math, any economist who knows anything about this will see that it will destabilize communities in terms of where communities are at.

As for our communities back home, a number of communities had a very large influx of people as a result of this legislation, so that the populations in some communities almost doubled; and then with Corbiere, all these people who have now doubled the population, who now have kids, and they have kids, and so on, are causing greater pressure on a fixed-growth budget. As a result, it really has all these negative implications that I think are going to play out over the next while in terms of the fiscal pressure on government and the fiscal pressure on the individual communities.

We really looked back at what the intent of all this stuff is. Is it similar to a policy that was created in 1969, called the Chrétien policy, of eliminating citizens plus, and basically moving to a strategy of dismantling communities and total assimilation of our people? Is that where this is going? I think our people and our leaders are very concerned about that, about the intent and the outcome of these kinds of issues, especially the impact on the children and grandchildren in our communities, as to who they're going to be in the future. It's serious stuff for the communities.

Thank you.

● (1215)

The Chair: Mr. Bruinooge.

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

Thank you, everyone, for coming today, especially my fellow Manitobans. Of course, I have nothing against those from Nova Scotia.

I'll start with some of the reasoning our minister and our government have employed for this repeal of section 67. That is that it is to resolve issues that we see brought before government on many occasions, especially in relation to matrimonial real property in particular situations where the marriage compact is broken, for whatever reason, and families have to vacate the home, not based on any direct division of marital assets, but rather through the current model employed throughout most of our first nations communities, which is the allocation of assets through the direction of band councils.

The issue that I face and our government faces as legislators is that we have what we see as a problem typically, in some situations, for mothers and children, who aren't necessarily guaranteed housing upon a marital breakup.

As part of our plans to remedy this situation, which we feel we must do, repeal of section 67 was asked for, to be undertaken as part of the process, as it is seen as necessary to provide matrimonial real property. That is one element of some of the reasoning.

I would ask the question, would you not agree that matrimonial real property is an essential part of families' lives on reserve, and do you not agree that a remedy is important?

Maybe I'll put that question to Ms. Eastman first.

Chief Viola Eastman: Thank you.

In regard to matrimonial real property, we had our dialogue sessions in Manitoba. You can't understand what it is like in the community. These dialogue sessions tend to be information sessions, because some of the women don't understand the term “matrimonial real property” and what it actually is. We ended up for two days giving information on the provincial laws.

At the end they said, why are they trying to tell us how to live our lives and what to do? First of all, they said, this isn't our land. We don't even own the land anyway. The property we have is just the tangible property; that's all we have. For Manitoba anyway, it is not land that we own. We don't own the land.

Then we have natural laws that we go by if there's a breakup in the family. They are just natural laws, that there are in-laws who take in the family, the children.

It was the first time they had ever heard about this. They were saying, they are going to implement something; legislation is going to be coming in April. That's only three months. We have to go home and look at this and talk about it.

We gave a lot of information, which was good. That is the positive part about it. The women who came got a lot of information out of it. But those are some of the things that came out of the dialogue sessions we had.

The scope of it is really large within the community. It is really different from living in a community in urban areas. If each and every one of you came out and lived in the community for a year, you would realize what it is like. It is not the same as living in urban areas in the province. That is one thing we found out.

That's all I'll say about that.

● (1220)

Mr. Rod Bruinooge: In response, it's my hope as a legislator that I'd be able to work through Parliament to extend that security to women and families, so that when they go through a marital breakup they would have the opportunity to reside in a home. That's really my intention through being a part of this process.

Chief Viola Eastman: One thing is that we don't want provincial laws to be presented to the communities. I know that this was the first thing that was said by the women.

Mr. Rod Bruinooge: How much time do I have, Mr. Chair?

The Chair: You're down to a minute and a half.

Mr. Rod Bruinooge: I'll go back to one of the points raised by Mr. Anderson.

You talked about how some of the human rights issues or abuses, perhaps, were unresolvable. Without a forum for individuals to raise the human rights issues they feel they have, how is it possible to quantify what they are and whether they are resolvable or not? Without a forum such as what we're suggesting, how would we be able to ascertain that?

Mr. Michael Anderson: Thank you, Mr. Bruinooge.

Ms. Keeper's question was directed somewhat at this issue, again.

The mechanism and the forum is the treaty relationship. It's the Crown–first nations relationship. It's the dialogue that would naturally result as part of the ongoing process of giving life to the perpetual commitment to build a nation together. So those issues that arise in first nation communities and as first nation concerns would be resolved directly through contact between the leadership and ministers of the Crown, parliamentarians, and committees such as this. It's the dialogue that the handshake of the treaty medal means: two nations together building one nation.

The concern regarding the repeal of section 67 is that we're proceeding immediately to developing a complaint mechanism and jumping right over the process of engagement. From the consultative questions that were asked, for example, we note, in our work on matrimonial property, that Ms. Grant-John was recommending that the minister and the Minister of Justice develop a culture of section 35 compliance. We see one of the critical points of engagement in that treaty relationship to be full implementation of the duty to consult that has been established as a doctrine by the Supreme Court of Canada.

The questions to ask—is there a right, is there an infringement of the right, and is the infringement justified?—are all at point of engagement. As yet, we have not fulfilled the obligation to engage in the consultative doctrine established by the Supreme Court in a meaningful, operationalized way.

The Chair: Thank you.

We're in the five-minute round now.

Turning to the Liberals, we'll have Mr. Russell.

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

Good morning to each and every one of you. Thank you for coming.

I know a little of Chief Paul, being from the Atlantic. I never thought you were batting zero on anything, to be quite honest. I've often heard about your many accomplishments in Nova Scotia.

Building a little bit on what Tina was saying and on some of what you have said to the committee, if you use examples like housing and water and some of these other service-type provisions that one should have, wouldn't the impact be more dramatic on communities that have less capacity in terms of some first nations? That must be a double punch for some communities. The poorer communities, or the ones that are more challenged, would be more severely impacted. There's an assumption that all first nations seem to be at the same stratum, which is just not the case.

Take, for instance, the Innu. The Mushuau Innu and the Sheshatshiu Innu in Labrador are just two new first nations. In fact, its only been months in terms of the formation of the Sheshatshiu first nation. So they're going through a whole implementation of the Indian Act, and now they've had this foisted on them in six months.

Could you comment on how this would exist? This might just exasperate. We've talked about the Pikangikum here at this committee, and we've talked about the Kashechewan, for instance, two particular communities that have been highlighted in the media.

Can you pass some comment on that, Chief Paul?

● (1225)

Chief Lawrence Paul: Thank you for your little bit of praise. I certainly appreciate it.

First of all, when I look at the big picture, as I've done ever since I've been in politics—that goes way back to the sixties, that's why I mentioned earlier that I went through a lot of prime ministers in my tenure as chief and councillor in native politics—I've seen a lot of changes. One thing I never did like and I still don't like is that when I talk to this committee I like to talk to the committee members as equals. I don't like talking to a committee where it's a parent-child relationship—we know what's best for you.

My accomplishments in my first nation are based on my own people and my economic development committee. We decided we would do our own thing. We had a department tell us what to do for years, and it always went belly up. It was a miserable flop. So we said we'd take control, we'd look at free enterprise and economic development and how we'd go forward in the modern day, and we're successful.

In answer to the honourable members on matrimonial property, you have to give some credit to first nations, that we have intelligent people on our councils. For instance, I have six college graduates on my council.

As for matrimonial property, we've seen that issue coming, so we have our own policy. If there's a marriage breakup in our first nation, then of course it has to go through the family court process. Whoever gets custody of those children automatically, whether male or female, gets custody of that home.

A non-Indian mom or dad has the responsibility of a guardian, so they're able to live in a band-owned home until the eldest child reaches the age of maturity—19, I believe it is now—then it's up to that child whether they still want their non-Indian parent to live with them or not; they're in control now. That would be up to the family. We think that's equal.

I don't like the idea of using matrimonial property, beyond all comparison, to give that protection and eliminate section 67 by Bill C-44, because we look at too many things. There are going to be so many court challenges against chief and council. I've often said it takes two of us, and then of course we have to sue the federal government. You know there are $22 billion worth of court cases against the previous federal government in the court system now. That's going to double to $44 billion before this is over, because when they sue us, we have to sue the government. We have no other avenue; we have to go that route.

At this time, I can see the Human Rights Act is going to disrupt everything else. Right now my band has 60% mixed marriages on- and off-reserve. My band members stretch from B.C. to Prince Edward Island, from Florida in the United States to California, Massachusetts—they're scattered all over. Under the Corbiere decision, they vote for us.

My colleagues and I are here today to ask the standing committee to listen to what we are telling MPs. We know what's best for our people. We live there. We know the society on a first nation is quite different from a society in downtown Truro, where I live. We have a different society, a different way of handling things.

● (1230)

I guess what we're asking is for you to listen to us on this particular issue of the repeal of section 67 of the Human Rights Act. It's going to cause more poverty. It's going to be a drain on the limited financial things that we have now. It's going to cause headaches, not only for us but for the municipal government, the provincial government, because then it's wide open.

Is my time up, sir?

The Chair: Yes, summarize, please. You're over.

Chief Lawrence Paul: I'm quite worried about the whole effect of this Bill C-44. I think it's going to have drastic effects on the community life of our first nations and our local governments.

Thank you, Mr. Chair.

The Chair: Thank you.

I'm sorry, I have to keep track of the time or else my colleagues will give me a hard time about not giving equal opportunity.

We're on to the government side, Mr. Albrecht.

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

Again, my personal thanks go to each of you for appearing today. I want to especially congratulate Chief Paul on outlasting five or six prime ministers. That's quite a feat, especially from my perspective as a rookie MP.

The issue of consultation—adequate consultation, full consultation—has come up not just from each of you as witnesses today, but from many of the other witnesses we've heard. I think in answer to Ms. Neville's question, Chief Eastman said that it would involve consultation right to the individual level. Certainly I agree that would be ideal, but if we consider that consultation would occur at the individual level, then at the first nations level, at the regional level, at the provincial level, at the federal level, what do we do? I mean, we want to listen; I'm committed to listening. But at the end of the day we've listened already to a number of federal representatives only, and we have very disparate views on what should be done.

At the end of the day, someone needs to grapple with this and make a decision. How would we possibly begin to engage in dialogue, first at the 600 first nations level across Canada, and then at the individual level, and still be sure that we haven't offended anyone in the process? That's a challenge that I'm sure you face in your individual band councils, as well. You make decisions, and people will always say you didn't listen to them because you didn't implement the decision or the suggestion they gave you.

I want to ask, how can we ensure you that we've listened and still possibly not come up with the decision that your group would have preferred? I say that with respect. I'm not trying to be disrespectful. It's a challenge we face not just on this issue in this committee, but in many others.

If you could help me with that, I would appreciate it.

Mr. Michael Anderson: In terms of practical application on consultation policy, MKIO has put a lot of work into codifying the consultation policy for the application of the Crown consultation process in Manitoba. We began work on it within months of the Sparrow decision in April 1991. I can remember getting instructions from the MKIO executive council to proceed. Now, we are working with the Public Interest Law Centre of Manitoba to put together a workbook on Crown consultations so that first nations can present this workbook when a demand for Crown consultations is made.

The Northlands Denesuline First Nation recently issued a demand to the Government of Manitoba to engage in Crown consultations in respect of mineral exploration licences in their territory and have requested that no further licences be issued until the conclusion of those consultations. In order to give effect to that, a response on the process has to be provided. We're going to provide that.

I would add that on the Crown consultations conducted jointly by Manitoba and Canada on the Waskwatum generating system, MKIO was not part of that consultation process. The first nations that are directly affected were a part of the Crown consultations on Waskwatum. There was a report on that, so the mechanism can be reviewed.

The concept is that representative consultation does not meet the standard of consultation established by the Supreme Court in Sparrow, and Badger in our case, and then in Haida Nation and Taku River. It is a direct consultation with the directly affected first nations. The questions I listed before—is the right affected, is the infringement justified?—are the questions that must be asked.

From the work I do on the national policy advisory group with AFN's fisheries committee, we understand that DFO is awaiting the outcome in respect of Bill C-45. The Department of Fisheries and Oceans is awaiting the outcome of work being done jointly between Indian and Northern Affairs Canada and the Department of Justice to develop a national consultation policy for the Government of Canada. We're eagerly waiting for that. We're going to ATIP it, actually, and try to get as much of it as we can right away. The end result is that it is a codified mechanism. It is a reliable process. It is between the Crown and first nations, and there has been a lot of groundwork done. The outcome of the consultation is another matter.

This is my last comment, if I might, Mr. Chair.

The key comment in Sparrow is that the presumption of validity on the part of Parliament is no longer valid. The Crown consultation process is not a matter of listening and then acting. If the Crown is going to take an action or make a decision that will infringe the exercise of a right that is recognized under section 35 of the Constitution Act, it may not do so unless it justifies that infringement. Consultation is part of the justificatory mechanism. The outcome of it would be establishing a valid legislative objective that would cause justification to be a conclusion in the consultative analysis.

● (1235)

Mr. Harold Albrecht: Mr. Chair, do I have any time left?

The Chair: No, Mr. Albrecht.

Mr. Lessard.

[*Translation*]

Mr. Yves Lessard (Chambly—Borduas, BQ): Thank you, Mr. Chairman. I'd also like to thank our witnesses for coming here to discuss this important bill. There is no question that this bill is important. Your testimony here today is once again evidence of that fact.

I'm trying to understand where the real problem lies. Does it have to do with form, with substance, or with both? Right now, I'm leaning more toward form. However, I don't want to make a mistake here and that's why I'm seeking some clarification.

Your appeal to the committee this morning can be summed up by Mr. Lawrence Paul's request that we listen to you, engage in consultations, respect your beliefs, customs and practices and recognize the need for a fair balance between individual and collective rights.

I have the impression—and here's where we need to achieve greater understanding—that previous lawmakers tried to listen to you. The legislation adopted in 1977 contained an exemption, namely section 67. The matter was debated at length both at the time and during the ensuing years. To summarize, in 1999, a very important national committee—I believe Mr. Paul testified before this committee, as I believe some of you surely did as well—put forward a series of recommendations about, among other things, the federal government's fiduciary responsibility and the repeal of section 67. That debate took place in 1999.

The Assembly of First Nations has also expressed agreement with the principle of repealing section 67. The Native Women's Association of Canada is more specific, claiming to agree with the principle, but calling for an interpretative clause to be included in the bill. We understand that request, given the specific points you mentioned earlier.

As lawmakers, we feel that we have tried to listen to your concerns. Not only have we tried, but we've also given you opportunities to speak out. I gave you a few examples and today, you're here once again speaking to the committee.

One other thing aptly describes the situation. Mr. John Paul advises us that the proposed time frame will make it impossible to honour the obligations created by the repeal of the provision, because there will not necessarily be time to put in place the health, education and other measures to honour the various obligations.

Moreover, I'm here speaking to people who know that no one can be expected to do the impossible. This rule was also applied in 1977 to communities other than first nations communities. At the time, other very fragile communities were not able to honour certain obligations. In time, they succeeded.

My question is as follows: do you not feel that when you compare what has happened since the passage of this act in 1977 and the measures adopted to date, the additional benefits are apparent? The Canadian government is a trustee who has a certain number of responsibilities toward your communities. Do you not feel that we are debating form more than substance here, and that what we really need to decide is whether or not to adhere to the principle? Maybe I'm being somewhat blunt with you, but do we really agree on the principle here? For example, I would be surprised if you did not agree with the 11 prohibited grounds of discrimination.

● (1240)

[*English*]

The Chair: There is limited time for an answer to that. Please be concise so that we can move on to the next questioner.

Mr. Paul.

Mr. John Paul: As you said, in terms of the substance and the form, we all agree that we have evolved since 1977 in terms of the point communities have reached. But one of the things that are still lacking is the fulfillment of the treaty relationship that was promised to us and the protection of the constitutional rights and the financial resources to go with them. The dilemma we get caught in is making trade-offs, making choices. For the communities, until you actually carry it out one way or another, it's going to play out.

As Lawrence said earlier, it could end up with $44 billion more of litigation, liability, and so on, but there are other more important issues that need to be addressed in our communities. If you look at it from a perspective of poverty, dividing up poverty is still poverty. If you can't move beyond that, you can have all the rights and equalities you want, but if you're poor people, you're still poor people.

We need to empower our people to a future. We have to empower them to be part of Canada and the economy, to have a job and to have a future. That's where we need to go. And this won't do it; I don't think it will.

The Chair: Mr. Storseth.

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

I want to thank you all for coming and presenting before us today.

Part of our job here today is to sit down and listen to you and determine which aspects of this legislation need to be kept, which aspects need to be amended, and whether there are any aspects that need to be thrown out. Unfortunately, I only have five minutes. I would love to spend quite a bit of time discussing this with all of you.

I'd like to go to Chief Eastman first. I appreciate the brief. I thought it was very succinct.

Do you believe the status quo we have in the community today is working?

Chief Viola Eastman: No, it's not working.

Mr. Brian Storseth: Try not to go on too long, but what aspects do you see that we need to make some changes to? Is this field, such as the repealing of section 67, not a good first step, as long as we can maintain some of the boundaries that you have set out within your brief?

● (1245)

Chief Viola Eastman: I'll get Irene to answer that from AMC's perspective.

Ms. Irene Linklater: Thank you, Chief Eastman.

On the question of whether the status quo is satisfactory, no, it's not satisfactory in either substance or form with respect to how the inherent rights, the treaty rights, and substantive rights of first nations people have been undermined through legislation not of their making—the unilateral statement that was made in the AMC submission; with respect to not being engaged in looking at how laws impact us, but seeing them imposed upon us, which is what's happening right now; with respect to the non-implementation of the treaty relationship, not having a fiscal arrangement in equality with the federal government.

The relationship between the Crown and first nations has not been respected. We are essentially provided with programs and services in the communities. We're allocated essentially a program department as opposed to enjoying a nation-to-nation, government-to-government relationship.

So the answer to whether the status quo, in that broader sense of the question, is good today is no, it's not; there need to be a lot of improvements. We are looking at human rights as having been and continuing to be violated now, because there is substandard housing or no housing; there are no roads to some of our communities, while they are taken for granted in other communities.

The argument being made that there's only so much money that can be allocated, because each fiscal year only allocates a certain amount of dollars to first nations people, in fact violates human rights from an international standpoint. There is a human right in international law to proper housing, full and adequate housing. Until Canada looks at international law principles of free prior informed consent and to the other national instruments that look to respecting indigenous people in Canada, then we are not going to get beyond dialogue. We're going to fail.

Mr. Brian Storseth: I don't mean to cut you off.

Your point then is that before we can implement repealing these human rights that don't currently exist on-reserve, we need to first properly fund the reserves so they can accommodate these human rights that aren't currently being fulfilled, that aren't there.

A witness: That's a partial—

Mr. Brian Storseth: I have a couple of questions. How much time do I have, Mr. Chair?

The Chair: You have a minute.

Mr. Brian Storseth: I will ask both my questions here.

The first one is, do you have any dollar figures for what you see, even in your area, that you would need in order to be able to fulfill this?

Second, Chief Eastman talks about the consultations that occurred with matrimonial property rights in your area. You don't have time to answer all the questions, but obviously there would have been documentation. Would you be able to provide the committee with some of the information and documentation as a result of those briefings that occurred, so we could get some feedback from people on the ground?

Chief Viola Eastman: Sure, we can provide it. We have the dialogue sessions all written out, and I can forward them. Indian Affairs should have them.

Mr. Brian Storseth: On the dollar figures, have you any idea how much more money you think the federal government needs to put into the system? Does anybody have that number?

Mr. John Paul: I think there has been some analysis done on that. I know the AFN has done an analysis of the impact of capital funding of the last decade, and based on that....

The way you look at it is the pie, and the pie is the same pie. It's getting thinner, basically. We're having more and more people we have to feed with it, and right now, in terms of the current scenario, unless we set fundamental standards of services for everybody on all activities and so on, it really comes down to providing basic services for people in communities. A lot of our people are in poverty. It's quite substantial in terms of what it is, and the AFN nationally has done some analysis of the impact of the fiscal gap that exists. If you look at that in terms of individual regions and look more closely, in terms of individual communities, at what impacts have occurred over the last decade, you will really begin to see and understand exactly the cause and effect in terms of limited growth, in terms of funding and the impact on services and programs at the community level.

● (1250)

Mr. Brian Storseth: If you were given that money, then, would you—

The Chair: Mr. Storseth, you're out of time.

Madam Crowder.

Ms. Jean Crowder: Mr. Chair, actually the department itself, INAC, has done an extensive analysis of the chronic underfunding on a cost drivers project that they did, and it was clear across a number of fronts. Indian and Northern Affairs Canada itself has admitted that there is serious underfunding.

I want to come back for a second. It seems, in effect, that this issue around the repeal of section 67 is being portrayed in a really simplistic manner, that either you're against human rights or you're for human rights; if you oppose the bill you're against human rights. It seems to me that what I am hearing from people presenting today is that the crux of this matter is the lack of recognition of a nation-to-nation status and that a unilateral decision-making process does not take into account a nation-to-nation consultative process; it undermines treaty rights and undermines that nation-to-nation status. It seems to me it's that kind of mindset that is actually getting in the way of getting to the issue around human rights, when we can't even recognize the nation-to-nation status.

Could you comment on that?

Grand Chief Sydney Garrioch: Thank you, member of Parliament. It was a good question, the earlier question about the status quo.

I think we are looking for a safeguard from the further eroding or terminating or extinguishment of any of our rights. The basic fundamental issues as well as the principles of the Kelowna accord will be able to address some of the fundamental issues of why people feel left out, why people feel discriminated against because they cannot get access to housing, that they can't get the education sponsorship, or basic health care services, or any other basic services in that sense.

We are at the level of trying to deal with the system itself about the remedy. We acknowledge the problems. We try our best in our capacity in our communities to resolve problems at our level the best way possible.

We have customary laws; they're all handwritten, but that knowledge and education are passed on from generation to generation. So that customary law brings not only the leaders, but elders, women, youth or people in question, parents, relatives, and extended relatives. The process is trying to come up with a proper resolution.

So we have a system. But you're trying to impose that system. Your way is the right way, but not our way. That's the issue. We are trying to do what we can at the level of the capacities we have and the resources we have in our system.

Now, if you want to open up the question of human rights, the question of treaty rights to education, the treaty rights to housing, the treaty rights to health, or any of the treaty rights about our wildlife and our resources on the land, and the question about the infringement or the land being taken away.... We have little land left, and the former Prime Minister said, we stole the land.

That's the question. What further are you trying to do, with all the implications that arise, not only the commission—nor to the Canadian Human Rights Act or the Indian Act or further to what section 25 in the Canadian Constitution Act is supposed to protect? The existing rights that we have are little. We're trying to protect what little we have left.

Your legislation or your policies or your system will essentially assimilate us. We are trying to safeguard what little we have, and we're trying to present in such a way—don't do it your way. We've tried to establish a process that is already established in our community. We already have a system in place, but the laws are unwritten. These are the things for which we need a capacity within the system itself, because it's there. Don't disrupt that. Don't take that away from us. It's our right. Those are the things we want to echo and present to the standing committee. We want to do it the right way.

Our people are the decision-makers. Our people are driving the system. We should not allow the parliamentarians to do such things that disrupt that and take that away from us. We're just trying to make sure it's there. We want to be able to develop a system from our people's perspective and from our forefathers', and we're building that future to carry on the duty and responsibilities. As trustees, as leaders, we're trying to do the right thing to keep that fiduciary duty within our system.

If you want to open it, how many complaints are you going to have across Canada with human rights to the Minister of Indian Affairs or you as the members of Parliament to the Government of Canada? Do you want open that up? And how long are you going to take to solve the problems that exist now? Every one of our people may register and file a complaint against you.

We want to resolve the problems. We want to work with you. Let's do it a better way, a proper way.

Thank you.

● (1255)

The Chair: Thank you, Chief Garrioch.

I think we've completed a round. I'm going to ask you a question because we're back to the government side.

One of the things, Mr. Paul and Madam Linklater, you talked about is adequate housing and access to education, all of those. The positive thing I see in this bill is that through the court system we would be able to identify what is adequate housing, identify what is reasonable access to education, and those kind of things.

That's just a thought of a positive thing, and I'm not discounting those things you've said. But that is a challenge when there are comments made about how there needs to be more housing. What is adequate housing?

Mr. Paul, perhaps you could just briefly address that.

Mr. John Paul: One example, so you'll understand in terms of this scenario, is two simple statistics that I keep in my head all the time.

One is about university education. In Atlantic Canada we have over 800 students in universities in Atlantic Canada and across Canada; 75% of them go to Atlantic universities in Atlantic Canada. The thing with that is that there are 800 more who want to go, so what do we do about them? That's the scenario; that's the reality that exists right now.

In terms of incomes, a measure of who we are, in Atlantic Canada our first nations only make 42% of what the incomes are of other Atlantic Canadians—42%. You look at that in reality and you ask how we can become part of whatever. That's part of the reality that exists.

Lawrence's and some of the other communities, the larger communities, have backlogs of...God knows. My community is a little smaller than Lawrence's, and I know the backlog is a couple of hundred units.

Mr. Rod Bruinooge: How are you allocating those university positions right now? How are you allocating those university slots?

Mr. John Paul: They're basically allocated based on the policy that was adopted by the community in terms of establishing set priorities, primarily modeled on the E-12 guidelines that were created—

Mr. Rod Bruinooge: So if you brought human rights, perhaps it would be allocated in a different way.

Mr. John Paul: But if you have more, twice as many, then—

Mr. Rod Bruinooge: You might use some other criteria to allocate those positions, though. Education—

The Chair: Okay, I'm not going to allow...Mr. Bruinooge, please, the chair has not recognized you.

Thank you. I really do appreciate the witnesses here, and your input. Thank you for that.

The meeting is 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

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