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# **Standing Committee on Aboriginal Affairs and Northern Development**

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**EVIDENCE**

**Thursday, June 14, 2007**

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**Chair**

**Mr. Colin Mayes**

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## Standing Committee on Aboriginal Affairs and Northern Development

Thursday, June 14, 2007

• (1105)

[English]

**The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)):** I call to order this meeting of the Standing Committee on Aboriginal Affairs and Northern Development of Tuesday, June 14, 2007.

Committee members, you have the orders of the day before you. We have committee business and we'll be dealing with Madam Crowder's motion. Do all committee members have a copy of that motion?

We'll deal with this motion. There's been some discussion about how we should proceed, whether in this meeting or in a subsequent meeting, so we'll discuss that after we deal with Madam Crowder's motion.

Madam Crowder, would you like to speak to your motion, please?

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** I would like to speak to the motion, Mr. Chairman.

I think the committee has now heard substantial testimony. We've almost consistently heard that consultation is a critical part to moving forward in a respectful way to ensure people's concerns are addressed, their needs are met within the communities, and there are adequate resources.

I don't need to repeat all of the testimony that's come forward, but I think it's been fairly clear that the bill in its current state is not acceptable to most first nations we've heard from. On the concerns that have been raised, I feel it would be irresponsible on my part to go forward with a bill that so clearly does not meet the needs of the communities it's most directly going to have an impact on.

We know the government has the will to move on consultation, which they've demonstrated through a specific land claims announcement this week. The government itself has clearly set a precedent by saying they would consult before drafting legislation. With that very important precedent, I'm urging the committee to look at consultation before we go to clause-by-clause.

There are a couple of other issues that I want to point out within this context. I refer to the International Convention on the Elimination of All Forms of Racial Discrimination report that came out in March 2007. In that report, they specifically talk about the repeal of section 67.

In the discussion of this, under section 25, it says:

The Committee, while welcoming the recent decision of the State party to repeal Section 67 of the Canadian Human Rights Act (CHRA), which effectively shielded the provisions of the Indian Act and decisions made pursuant to it from

the protection provided by the CHRA, notes that the repeal in itself does not guarantee enjoyment of the right to access to effective remedies by on-reserve Aboriginal individuals.

They go on to say that

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.

Mr. Chairman, we again have an international body recognizing that although the repeal of section 67 is important, it also recognizes the fact that the repeal in and of itself will not provide the remedies in order for human rights to be truly present in first nations communities. Of course, this week we also had the very important decision from the B.C. Supreme Court.

Part of what we've consistently heard from witnesses was on the impact of unintended consequences. One of the arguments the bar association put forward was that they were concerned the repeal of section 67 would actually result in the piecemeal taking apart of the Indian Act, without the kind of responsible comprehensive overview that's required to ensure we don't take out chunks of it that would then have the impact we saw with Bill C-31.

On that particular piece, they say the B.C. court decision strikes down status provisions of the Indian Act, and appeals and chaos are certain. They go on to talk about the fact that they declare that section 6 of the 1985 act has no force, and so on. It authorizes the differential treatment of Indian men and Indian women born prior to April 17, 1985, and matrilineal and patrilineal descendants born prior to April 17, 1985, in the conferring of Indian status.

• (1110)

The justice goes on to talk about the fact that in 1985 the government elected to sever the relationship between status and band membership, and status is now purely a matter between the individual and the state. The justice concludes that section 6 of the 1985 act violates subsection 15(1) of the charter, in that it discriminates between matrilineal and patrilineal descendants born prior to April 17, 1985, and so on.

**The Chair:** Madam Crowder, we're getting a little bit away from the motion before us.

**Ms. Jean Crowder:** But there is a point there, Mr. Chair. My point in building up towards a need for consultation is that these are very clear examples why consultation is so critical. We've had this recent B.C. Supreme Court decision that talks about the fact that the Indian Act itself is discriminatory. It's going to be taken apart on a piecemeal basis. The justice herself is saying that striking down this section of the act is going to create chaos. I'm trying to make the point that without adequate consultation we're going to see some very serious problems.

I want to go on about the cost drivers project. The department itself said that in analyzing legislative change and disruption—and I'm referring back to Bill C-31—in the event of challenges to Bill C-31 there are over 45,000 applicants whose claims to registration have been denied, and an additional 30,000 whose claims have gone dormant. These individuals will quickly be included in the backlog and increase it by ten times its current size. Depending on the impact of the legislative change, there may be a requirement to review all of the 250,000 Bill C-31 applicants held at headquarters, or even review many of the registrations completed by the regional offices as well, which could number in the hundreds of thousands of cases.

Again, we're talking about significant impact on previous pieces of legislation that did not have adequate consultation in place.

We've had recent experience with matrimonial real property. The Native Women's Association issued a press release. This part is important, because some members have said that my motion was complex. It was complex deliberately so we could envision and cut off the kinds of things that happened around matrimonial real property. Under matrimonial real property, the Native Women's Association argued, in talking about the minister, that despite his assurances that NWAC would be fully engaged in the MRP process, NWAC has been completely excluded in the drafting of the legislative solutions and implementing non-legislative solutions to these serious issues. NWAC is also concerned about the minister's continued silence on ministerial representative Wendy Grant-John's comprehensive report on MRP.

Because of the very compelling testimony we've heard, I believe we should look at consultation. I can go through testimony from Wendy Cornet, Louise Mandell, Mr. Slavik, and any number of other people who talked about the duty to consult and what it would look like.

I know that there are other committee members who probably want to put forward their views on this, but I strongly urge the committee to look at my motion as a way to respectfully engage first nations in this very important matter of the repeal of section 67.

Thank you.

**The Chair:** Thank you, Madam Crowder.

Madam Neville.

• (1115)

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

I'm not speaking to the motion specifically at this point. I really want to speak to the conundrum we now find ourselves in.

**The Chair:** We're dealing with the motion.

**Hon. Anita Neville:** It's relevant to the motion; I'll try to link it to the motion.

**The Chair:** I'll discern that.

**Hon. Anita Neville:** What we're hearing quite clearly and what we've heard from the many witnesses who've appeared before the committee is the need for consultation, the fact that consultation, as we understand consultation to take place with aboriginal communities, has not taken place.

I know there's a view abroad that consultation is 30 years of conversation and talks. I certainly don't accept that as consultation.

I wish the consultation had taken place and that we were now dealing with an act that reflected the consultation and the outcome of consultations, because we would have heard, through the consultation processes, much of what we've heard here and perhaps then some.

The reality is that at this point it appears we're unable to amend the bill to reflect the concerns we've heard expressed by many representatives who have come before us. Without being able to amend that bill, we—and I'm speaking for my party—have very serious concerns about moving forward with the bill at the moment.

There appear to be a number of options. One is certainly to engage in a consultation process, as Ms. Crowder has put forward, and there is merit to that. Another is to ask the government—and the government has heard the representations here today—whether there is a real possibility of redrafting the bill to incorporate the very serious concerns we've heard from individuals, organizations, first nations, communities.

I think those are the options we have before us right now. The third option is simply to not proceed with it and let it die. I know I speak for my colleagues. We certainly support the intent of the bill, that is, the repeal of section 67, but we want it done appropriately.

I too have read—I was lugging it around with me, and I had it with me at the last committee meeting—the very thick judgment that came out of British Columbia on Sharon McIvor versus the Crown on Bill C-31. The unintended consequences of Bill C-31 have been far-reaching to communities and to families. Families are divided by the different status of it. The last thing in the world we want to do here today, or in the next few days, is create another Bill C-31 situation.

So we're in a conundrum. I would ask all committee members, can we work collectively to see how we can resolve this issue in good faith, knowing that everybody here is committed to the repeal of section 67, but not the way it's being done?

**The Chair:** Mr. Bruinooge.

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

I'm not sure if I'm dealing with the motion or perhaps with what Ms. Neville has put forward, but I will start by discussing what Ms. Neville has suggested to the committee. We have had conversations with all the members of the opposition.

Should there be an interest, I know Ms. Neville has wanted to have additional time to consider these options. I think it's entirely reasonable to have an opportunity subsequent to this meeting to put together a good faith discussion on ways we can find a resolution to having section 67 repealed. In the event that is still what you'd like to see happen, I think we as a government would be agreeable to that today as well.

**Hon. Anita Neville:** May I have a question?

**The Chair:** Certainly, Madam Neville.

**Hon. Anita Neville:** How do we do it?

**The Chair:** Mr. Bruinooge.

**Mr. Rod Bruinooge:** I think you had suggested that we—The government and the opposition members could look at the bill itself. I think that's a reasonable solution. You were looking for time, and I think it's something that can be arranged.

• (1120)

**The Chair:** We're in the middle of a motion here. I've allowed the discussion to get kind of sidetracked, but I think it has value. It is relevant to the motion.

Madam Crowder, do you want to continue?

**Ms. Jean Crowder:** My challenge with this, Mr. Chair, is that there are a couple of issues. One is that there is no assurance that we will actually be sitting next week. If we are not sitting next week, then if my motion—which would encourage the government to move forward with consultation—were passed by the committee, then consultation could start fairly soon and take place over the summer, instead of there being no action whatsoever taken over the summer.

My motion, specifically, does not reference Bill C-44. It references a consultation process around the repeal of section 67, so it could proceed whatever the discussions are around the bill. In fact, it would be a good-faith gesture on the government's part if they would agree to consultation while we sorted out what other proposed amendments should be in the bill.

**The Chair:** I wonder about that, because I see in the motion that basically the bill would be postponed until this process that you are suggesting was followed. If the committee decided to go into clause-by-clause and bring forward some amendments, if that were the pleasure of the committee, then there would be a question of whether that consultation....

Mr. Bruinooge, could you comment on that, please?

**Mr. Rod Bruinooge:** I didn't speak to the motion in my last submission, but I will speak to the motion right now. Again, I think one could predict at least where I'm going to start.

In Madam Crowder's motion she compares matrimonial property study to the fact that there was a process that was set up. You're indicating that's somewhat of a precedent. I feel that the types of consultations and discussions that have occurred in the last 30 years—and it can't be denied that over the last 30 years there have been a lot of attempts to do what we're doing today—are quite dissimilar from the current initiative of the minister and Ms. Grant-John on matrimonial real property.

I think there is no direct comparison of consultation, but we must remember the fact that what we're doing here through our repeal of section 67 is to bring the opportunity for individuals, for people who currently don't have a voice, to express their human rights cases. It puts a challenge on me as a legislator, and I know on everybody on this side, to further delay that.

I think we've been given a number of submissions from many of the leaders within the aboriginal communities—first nations specifically, but others as well. I believe we have received considerable information to be able to actually do the work we're currently doing.

In light of the fact that we're in a minority government, there is no guarantee that we're going to be here forever. We have that opportunity now to be able to do something historic. Therefore, unfortunately, your motion would cast some doubt on what we would be doing as a committee. You don't specifically reference Bill C-44. Likely, you did that for the reason I just mentioned—that you didn't necessarily want to influence the discussion of the bill. Nonetheless, this motion is still in our discourse right now. It will influence what we're doing. Naturally, as a member of the government side, I can't support it.

• (1125)

**The Chair:** Okay.

I have Mr. Lemay and then Madam Crowder.

Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Mr. Chairman, I will go straight to the point. Mrs. Crowder's motion is very interesting and important, but it shows a lack of—I will try to say it diplomatically—potential trust in the government.

That being said, it is the position of the Assembly of First Nations of Quebec and Labrador that there must be consultations before the bill can be passed. This causes a problem to the members of the Bloc québécois.

As for the position of the Assembly of First Nations of Canada, Chief Phil Fontaine told us that if the proposed amendments he tabled last Tuesday were passed, this would satisfy the concerns of the First Nations of Canada. I am not sure—and this is what we need to find out—if it will satisfy the concerns of the Assembly of First Nations of Quebec and Labrador. Mr. Chairman, this is another issue.

My question is to the members of the government. Can the government rewrite the bill by Tuesday, the day of our next meeting, taking into account the amendments proposed by the Assembly of First Nations of Canada that were tabled by Mr. Fontaine Tuesday last.

This is my question.

[*English*]

**The Chair:** Mr. Bruinooge, would you mind responding to that, please?

**Mr. Rod Bruinooge:** Well, I'm not sure that I'm in question period yet, but I will try to give you an answer.

As we've discussed, and as I have chatted with some of the members opposite on ways we can move forward with this important legislation, I think this committee is the master of its own destiny and we will be able to find solutions to rectify any situations that are perceived to be preventing Bill C-44 from proceeding. In that sense, there is no question that we can have those discussions, and we will do so over the next few hours and days—hopefully, preceding summer.

But getting back to the motion, it flies in the face of our being able to do that, as it calls for a different process to begin. Just trying to take this debate back to the motion, I would suggest that we as a committee have to vote against this motion and continue our work to bring forward a repeal of section 67.

**The Chair:** Just before we continue, committee—and I would ask the clerk to correct me if I'm wrong—we do have an option here of tabling the motion until after we've finished discussion on the issues around how we're going to proceed.

We can adjourn the debate on the motion and come back to it after we discuss the other issues that are not necessarily relative to the motion. Mr. Bruinooge is correct that some of the discussions we're hearing right now fly in the face of the motion, because they're talking about possibly having amendments, or the act redrafted, in order to make everyone feel comfortable and to move forward with the act as soon as possible, whereas Madam Neville's motion is basically just to start a period of consultation. So you do have that option.

**Mr. Rod Bruinooge:** Chair, if I could just jump in on that front—

**The Chair:** Mr. Bruinooge, please.

**Mr. Rod Bruinooge:** Of course, as you might predict, this motion, as I've already said, contemplates a process that doesn't allow us to immediately begin the process of extending human rights to first nations people on reserve.

We have a motion on the table, and I'd prefer to vote for it today.

**An hon. member:** Or against it.

• (1130)

**Mr. Rod Bruinooge:** Or against it.

**The Chair:** Okay.

Madam Crowder, then.

**Ms. Jean Crowder:** I have couple of points around this. First, a motion has already been passed by the committee that does not allow us to go into clause-by-clause until September.

My motion recognizes the fact that the committee already passed that. Therefore, there isn't going to be an undue delay, if the process here is undertaken fairly quickly.

My understanding—and I don't think that we've had anything official, and I don't know if it's possible—is that the Assembly of First Nations' proposed amendments are outside of the scope of the bill. If they are not ruled out of order here, they would likely be ruled out of order when they came to the floor of the House.

So it would take a commitment on the government's part to withdraw the bill and resubmit a new one.

**The Chair:** First, we should be clear that the AFN does not have the power to table amendments. They made suggestions, but they do not have the authority to table amendments. We have been using the type of language that they have some sort of authority on the committee; they don't.

They were witnesses; they made suggestions and comments on some amendments that they like. But ultimately, so that you are aware of this, the committee members will forward any amendments that the chair entertains.

Mr. Albrecht.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Mr. Chairman, I certainly don't want to second-guess my colleague's motives, but I have a number of problems with the motion that's before us.

First is the sheer size of the motion; it is much longer than Bill C-44. To expect us to engage this motion with any degree of vigour and come up with a reasonable solution within a two-hour period is rather unrealistic.

There are a couple of comments, words, or phrases used here that I think are problematic. For example, under number 1, it refers to “a degree of consensus”, and I think that gets to the heart of what we talked about with a number of our witnesses. Virtually every witness who appeared before us admitted that getting a consensus on this would be a pretty tall order. There are really no degrees of consensus; either we have it or we don't.

She refers to a non-derogation clause. When the Canadian Human Rights Commission appeared before us, they did not support including that.

There is no addressing of the timeline or costs of the steps that she proposes. What would the timeline be? What would the cost be?

There are too many unanswered questions for me to give any degree of support to this, so I'd definitely be voting against it.

**The Chair:** I want to bring to the committee's attention that there have been some consultations going on, because we've had a number of witnesses. We did call for submissions, if you recall, and we had three submissions presented. We called for submissions all across Canada, so there was an opportunity to respond.

There's a balance between the responsibilities of duly elected leadership, whether it's MPs or the aboriginal leadership across this country. We have heard from a number of the leaders of the aboriginal communities across this country, and I think that is part of the consultation.

The committee has to make a decision. As Mr. Albrecht just said, what is adequate consultation? That is a real question. There is a responsibility of duly elected people to represent, as they are duly elected to do.

Madam Neville.

**Hon. Anita Neville:** Thank you, Mr. Chairman.

We're sort of between, as my colleague just said, a rock and a hard place on this right now.

I want to make it clear that I and my party do not view the representations we've had before the committee as consultation. They've been representations by people who have come before the committee in response to this bill. So we do not feel that a consultation process has taken place.

I wanted to respond to your comment about the first nations or the Assembly of First Nations in terms of drafting legislation. No, it's not their responsibility, but they have brought forward a number of very important issues, as have a number of other individuals and organizations, and we actually have amended clauses. The issue, Mr. Chair, is that these clauses will in all likelihood be ruled out of order and beyond the scope of this bill. I'm repeating myself in terms of what I said earlier. We cannot support this bill without the scope of the bill being expanded.

My preference, and I don't know whether colleagues will agree with me, would be to allow discussions to take place today, tomorrow, over the weekend, or however they want to do it. And I would ask my colleague if she would allow us to defer her motion—I would prefer not to take a vote on it—until Tuesday to see what possible expansion of the bill might take place. We reconvene on Tuesday with the motion still on the floor, amended or not amended, with the possibility of other options being brought forward.

• (1135)

**The Chair:** The chair would entertain such a motion.

**Mr. Rod Bruinooge:** We would agree to that.

**The Chair:** You agree, or you disagree?

**Mr. Rod Bruinooge:** We agree to suspend. That's fine.

**The Chair:** Okay. We're dealing with a motion, and I haven't heard a motion to—

**Hon. Anita Neville:** Well, it's not to table; it's to defer.

**The Chair:** Yes. It's to adjourn any debate on the motion until Tuesday, June 19.

Go ahead, Madam Crowder.

**Ms. Jean Crowder:** What business would this committee then do for the balance of the meeting today?

**The Chair:** The chair would be looking at the pleasure of the committee. There are a few options. One is that we could go in camera and talk about how we're going to proceed, or we could do it informally, out of committee, and do it on an informal basis.

**Ms. Jean Crowder:** We would adjourn this meeting now.

**The Chair:** Yes, that's correct.

So do we have a motion that the debate on the motion be adjourned until Tuesday, June 19? Who's going to move that?

**Hon. Anita Neville:** I'll move it.

**The Chair:** There's a motion by Madam Neville.

**Hon. Anita Neville:** And I would like to add another piece to it, which would be to review all considerations that might be brought forth at that time.

**The Chair:** Okay. Is the clerk clear on the motion?

We'll have Mr. Storseth.

**Mr. Brian Storseth (Westlock—St. Paul, CPC):** I believe that what we technically procedurally want to do is suspend debate on the motion. That way all debate that has taken place at this point is read into the record and—

**The Chair:** It can say “the debate on the motion can be adjourned until”. It can be adjourned—not suspended, but adjourned, I've been advised by the clerk.

**The Clerk of the Committee (Ms. Bonnie Charron):** The motion is that debate on the motion be adjourned until Tuesday, June 19, in order to review all related considerations.

**The Chair:** Okay, are you ready for the question?

**Mr. Harold Albrecht:** Saying “all related”, that's a pretty big—

**Mr. Rick Dykstra (St. Catharines, CPC):** Yes, what does that mean? That's a little undefined.

**The Chair:** I guess it's—

**Hon. Anita Neville:** All right, just take it off. Take it off. That's fine.

**The Clerk:** Okay, I'll just take it off.

It is moved that debate on the motion be adjourned until Tuesday, June 19.

(Motion agreed to)

**The Chair:** What is the pleasure of the committee now?

**An hon. member:** I move that we adjourn the meeting.

(Motion agreed to)

**The Chair:** The meeting is adjourned.







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