



Repeal of Section 67

An Issue Paper

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Background

The Canadian Human Rights Act (CHRA) was enacted in 1977. Section 67 of this Act states that “Nothing in this act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act.”

The intent of this clause was to create an exemption under s.67 in order to avoid changing the *Indian Act* inadvertently through the application of the *Canadian Human Rights Act* to specific situations that could arise on First Nations reserves. This provision has prevented First Nations people from lodging complaints of discrimination against the federal government or First Nations governments in relation to acts and decisions that are authorized by the *Indian Act*.

The s.67 exemption was intended to be interim legislation until the federal government could conduct meaningful consultation with First Nations. NWAC fully supports the repeal of s.67 of the *Canadian Human Rights Act* and encourages the Department of Justice to take a proactive role in ensuring that all citizens have full and meaningful access to human rights law, including the human rights of Aboriginal women regardless of their residency.

For NWAC, it is clear that in order to address specific provisions on human rights protection and promotion in a manner consistent with international law, including principles of equality, First Nations need the authority, capacity and the resources to adapt human rights protection based on their communities' diverse needs, cultures and traditions. It is in the interests of First Nations women that all levels of government engage First Nation communities on ways to incorporate Indigenous legal traditions into culturally adapted human rights mechanisms. The knowledge and engagement of NWAC and First Nations communities will be of great assistance in integrating innovative human rights mechanisms into community-driven governance reforms and self-government agreements.

NWAC believes that meaningful access to human rights for First Nations women depends on the ability of governments to engage First Nation communities in developing, designing and implementing community-driven, culturally appropriate human rights mechanisms. NWAC has proposed a comprehensive multi-year plan to fully meaningfully consult with First Nations and Aboriginal communities on the repeal of s.67 of the *Canadian Human Rights Act (CHRA)*. The proposed Community Participatory Engagement Consultation process would build capacity at the local level, increases awareness and knowledge, and ensure the successful implementation of community-driven human rights mechanisms. The long-term goal would be to facilitate, support and promote the development of good governance within communities to ensure meaningful access to human rights protections for all members, particularly those who are most vulnerable: Aboriginal women.

Current Conditions

The federal government has introduced Bill C-44, *An Act to amend the Canadian Human Rights Act*. If enacted, Bill C-44 would repeal section 67 of the *Canadian Human Rights Act*.

The first reading in the House of Commons for Bill C-44 occurred on December 13, 2006. The second reading of Bill C-44 occurred on February 21, 2007 after which it was referred to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development. The Committee began its study of the legislation on March 22, 2007 when the Minister of Indian Affairs and Northern Development appeared before the committee. The Committee has also heard presentations by the Native Women's Association of Canada, the Assembly of First Nations, and the Canadian Human Rights Commission. To date, the Standing Committee on Aboriginal Affairs and Northern Development has held 16 committee meetings on this bill, up to June 12, 2007.

NWAC has also met with the Canadian Human Rights Commission on several occasions to discuss issues associated with Bill C-44 and the government's implementation plans following the repeal of s.67. There are three key issues associated with Bill C-44: the need for consultation, the need for an interpretative provision, and the length of the implementation and transition period following the repeal of s.67.

As outlined above, NWAC believes that a full consultation process is necessary that involves both First Nations communities and National Aboriginal Organizations. Secondly, the inclusion of an interpretive clause is required to safeguard important collective rights while balancing these with the rights of individuals. Finally, the six month transition period proposed by the federal government is inadequate. The Canadian Human Rights Commission (2005) recommended a transition period of 18 – 30 months, and NWAC concurs that 30 to 36 months would be a more appropriate timeframe.

Recommendations

NWAC agrees that the repeal of s.67 is long overdue. The following recommendations are proposed for an orderly and thoughtful repeal process:

1. There must be meaningful consultation as the first step of an evolving and collaborative process. National Aboriginal Organizations and First Nation communities and individuals must be engaged to discuss the potential impacts of the repeal of Section 67. To support meaningful consultation, the provision of resources for capacity building and consultation is urgent and must be addressed promptly.

2. Capacity building and education are necessary: they are key factors that will influence the success of communities in implementing their own mechanisms to protect human rights. Again, the provision of resources for these activities is necessary for their success.
3. A minimum of 36 months from the repeal of s. 67 to the coming into effect of the new provisions is necessary to provide adequate consultation and to put into place capacity building and education measures.
4. There must be balance between the collective and individual human rights without jeopardizing either set of human rights.
5. Communities must decide how best to use indigenous legal traditions to address conflicts that may arise as a result of the repeal of s.67.
6. An interpretative mechanism is necessary to guide the application of Bill C-44. The process for deciding what would be included in this interpretative mechanism should be addressed during the 36 month period before the Act would come into force.

Bibliography

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