

**Brief to the
Standing Committee on Aboriginal Affairs
Regarding Bill C 7
First Nations Governance Act**



**National Council of Women of Canada
February 2003**

1. Introduction

It may seem unusual for a predominantly non-Aboriginal organization to put forward a brief on a proposed Bill that is focused on First Nations' peoples and their communities. However, the National Council of Women of Canada would like to present its views and its perspective, as reflecting those of many Canadians who are observing and learning about the cultures and history of Aboriginal peoples. We appreciate the opportunity to bring this forward to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources and appreciate the challenges of your deliberations.

Our purpose today is to support the work and brief of the Provincial Council of Women of Manitoba. This Council has been keenly interested in the issues affecting Aboriginal women and Aboriginal communities, particularly heightened by their experience with Dakota Tipi First Nation. We urge the Standing Committee to listen and benefit from the input from these women.

The National Council of Women of Canada (NCWC) is a federation of five Provincial Councils of Women, in British Columbia, Saskatchewan, Manitoba, Ontario and Quebec; seventeen Local Councils of Women in cities from Victoria to Halifax; and twenty-eight independent affiliated national organizations. The list of federate members is attached and includes such organizations as the Elizabeth Fry Society and the National Association of Women and the Law. In its history of more than one hundred years of advocacy on behalf of women and their families, health issues, social justice, education, and social issues have always been of great concern to NCWC federates. Briefs are regularly submitted to both the federal and provincial governments. NCWC develops policies through resolutions originated at the grass roots, and these are debated and voted on by the membership at annual meetings.

A general comment by way of an introduction is that we are aware of and acknowledge the harmful effects of colonization and the impact of the 126 year old *Indian Act*. "From the aboriginal perspective, it (colonization) refers to loss of lands, resources, and self-direction and to the severe disturbance of cultural ways and values" (Larocque, 1994). The *Indian Act* has contributed to the exclusion of First Nations' women from decision making bodies pursuant not only to a discriminatory membership practice, but to the importation of European governance practices.

NCWC also acknowledges and supports the inherent right of Aboriginal peoples to self-government. We are aware of the fact that there are many different views in the Aboriginal communities of Bill C-7, ranging from outright rejection to qualified support. NCWC's presentation is based on research and consultation with Aboriginal people, particularly women, who have raised serious concerns about personal safety, the lack of protection of human rights and the lack of democratic governance on their reserves.

The absence of representation, recourse or remedy for violations of fundamental human rights also raises serious questions about the role of the Canadian Government and Canadian society in failing to protect Aboriginal women and children, and minority group rights on reserves.

As stated in the Status of Women Canada's Policy Research publication, *First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports*: "It is important to ensure that any framework for First Nations governance, whether pursuant to the Indian Act or a First Nations Constitution, makes provision to ensure the role of women in governance." (Judith F. Sayers and Kelly A. MacDonald)

2. Background

Although the focus of our Brief is on Bill C-7: First Nations Governance Act, it may be helpful to provide some background and review the policy work of the National Council of Women of Canada in the general area of Aboriginal Peoples.

There have been, in recent years, 5 policies supported by National Council – with one being most relevant to the discussion today and presented as well by the Provincial Council of Women of Manitoba. In addition to policies, a Brief to the Royal Commission on Aboriginal Peoples was submitted by NCWC in October 1993.

Early policy was adopted by the National Council of Women in 1974, when a resolution was approved on the "**Right to Status of Indian Women**". We supported our Aboriginal sisters who were denied their status if they married a non-status man; they were frequently denied acceptance back in the reserve community when their spouse died or left; and their wishes were ignored as to the raising of their children as First Nations' citizens.

In 1993, National Council urged the Government of Canada to "**place into the hands of First Nations people the necessary consultative processes, and set up mechanisms in partnerships with First Nations people to move quickly to resolve the settlement of land claims and the issues of self-determination**". We also urged government to "**Ensure that native women participate as equals in the definition of Native governments, their forms, structures and powers**" and "**Provide funding on a scale commensurate with the change over to self-government, and the opportunity for Canada's native peoples to solve their own problems of poverty and dependency.**"

In 1996, we adopted a resolution urging "**better health care for the elderly Aboriginal population**", particularly developing a "**Major diabetes education and counseling program.**"

In 1997, National Council, noting some frustration with the lack of action on the part of government in implementing the recommendations of the Royal Commission "**urged the Government of Canada to study the Report of the Royal Commission on Aboriginal Peoples and undertake appropriate action using a conciliatory process to create a new and better relationship between the Government of Canada and Aboriginal Peoples**".

3. Recent Policy

As described in the Provincial Council of Women of Manitoba's brief, the National Council of Women of Canada approved as policy a resolution dealing with the "**Protection of Human Rights of Aboriginal Peoples in Canada**" in 2002. This policy

“urges the government of Canada to remove Section 67 of the Canadian Human Rights Act as quickly as possible and to consider drafting, in consultation with First Nations Governments, a Human Rights Code that would be in compliance with UN Human Rights Conventions.” At the time the policy was debated, it was agreed that First Nations should be consulted about the application of the Canadian Human Rights Act, and the option of developing a First Nations’ Human Rights code, consistent with international standards, should be given. We are pleased to see that this section of Bill C-7, the repeal of Section 67 of the Canadian Human Rights Act, has met with general support from the First Nations’ representatives and organizations, and it is further noted that the presentation by the National Aboriginal Women’s Association puts forward the idea of a Human Rights Act or Code developed by First Nations’ governments, which we would support.

It should be mentioned here that it was the Provincial Council of Women of Manitoba that drafted, presented and supported this important resolution at our National Annual Meeting just a year ago.

4. International Commitments

The National Council of Women of Canada has been a member of the International Council of Women since 1897, and has consultative status at the United Nations. We believe reference to Canada’s participation and acknowledgement of international agreements should be stated here.

There are several relevant principles in Human Rights Conventions, to which the Government of Canada is a signatory, that are particularly pertinent to our discussion regarding Bill C-7. We have listed these, in some detail, in the Reference Section at the end of this Brief, and they include the 1966 Convention on Civil and Political Rights (ratified in 1976); the Declaration on the Elimination of Discrimination Against Women (1967); Convention on the Elimination of all Forms of Discrimination Against Women (1979) and the 1992 Convention on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

The international conventions and declarations that Canada has signed on to, state in summary:

- All Peoples have the right to self determination;
- Measures shall be taken to abolish existing laws, customs.....that are discriminatory against women... and establish protection for equal rights for men and women;
- A definition of Discrimination - Any distinction, exclusion, or restriction made on the basis of sex which has the effect of impairing or nullifying.... the exercise by women ...of their human rights... in the political, economic, social, cultural, civil or any other field;
- Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live.

The recent review at the United Nations by the CEDAW Committee (Convention on the Elimination of Discrimination) of Canada’s 5th report raised questions about Canada’s treatment of Aboriginal women. Many of the issues raised in the NGO brief brought forward at the January 2003 UN meeting are included here, with the additional concern

about the lack of any guarantee for Aboriginal women living on reserves of equal division of matrimonial property at the time of marriage breakdown.

As Shelagh Day reported following the meeting, "Many of the CEDAW Committee members were confounded by the federal government's failure to deal with obvious inequalities in law for Aboriginal women - including the unresolved and continuing discrimination against Bill C-31 re-instatees, the provision of the Canadian Human Rights Act that bars women from making complaints of discrimination against Band Councils, and the lack of any guarantee for Aboriginal women living on reserve of equal division of matrimonial property at the time of marriage breakdown."

5. Issues and Concerns

- It will be important for this legislation to include a non-derogation clause to state quite clearly that the legislation will not infringe on aboriginal and treaty rights.
- We are disappointed that the process of consulting, drafting and presenting the proposed Bill C-7 is flawed. Instead of bringing together First Nations and the Government of Canada, we see strong opposition by Aboriginal leaders to the proposed Bill and the absence of a meaningful consultation. The presentation by Grand Chief Gary Merasty, from the Prince Albert Grand Council speaks eloquently to what we have observed. He states that in spite of the fact the bands cooperated with the consultation, the result did not address the points brought forward by band members. We are concerned that the Bill will do more to divide First Nations communities and separate them from the rest of Canada rather than bringing the communities into harmony with values commonly held such as the need for accountability and transparency.
- The time frames as proposed by the Bill to develop codes are not realistic – two years is not reasonable for many of the smaller communities. Has the Department done any analysis of how many of the communities could meet this standard and what is the Action Plan and budget for implementation?
- Although there may be principles expressed in the Bill, such as accountability and democratic selection of leadership, that we could support, we believe there is a duty, as Sheila Fraser has stated in her presentation to you, that "Government has to help the First Nations develop the capacity to manage well and we should strive to have no bands under third party management." Much work needs to be done under the heading of capacity building before the expectations proposed under Bill C 7 can be realized.
- The appointment of enforcement officers and the appeal processes as outlined in Bill C -7 concern us because of the possible arbitrary manner that this may occur. It will be important for the protection of women and children that appointment, enforcement and appeal processes be independent of the political structure currently governing the community.

6. Recommendations

1. Proceed quickly with the consequential Amendments to Section 67 of the Canadian Human Rights Act.

We urge you to proceed quickly with the consequential amendments to section 67 of the Canadian Human Rights Act as proposed in Bill C-7. Because of Section 67, First

Nations' peoples are the only citizens of Canada that do not have full access to an effective human rights complaints system to resolve complaints of discrimination.

2. Include the grounds of “political belief” in the *Canadian Human Rights Act*

It should be stated that one of the limitations of the *Canadian Human Rights Act* is that “political belief” is not a prohibited ground for discrimination, and this may prevent those who are not treated fairly at the band level from resolving their complaints satisfactorily because of band politics. Consideration should be given to prohibiting discrimination on the basis of “political belief” in the *Canadian Human Rights Act*, as is found in most provincial Human Rights Codes, and in fact, in most other countries. The 1966 UN Convention on Civil and Political Rights, which Canada has agreed to, provides for this inclusion.

3. Provide resources to inform First Nations about the Human Rights Commission and the Complaints Procedures

The removal of section 67 will have important implications for First Nations, their citizens and the Human Rights Commission. Resources should be considered to support informing First Nations about the Human Rights Commission and the complaints procedures.

4. Ensure the *Indian Act* does not discriminate at the same time as Section 67 is removed from the *Canadian Human Rights Act*

We would also urge you to consider the comments made in the Submission of the Canadian Human Rights Commission (dated January 28th, 2003) to this Committee with respect to the gender-equality guarantee, (the interpretive clause), making it clear that in no case can the needs and aspirations of First Nations' communities be interpreted so as to discriminate against women.

We have particular concern regarding the legacy of Bill C-31 and the fact that the grandchild of a C-31 woman has Indian status only if both of his or her parents have status. The grandchild of a man who married a non-Indian is entitled to status without exception. There will now be ability for complaints to come forward with the removal of Section 67 and the Committee should anticipate this. Also, the possible discrimination against C-31 women in their access to programs and services by First Nations must be addressed. This could be, for example, denial of access to housing and education. We would concur with the submission of the Canadian Human Rights Commission that the government must review the impact of Bill C-31 and take appropriate legislative measures to ensure the *Indian Act* does not discriminate at the same time as Section 67 is removed.

5. Complete a thorough Gender Based Analysis of Bill C-7, and analyze the impact of the proposed changes on existing legislation such as the *Indian Act* and *Canadian Human Rights Act*, and consider further legislative changes, in consultation with Aboriginal peoples

The Canadian Government cannot simply hand over to civilians the responsibility to mend historically gender-biased provisions in the *Indian Act* that are known to be

seriously in violation of existing human rights legislation. Individuals must then go on their own initiative, and at their own expense, to the Canadian Human Rights Commission. To propose to do so is also an apparent attempt to download the resolution of these crucial issues to the Canadian Human Rights Commission and the Courts rather than acknowledging the Federal government's duty to negotiate these issues with the Aboriginal peoples in a climate of reciprocal responsibility, respecting the intent of the negotiating parties to establish responsible and democratic Aboriginal self governance.

As our Brief has outlined, the National Council of Women of Canada continues to be concerned about the situation facing many Aboriginal peoples in Canada, particularly women and their children. Removal of Section 67 of the *Canadian Human Rights Act* is one small step forward. But much more needs to be done, with respect to the apparent gender discrimination of the *Indian Act*, and omissions such as membership and matrimonial property rights. The National Council of Women of Canada urges this committee to make recommendations for changes to the FNIA and other legislation that reflect the points brought forward in this brief, and that will remove barriers to the achievement of democratic self government for Canada's Aboriginal peoples.

Thank you for your time and consideration.

Mary Scott,
Vice President,
on behalf of the National Council of Women of Canada

Reference Materials

Aboriginal People in Manitoba Cat. No. RH34-19/2002E

People to People, Nation to Nation, Highlights from the Report of the Royal Commission on Aboriginal Peoples, ISBN 0-662-25044-3 Cat. no. Z1-1991/1-6E

National Aboriginal Women's Association Analysis and Summary Bill C-7 November 2002

Bill C-7: The First Nations Governance Act Legislative Summary LS-435E Mary C. Hurley, Law and Government Division October 10, 2002 Parliamentary Research Branch

Submission of the Canadian Human Rights Commission to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, January 28th, 2003

Opening Statement to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, Sheila Fraser, Auditor General of Canada, January 28th, 2003

Speaking Notes, Hon. Robert Nault, Minister of Indian Affairs and Northern Development, to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, January 27th, 2003

North American Indian, Metis and Inuit Women Speak about Culture, Education and Work, Status of Women Canada, Carolyn Kenny, November 2001

North American Indian, Metis, and Inuit Women Speak about Culture, Education and Work, Status of Women Canada, Carolyn Kenny, March 2002

Presentation to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, Pam Paul, National Aboriginal Women's Association, February 2003

The 1966 Convention on Civil and Political Rights (ratified in 1976) in its preamble refers to the "*equal and inalienable rights of all members of the human family*". Article 1.1 states "*All peoples have the right to self-determination*".

1967 Declaration on the Elimination of Discrimination Against Women, Article 2 says: "*All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate protection for equal rights of men and women, in particular: a) the principle of equality of rights shall be embodied in the constitution and otherwise guaranteed by law*".

1979 Convention on the Elimination of All Forms of Discrimination Against Women which in Part I, Article 1 defines "*discrimination against women*" as "*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*".

Convention on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities in Article 2.3 it is stated that “Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation”; Article 5.2 “There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant, pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent”.

1966 Convention on Civil and Political Rights

Part II Article 2: “Each State Party to the present Covenant undertakes to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized by the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Canada’s Fifth Report to the CEDAW Committee, Submitted to the UN March 2002, with questions, responses and updates: http://www.canadianheritage.gc.ca/progs/pdp-hrp/docs/cedaw_e.cfm

FAFIA’s Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee’s Review of Canada’s 5th Report on January 23, 2003:
http://www.fafia.org/index_e.htm

Correspondence from Shelagh Day, dated February 5th, 2003

Provincial Councils of Women

British Columbia
Manitoba
Ontario
Quebec
Saskatchewan

Local Councils of Women

Edmonton, AB
Halifax, NS
Hamilton and District, ON
London and Area, ON
Montreal, QC
New Westminster, BC
Ottawa, ON
Prince Albert, SK
Regina, SK
St. Catharines & District, ON
Saskatoon, SK
Toronto and Area, ON
Vancouver, BC

Victoria, BC
White Rock and District, BC
Windsor, ON
Winnipeg, MB

Study Groups

New Burnaby, BC
Sunshine Coast, BC

National Organizations Affiliated with NCWC

Anglican Church of Canada
Association of Public Service Alliance Retirees
Canadian Abortion Rights Action League
Canadian Association of Elizabeth Fry Societies
Child Care Advocacy Association of Canada
Canadian Congress for Learning Opportunities for Women
Canadian Council of Muslim Women
Canadian Federation of Business and Professional Women's Clubs
Canadian Home Economics Association
DES Action Canada
Federation of Junior Leagues
Federation of Medical Women
Girl Guides of Canada
Hadassah-Wizo
League of Ukrainian Women
Mothers are Women
Na'amat Canada Inc
National Association of Women and Law
National Consultation of United Church Women
National Women's Liberal Commission
Planned Parenthood Federation of Canada
Polish Alliance of Canadian Ladies Circle Group 1-7
Polish Canadian Women's Federation
The Salvation Army
Ukrainian Women's Association of Canada
Ukrainian Women's Organization of Canada
YWCA
Women's Missionary Society, WD., of the Presbyterian Church