



'To Repeal or Not to Repeal'

**Ontario Native Women's Association Position
Paper on
Bill C-44; The repeal of Section 67 of the Canadian
Human Rights Act**

Respectfully Submitted by:

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**Bill C-44,
To Repeal Section 67 or not to Repeal**

INTRODUCTION

Incorporated in 1971, the Ontario Native Women's Association (ONWA) is representative of the views, aspirations, and needs of Aboriginal Women and their families in the province of Ontario. The ONWA exists to create a forum through which Aboriginal women can effectively address the social, economic, health, justice, employment, and training issues that affect their lives, and their families. ONWA is an affiliated Chapter of the Native Women's Association of Canada.

The ONWA head office is based in Thunder Bay Ontario, and has approximately 80 affiliated community groups or "Locals" across the Province of Ontario, each with their own memberships and volunteers. The ONWA membership is open to Aboriginal women 18 years of age or older, who reside in Ontario. Our main programs and services are provided to Aboriginal Women and their families, and/or as specified in each program's criteria, as set by various funding sources. The ONWA programs and activities over the course of a year will provide a variety services, products, and supports to over 10,000 Ontario citizens.

ISSUE

With the creation of the Canadian Human Rights Act (CHRA) in 1977, the government felt it necessary to incorporate a specific clause in relation to peoples identified as Status Indians governed under the Indian Act. This provision Section 67 exempts Status Indians from the CHRA as stated:

“Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act”

Specifically this section disallows for the equal access to the Human Rights Act for Individuals governed by the Indian Act. Bill C-44 is an act to amend the Canadian Human Rights Act. This Bill demands the repeal of Section 67 from the federal human rights statute which restricts access to its process of redressing human rights violations.

BACKGROUND

Before we can move forward we must understand our past and present situation as Status Indians, the need to acknowledge the true oppression suffered by the Aboriginal Community and discuss the Indian Act in its true form is vital to understanding our position with the repeal of Section 67. The purpose of the Indian Act is a mechanism to further support the Government of Canada in dealing with Aboriginal people. This is where it gets complicated. Most Aboriginal people, status especially see the Indian Act as an Act that was designed to protect their rights. And it does that to a certain extent, but it also assists the government in managing Aboriginal people.

“Indian Band Councils, which are the legal delegated governing bodies constituted under the Indian Act, to carry out four basic functions, as acknowledged in *Whitebear Indian Council v. Carpenter’s Provincial Council of Saskatchewan*: (1) municipal government, (2) acting agent, (3) acting as an instrument of communication between the band members and other

governments, and (4) acting in an advisory capacity to the Minister.”¹ This gives us a clearer picture of how much power we, as Aboriginal people, actually have. Even the idea of self-government for Aboriginal people is contained within the Indian Act. Up until now, this misconception of power has confused our leaders because our leaders may truly believe that the work they do is for their people. But how can they do what is right for their people, when the employer that pays them is the government that they work against.

But as a body of people, we have not come to consensus in making this right. Many believe that it is as simple as the elimination of the Indian Act, but will that really solve problems for Aboriginal people. Our worst fear is that the one thing that holds us down, is the same thing that protects our rights as the First People of this wondrous land we call Canada. If we view the Indian Act as the container that holds our rights as Aboriginal people, do we not put ourselves in the precarious position of being controlled by a system that is not of our design?

“We do not want the Indian Act retained because it is a good piece of legislation, it isn’t. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be... We would rather continue to live in bondage under the Indian Act than surrender our sacred rights. The Indian Act was thus transformed from the legal instrument of oppression which it had been since its inception into a repository of sacred rights for Indians.”²

This was the argument that Aboriginal leaders originally used to oppose the White Paper that was introduced by Prime Minister Pierre Elliot Trudeau, but

¹ Page 463, Issac Thomas, Aboriginal Law, Commentary, Cases and Materials 3rd Edition, Purich Publishing Ltd. Saskatoon, Saskatchewan, Canada, 2004

² Page 2, Jamieson, Kathleen, Indian Women and the Law in Canada: Citizens Minus, Advisory Council on the Status of Women, Canadian Rights for Indian Women, April 1978

it would also come in handy in opposing Bill C-31. Bill C-31, which was an act to Act to Amend the Indian Act, was the government's solution to "bringing the act (Indian Act) into accord with the Charter (Canadian Charter of Rights.)"³ It would be this Amendment that would ensure that all Aboriginal people, both men and women, would be discriminated against equally. It is the Indian Act itself that is discriminatory and amendments to the act are not going to make Aboriginal people with special status under the Indian Act equal to that of all other Canadian citizens. Our special status, which many Aboriginals and Canadians view as a positive do not realize the reality of such an Act. With the introduction of Bill C-31 Aboriginal women who married non-native men would no longer lose their status, and many who had, would have their status reinstated. But, what about the non-native women who had married an Indian man and suddenly became Indian? Did they have to go through the process of having their status revoked, or were they too good for that. That is something that was never put on the table and just asks any Aboriginal woman who had to leave her family and community how that made her feel.

Bill C-31 would be the catalyst through which Indian women believed they could regain their identity through returning home to family and community. In reality, all Section 35 (4) does for equality is make it so that Aboriginal men and women will be discriminated against equally. The whole notion of keeping Aboriginal people apart from the rest of Canada through a statute is discriminatory in itself because it is race-based. The fight for rights based on

³ Page 508, Issac Thomas, Aboriginal Law, Commentary, Cases and Materials 3rd Edition, Purich Publishing Ltd. Saskatoon, Saskatchewan, Canada, 2004

gender only creates further conflict within Aboriginal communities itself. Bill C-31 has not solved the equality problem in Canada and one has to wonder, if Bill C-44 is another stab in the back to Canada's Aboriginal People.

Is making the Human Rights Act accessible to all people of Canada the solution to equality for Aboriginal people of Canada? The fact that Canada is considering amending an act that applies to humans to include Aboriginal people governed by the Indian Act speaks volumes in itself. Up until the Human Rights commission made this recommendation in their report, A Matter of Rights, A Special Report of the Canadian Human Right Commission on the Repeal of Section 67 of the Canadian Human Rights Act⁴, have the Aboriginal people in Canada governed by the Indian Act been treated inhumanely. Are we again going to be so naïve to think that by removing Sectional 67 from the Human Rights Act, it will suddenly become real? The reality is that many Aboriginal women and men do not know enough about the Indian Act or the Human Rights act to know that this applies to them. Since Section 67 of the Canadian Human Rights Act states, "Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act,"⁵ we must therefore ask ourselves, how many Aboriginal people in Canada understand that at this point in time, that the Human Rights Act does not apply to them simply because of their race? We must be concerned about changes to the Human Rights Act. Why are should Aboriginal people be denied the protection that all other Canadians are guaranteed. Inequality can not be erased that easily.

⁴ Canadian Human Rights Commission, October 2005

⁵ Canadian Human Rights Act

The Indian Act not only defines who is Aboriginal and the status of such, but it also divides us. The Aboriginal community has been divided for far too long. It is time for us to come together and begin working on what is best for our people collectively rather than what is best for Aboriginal organizations individually. All Aboriginal people must work together on finding solutions that work for Aboriginal people. It is only as a collective that the Aboriginal voice will be strong enough to be heard.

RECOMMENDATIONS

We are in agreement with the elimination of Section 67 provided that the following recommendations are followed:

1. Effective dialogue needs to take place between the governments and the Aboriginal Community **before** the implementation of the repeal of Section 67. This is necessary to ensure that the Aboriginal Community develops
2. Community capacity **must** be developed **before** the implementation of the repeal of Section 67.
3. During the repeal process it is **highly** recommended that there is an **18-30 month** transitional period for the First Nations.
4. The necessity for an interpretive provision is vital to the success of Bill C-44 to ensure that the balancing of both communal and individual traditional rights are equally empowered.

We are supportive of the Native Women's Association of Canada stance that unless there is commitment of the government for an effective repeal process of Section 67, we can only support the repeal in **principle**. Bill C-44

is designed for failure as it is devoid of Aboriginal community engagement, capacity building, lacking the acknowledgement of Aboriginal decisions/recommendation and the omitted interpretive provision Bill C-44 will continue to oppress all Aboriginal Women within Canada and will promote a sense of false human identity and rights.

Therefore unless the above recommendations are supported and implemented with a comprehensive dialogue we can not support Bill C-44 and the repeal of Section 67 at this time. Our Aboriginal Women have suffered the oppression of Section 67 for the past three decades and unless the repeal is truly addressing their equality by ensuring "equal access to justice⁶" we are continuing their subjection within Canadian society.

Human Rights, with Bill C-31

"Individual Rights before Collective...did we do ourselves justice because what if I don't want to be status...My right to not be has been removed. There is no longer a window for me to escape from...I can become status but I cannot have my status removed, where is my human right of choice. Ultimately I am governed by an ACT that says I am Indian!⁷"

⁶ Native Women's Association of Canada, 2006

⁷ Ingrid Green, 2007