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BILL C-44

ACT TO AMEND THE CANADIAN HUMAN RIGHTS ACT

PRESENTATION of the ASSEMBLY OF FIRST NATIONS OF QUEBEC
AND LABRADOR to the
STANDING COMMITTEE ON ABORIGINAL AFFAIRS

May 1, 2007

(Greeting in Innu)

“No longer will we in Ottawa develop policies first and discuss them with you later. The principle of collaboration will be the cornerstone of our new partnership.”

“Cooperation will be a cornerstone for partnership between Canada and First Nations. This requires honourable processes of negotiations and respect for requirements for consultation, accommodation, justification and First Nations’ consent as may be appropriate to the circumstances. Upholding the honour of the Crown is always at stake in the Crown’s dealings with First Nation peoples.”

“The Aboriginal peoples have the right to directly participate in ... decision-making processes that are likely to affect them or their rights. When the status, rights or territories of Aboriginal peoples are directly affected, any change to the political ... framework of Canada requires the free and informed consent of the First Nations concerned.”

Thank you for the opportunity to present to you on this important Bill.

My comments today will be brief.

The quotes I read a moment ago are attributable to, in order that I read them, the former Prime Minister, speaking on behalf of the Federal Government in 2004, the First Nations - Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments, May 31, 2005 and the Assembly of First Nations of Quebec and Labrador principle # 16 from a set of 26 principles adopted by Chiefs in 1998.

I started with those quotes because Bill C-44 was not developed jointly with First Nations, at least not so with the members of the AFNQL. Despite its virtuous intent, it is another example of imposition on First Nations without our consent, despite the fine promises of the Crown to the contrary. The AFNQL is not aware of any facts that would support the Minister's claims and those of his officials that this provision has been debated on many occasions over the years.

I will read another one in the set of the AFNQL's 26 principles¹. Significantly, it is the first principle on the list.

¹ The full set of AFNQL's 26 principles adopted by Chiefs in 1998 is attached to this brief.

“The Aboriginal peoples of Quebec have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms, with no obstruction or discrimination, as recognized under international and internal law.”

There is no doubt, therefore, that the AFNQL supports the full range of fundamental human rights of our peoples. Indeed, our very *raison d’être* is to advance our human rights as First Nations peoples.

Ideally, Bill C-44 or a revised version should pass only after being fully discussed with and receive the consent of First Nations. The protection of individual human rights of First Nations people should be a subject of discussion, negotiation and agreement between the First Nations and Canada. The interrelationship of individual and collective rights requires a comprehensive approach. Bill C-44 is just one more piecemeal good intention that has as much chance to go bad for First Nations as it has to be good for us.

The Commissioner of the Canadian Human Rights Commission (CHRC) presented before you a couple of weeks ago a suggestion that a statement of principles to act as a set of guidelines could be

produced through its discussions with the First Nations after the Bill comes into force. Presumably, the principles and guidelines will ensure the CHRC's good intentions to respect Aboriginal and Treaty rights while they pursue the protection of individual rights.

Well excuse my cynicism but First Nations are still trying to heal from decades of paternalistic good intentions. Negotiating principles and guidelines of dubious legal force or legitimacy after the horse has left the barn does not seem like the best approach.

I note that all the Parliamentary caucuses have already declared their intent to support the passage of Bill C-44, albeit with the possibility of amendment. I would have liked to confirm to you today the AFNQL's full support of an approach that was jointly developed or to say that our First Nations members had been consulted and accommodated. Alas, I cannot say that because the Federal Government shirked its constitutional obligations and political commitments in that regard. One option that the AFNQL member nations might have considered had the time been taken

to consult us would be to amend the Bill to recognize the power of First Nations governments, the Band Councils, to allow the CHRA to apply or not. It could have been a sort of 'notwithstanding clause', similar to the one in Canada's constitution that allows legislatures to suspend application of the Charter of Rights for five years on specific legislation. I could have been further backed up by the ultimate power of the people to decide by referendum within 6 months if they want the CHRA to apply. The referendum provision could have been mandatory on Band Councils that would opt to enact the 'notwithstanding' clause. It might have been an interim step in the journey toward proper recognition and implementation of the First Nations inherent right to self-government.

It seems to me that this committee has at least a couple of options to do the right thing – to do that which the Federal Government failed to do. Indeed, if you believe like I and many others do that Parliament shares with the Federal Government the discharge of the Crown's legal obligations to First Nations, you will adopt either one. First, you can either suspend further progress on the Bill until the Federal Government and the First Nations report

back that full consultations have been conducted, the consent of the First Nations has been obtained and consequently, specific amendments, a new bill or a new approach are required. Alternatively, this committee can recommend to Parliament that it conduct such full consultations and seek the conditions for First Nations consent.

By adopting either approach, you will be assuring First Nations that nothing is being shoved down our throats, even if you think it might be good for us. You will be signaling to First Nations that Parliament is taking a non-partisan and thoughtful approach that respects the highest law in the land, the Constitution. It will give adequate time for First Nations to analyze and debate amongst ourselves if our collective rights are threatened by the application of the CHRA and if so, how that might be mitigated.

There is no compelling reason or urgent situation demanding that this Bill be passed at this time. Let's jointly take the time to do it properly.

I must make two final important points.

First, the AFNQL has not been, is not and will very likely never show favor to any Federal political party. We are non-partisan. The First Nations' government to government, nation to nation relationship to Canada is primarily realized through its Government, not via political parties. The danger of being sidelined for years if we were to favour one party over another is too great. My earlier reference to the former Prime Minister's commitment to First Nations in 2004 and to the Accord his Minister of Indian Affairs signed on behalf of Canada with the Assembly of First Nations in 2005 have nothing to do with their political party allegiances. Rather, they are recent high water marks in our relations that must be honoured as solemn commitments of the Crown to the First Nations.

I conclude by noting the need for adequate resources to First Nations to manage any impacts of the Bill. History again shows us that no Federal bill directed broadly to First Nations has ever been adequately resourced, which is another plank in the Federal long term assimilation strategy. The study of possible impacts and the guarantee of adequate resources must be determined jointly with First Nations prior to the Bill becoming law.

I would be pleased to answer questions.

(Brief closing In Innu)

END

Appendix (1)

ASSEMBLY OF FIRST NATIONS OF QUEBEC AND LABRADOR FUNDAMENTAL PRINCIPLES

ENJOYMENT OF ALL FUNDAMENTAL RIGHTS

1. The Aboriginal peoples of Quebec have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms, with no obstruction or discrimination, as recognized under international and internal law.

UNIQUE STATUS OF ABORIGINAL PEOPLES

2. Each of the Aboriginal peoples forms a distinct “people” and “nation,” as recognized under international and internal law. The capacity to conclude treaties is an important aspect and demonstration of the unique status of the Aboriginal peoples.

RIGHT TO SELF-DETERMINATION

3. The Aboriginal peoples have the right to self-determination. By virtue of this right, they can freely determine their political, economic, social, and cultural development.

RIGHT TO POLITICAL AUTONOMY

4. The Aboriginal peoples have the right to political autonomy in their traditional territories or on the land that they have traditionally owned or otherwise occupied and used. They have the right to determine the form, structure, and jurisdiction of their own institutions and to ensure the integrity of their societies and territories.

SELF-IDENTIFICATION AND CULTURAL RIGHTS

5. The Aboriginal peoples have the right to their own identity, culture, language, customs, traditions and spirituality.

LAND RIGHTS AND RESOURCE RIGHTS

6. The Aboriginal peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

7. The Aboriginal peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources that they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources.

Appendix

8. The Aboriginal peoples have the right to hunt, fish, trap, harvest, gather and barter all year round in the zones which they have traditionally owned or otherwise occupied or used.

9. The Aboriginal peoples have the right to effective measures by non-Aboriginal governments to prevent any interference with, alienation of or encroachment on these rights or any obstacle to the exercise of these rights. Under no circumstances may Aboriginal peoples be deprived of their own means of subsistence, including its essential economic, social, cultural and spiritual dimensions.

MATTERS RELATED TO DEVELOPMENT AND THE ENVIRONMENT

10. The Aboriginal peoples have the right to establish their own priorities concerning the development of their territories, lands and resources. To this end, they may conclude agreements related to income sharing and other means of wealth distribution.

11. In development planning and implementation, the principle of mandatory free and informed consent of the Aboriginal peoples concerned must be respected. The need to protect the integrity of the environment for future and current generations, and the importance of sustainable and equitable development must be respected as fundamental principles.

IMPORTANCE OF THE POWER TO CONCLUDE TREATIES AND TREATY RIGHTS

12. In keeping with their unique status, the Aboriginal peoples have the right to conclude nation-to-nation treaties. The nation-to-nation relationship is based on the equality and peaceful coexistence of the peoples. All notions of domination, subjugation and exploitation are rejected.

13. When the Aboriginal peoples concerned so desire, the power to conclude treaties must be recognized as an essential means of ensuring adequate recognition and respect of their fundamental rights, including those involving their lands and resources, and of related sharing agreements. The obsolete doctrines of dispossession, especially *territorium nullius*, cannot be invoked against Aboriginal peoples or their rights.

14. The treaty rights of the Aboriginal peoples include rights previously or subsequently granted by territorial rights agreements. The rights of the Aboriginal peoples arising from treaties concluded outside of Canada or before Confederation, as well as Aboriginal title, must be explicitly recognized in accordance with Part II of the 1982 Constitution Act.

RIGHT TO DETERMINE THEIR OWN RELATIONS

15. The Aboriginal peoples have the right to freely to determine their relationships in a spirit of coexistence, mutual benefit and full respect.

PARTICIPATION IN CONSTITUTIONAL AND OTHER PROCESSES

16. The Aboriginal peoples have the right to directly participate in the amendment of the Constitution and in other decision-making processes that are likely to affect them or their rights. When the status, rights or territories of Aboriginal peoples are directly affected, any change to the political and constitutional framework of Canada requires the free and informed consent of the First Nations concerned.

17. To enhance their fundamental rights, the Aboriginal peoples must have access to a constitutional amendment process that guarantees their full participation.

ROYAL PROCLAMATION OF 1763

18. The rights of the Aboriginal peoples, recognized and confirmed by the Royal Proclamation of October 7, 1763, enjoy constitutional protection, since the Proclamation is a constitutional instrument.

FINANCIAL TRANSFER AGREEMENTS

19. The governments of Quebec and Canada are committed to implementing equitable access for Aboriginal peoples to the financial resources needed for certain basic purposes. These purposes include the effective exercise of self-government, the promotion of equal opportunity, the reduction of regional disparities, the pursuit of Aboriginal economic initiatives and the provision of good quality essential services and community infrastructure.

20. In keeping with their status and rights, the Aboriginal peoples have the right to immunity from taxation.

NEW OR NASCENT STANDARDS

21. New or nascent international standards related to the status and rights of Aboriginal peoples must be taken into full consideration in the negotiation of new or amended agreements with non-Aboriginal governments. Moreover, the recommendations of the Royal Commission on Aboriginal Peoples must be fully considered.

NO ASSIGNMENT OR EXTINCTION OF FUNDAMENTAL RIGHTS

22. The fundamental rights of Aboriginal peoples are human rights, both collective and individual, and cannot be subject to assignment, extinction or other forms of destruction. These rights may be enhanced, in keeping with their recognition and affirmation by virtue of Canadian constitutional law, international law or Aboriginal law.

23. Government policies and current laws must be modified to eliminate any notion or obligation of coercive assignment or extinction of Aboriginal rights.

PARTNERSHIP RATHER THAN UNILATERALISM

24. Partnership with non-Aboriginal governments must be founded on the principles of the equality and free and informed consent of the Aboriginal peoples. Unilateral measures taken by these governments against Aboriginal peoples signify a lack of respect concerning the status and rights of the Aboriginal peoples and must therefore be rejected.

IMPOSITION OF POLITICAL POSITIONS BY NON-ABORIGINAL GOVERNMENTS

25. The notions of territorial integrity, non-Aboriginal sovereignty and legislative or regulatory “effectiveness” cannot be imposed on Aboriginal peoples in such a way to create inequality, domination or other forms of colonialism.

26. In particular, it is reprehensible for non-Aboriginal governments to tie acceptance of territorial integrity, non-Aboriginal sovereignty and legislative or regulatory “effectiveness” to the granting of financial resources to First Nations peoples. Such ties are especially unacceptable in terms of essential services, community resources and economic development of the First Nations peoples.