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BRIEF ON QUEBEC NATIVE WOMEN & BILL C-7

1. Introduction

The summary of Bill C-7 states that the legislation provides «governance tools» to bands operating under the *Indian Act*, that is, the vast majority of bands in Canada. Presumably, the issues covered in the legislation are those which the Government of Canada feels are the most important priorities for good governance. They include administration, financial management and accountability, legal capacity and a form of «lawmaking» which is basically the old by-law power under the *Indian Act* called by another name.

No one questions the usefulness of good administrative and accounting practices, but to reduce the concept of «governance» to these types of clerical functions does nothing more than illustrate the Government of Canada's lack of vision and courage. Implicit in the introduction of special legislation to deal with these issues is the assumption that present-day administrative and accounting practices are deficient. In the case of some First Nations, there may well be cause for concern. However, the majority of First Nations are administered by reasonable people trying to do a complex job, often in very difficult circumstances.

While administrative practices, including those of the federal and provincial governments themselves, can always be improved, we note that the Report of the Auditor General of Canada issued in December 2002, points the finger at the real source of many of the administrative and reporting difficulties experienced by First Nations. The Report states, at paragraphs 1.1 and 1.3:

1.1 First Nations reporting requirements established by federal government organizations are a significant burden, especially for communities with fewer than 500 residents. We estimated that at least 168 reports are required annually by the four federal organizations that provided the most funding for major federal programs.

1.3 We are concerned about the burden associated with the federal reporting requirements. Resources used to meet these reporting requirements could be better used to provide direct support to the community. Steps need to be taken to streamline reporting requirements. The current program structure established by the federal organizations is an obstacle to reforming reporting requirements and needs to be reviewed.

In short, it is the reporting structure set up by the federal government which is the source of many of the problems. Aside from being excessive and repetitive, the reporting requirements are dictated by the federal government and, again as noted by the Auditor General at paragraph 1.2 of her Report, the information required does not reflect the priorities of the communities concerned, is not used to set funding levels and, by and large, is not used by government authorities in their own reports.

In most First Nations communities, these reports are all available to members, but the information required by the federal government, and set out in the ensuing reports, is often meaningless to First Nations peoples and their communities. There is, indeed, a problem of transparency, but it is caused, at least in part, by the impenetrable fog of irrelevant data gathered in answer to federal government requirements.

2. Government of Canada Should Focus on Real Problems

We note with sadness and disappointment that, once again, the Government of Canada has demonstrated that it does not consider that the correction of past injustice in order to ensure fair treatment in the future is a major component of good governance. Nor, apparently, does the Government of Canada consider respect for fundamental human rights to be the cornerstone of any government initiative regarding governance. Yet what could possibly be more important?

Our members are suffering some of the most egregious forms of discrimination both at the hands of First Nations Governments and at the hands of the Government of Canada. No amount of fiddling about with accounting requirements is going to change this.

For example, a real problem of accountability occurs when band councils simply choose to defy the 1985 amendments to the *Indian Act* by refusing to allow re-instated women and their children to return and by refusing those who have returned access to any programs and services. Rather than using their leadership position, not to mention their financial power, to encourage band councils to respect the Act, DIAND has been a knowing accomplice in the defiance of the Act, often devolving more and more power, and larger and larger budgets, to band councils who openly refuse to recognize the rights of, and provide services to, re-instated women and their children.

The problem of accountability in respect of these funds does not lie with accounting procedures. It lies in the fact that DIAND knowingly closes its eyes to the fact that women who were re-instated and their children are being refused access to the programs for which their First Nations are receiving funding. DIAND apparently prefers to set up parallel programs for these women with additional monies to be administered by other agencies, rather than force band councils to comply with the law. So these band councils continue to receive program funding which they refuse to disburse to those who are entitled to it, and DIAND pays out additional money to administer these programs through outside agencies in order to provide services!

How, exactly, is Bill C-7 going to improve this situation?

The answer is, of course, that it won't, because the Government of Canada is only interested in window-dressing; it is not at all interested in addressing the fundamental problems which plague First Nations women and their children.

In our opinion, the Government of Canada's focus on administrative matters is designed to deflect attention from the fact that its continued discrimination against First Nations women is in breach of the Constitution of Canada and many of its international obligations and is one of the primary causes of real misery amongst aboriginal women and their children.

Among the many examples are the discriminatory provisions of the *Indian Act* such as the restrictions on Indian status entitlement; the discriminatory policy of the Indian Registrar which requires identification of a child's father; the difficulty in transferring to another band such as the birth band because of the requirement of consent of the other band; the denial of band membership by some band councils even though the right to membership is protected under the *Indian Act*; by-laws preventing non-members from residing on the reserve which affect non-aboriginal spouses and, as a consequence, the children of such marriages; land allotments being subject to the Band Council's will; the silence of the *Indian Act* with respect to division of property upon divorce when historically, lands and houses are registered in the male spouse's name; difficulties in obtaining orders for the temporary use of the matrimonial house in situations of family violence, or to have the order enforced on reserve; and the application of the Charter to Aboriginal Governments so as to attain balance between Aboriginal community interests and individual rights.

Now, with the *First Nations Governance Act*, it appears that we may be subject to even greater discrimination. Section 5, which deals with the adoption of a «leadership selection code», contains what appears to be a strange anomaly. At sub-section 5(2), we read that if a band was under what was commonly called a «custom selection» system immediately prior to the coming into force of the *FNGA*, it can adopt a leadership selection code which *either* includes the rules under subsection (1), *or* the custom rules for the council's selection, as they existed when the section comes into force. However, in virtue of subsection 5(5), it is only when the leadership selection code includes the rules under subsection (1) that it must respect the rights of all members of the band. This is completely unacceptable.

Equally worrisome in subsection 5(5) is the provision which allows a leadership selection code to «balance» the «different interests, including the different interests of members residing on and off the reserve». This provision will affect re-instated women and their children disproportionately, because it is they who were originally forced off their reserves and it is they who are often unable to get housing on reserve because of discrimination against them.

It is extraordinary that the Government of Canada should propose a provision which allows for discrimination in the right to participate in the selection of council.

The Government of Canada has consistently and deliberately ignored, for the past fifteen years, not only our own pleas for justice and equity, but also the recommendations of such entities as the Standing Committee on Aboriginal Affairs and Northern Development, the Aboriginal Justice Inquiry of Manitoba, the Auditor General of Canada and the United Nation's Human Rights Committee. The Government of Canada simply refuses to act to end the discrimination.

This refusal to act is often on the pretext that it does not wish to interfere in the internal workings of First Nations. Of course, it has no such scruples about enacting Bill C-7 against the wishes of First Nations communities! More importantly, the Government of Canada is bound by its own Constitution and by its obligations under international law. It cannot, *on any pretext*, create enclaves within its borders in which it permits the routine violation of basic human rights. Rather, it has a clear *duty to act* to protect the basic human rights of all those within its borders.

Yet rather than provide for good governance based on respect for fundamental human rights, and end the discrimination against women and children, the Government of Canada has centred its efforts on a public relations exercise aimed at convincing the Canadian public that the concerns of First Nations peoples are being addressed.

The following is a brief summary of some of the *real problems* being faced by our members.

3. Continuing Discrimination in the *Indian Act*

Women who were «re-instated» under the 1985 amendments to the *Indian Act* and their children face continued discrimination. The *Indian Act* cuts off entitlement to Indian status after two generations if one parent does not have Indian status. Among other adverse consequences, this leads to situations where members of the same family may not all be entitled to the same rights.

The Standing Committee on Aboriginal Affairs and Northern Development held six months of hearings on the implementation of Bill C-31 and published its report in 1988. In its report, at pages 30-36, the Standing Committee noted that there were a number of examples of residual sex discrimination in the amended *Indian Act*. It concluded:

«Most Indian groups, whether status, non-status, including native women's groups, agreed that the 1985 amendments do not go far enough in recognizing Indian status for persons of mixed Indian and non-Indian heritage. While most also appear not to favour any arbitrary cut-off point, a uniform Quarter Descent Rule would at least place reinstated women on an equal footing with their brothers and would help to allay the fears of an ever-decreasing population of status Indians as a result of s. 6(2) and current rates of status/non-status intermarriage.»

The Standing Committee then recommended (Recommendation #11) that s. 6(2) of *An Act to Amend the Indian Act, 1985* be amended *before the end of the current session of Parliament* in order to eliminate discrimination between brothers and sisters. This was in 1988! Fifteen years later, nothing has been done.

The *Act to amend the Indian Act, 1985* (Bill C-31) required the Minister to table a report on the implementation of the Act no later than two years following assent. The Minister did so, but concluded that it was too soon to determine the impacts of the amendments. He thus

undertook to carry out a full review of the implementation of the Act and to report by 1990. This was done, and in the Minister's «Report on the Impacts of the 1985 Amendments to the *Indian Act*», the following was noted (on pg. 8):

«Not all sexual discrimination has been eliminated by Bill C-31. There remains unequal treatment of some male and female siblings. Women who lost status through marriage prior to 1985 cannot pass status along through successive generations; their brothers who married non-Indian women prior to 1985 can do so. The brothers, their non-Indian spouses and their children, are automatically considered band members, while their sisters' children can only acquire status. In the case of bands that have assumed control of membership prior to June 28th, 1987, the children of the female line have only conditional entitlement to band membership.»

The Minister of Indian Affairs and Northern Development thus acknowledged thirteen years ago that the *Indian Act* continued to discriminate against Indian women and their children. However, no attempt has been made to introduce legislation to remedy this continued violation of our rights.

The *Report of the Aboriginal Justice Inquiry of Manitoba*, 1991, (at p. 203-204) pointed to the fact that «Despite the amendments intended to remove discrimination, the *Indian Act* today still contains clear forms of sexual discrimination - as well as the seeds of eventual termination of Indian status altogether.» It recommended that the *Indian Act* be amended to eliminate all continuing forms of discrimination regarding the children of Indian women who regain their status under Bill C-31.

4. Continuing Violations of Canada's International Obligations

Canada is a party to several international treaties which guarantee equality between men and women and forbid all forms of discrimination. It is also party to a Convention which specifically protects the rights of children. Furthermore, it is subject to the jurisdiction of several international institutions¹ established to ensure that States which, like Canada, *freely and voluntarily* become parties to international legal instruments, respect their obligations. Discrimination against the children and grand-children of Aboriginal women who regained their status under section 6(2) of the *Indian Act*, the assumption that the father of a child is not Indian if the mother does not reveal his identity, the unequal patrimonial rights of spouses and the adverse consequences of this situation in a divorce, as well as the lack of guarantee of residence within the community for non-aboriginal husbands are all situations which are incompatible with Canada's international obligations.

¹ *Inter alia*: Human Rights Committee; Inter-American Commission on Human Rights; Committee for the Elimination of all Forms of Discrimination against Women

This is not the first time we have raised the issue that the various forms of differential treatment in the *Indian Act* are incompatible with Canada's international obligations. As reported in 1988 by the Standing Committee on Aboriginal Affairs:

Accordingly the Quebec Native Women's Association says the right of 12(1)(b) women with non-Indian spouses and non-member children to live on reserve with their families is not guaranteed.

They argue that the various forms of differential treatment described above violate a variety of domestic and international human rights standards. The restricted ability of Indian women to pass on Indian status and band membership to their children and grand-children is said to be discrimination on the basis of sex and descent and therefore a violation of:

- s. 15 of the Canadian Charter of Rights
- ss. 2 and 7 of the Universal Declaration of Human Rights
- ss. 1, 2(1), 3 and 26 of the International Covenant on Civil and Political Rights
- 1(1) of the International Covenant on the Elimination of all Forms of Discrimination.

In addition, the more limited ability of Indian women to reside on reserve with their families is alleged to be a violation of s. 17(1) of the International Covenant on Civil and Political Rights.²

More recent developments in international law lead to the clear and inescapable conclusion that the Government of Canada continues to violate its international obligations by discriminating against Indian women and their children.

The Human Rights Committee has underlined the fundamental character of non discrimination: Non discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.³

The importance of this principle is clearly reflected by the fact that it tolerates no derogation whatsoever, even in times of public emergency.

However, the regime which flowed from the 1985 amendments to the *Indian Act* has created significant inequalities among Aboriginal children and as such, it is incompatible with Canada's international obligations. A child born of a marriage contracted before 1985 whose father is non-Indian and whose mother regained her status under section 6(1) of the

² *Fifth Report of the Standing Committee on Aboriginal Affairs and Northern Development on consideration of the implementation of the Act to amend the Indian Act as passed by the House of Commons on June 12, 1985*, August 1988, pp. 33-34.

³ *Non-discrimination: 10/11/89, CCPR General Comment 18* (General Comments)

Indian Act may be deprived of the possibility to pass his or her Indian status on to his or her children, contrary to a child, also born of a marriage contracted before 1985 whose father is Indian and whose mother is non Indian who can do so. In addition, children of Indian women who regained their status under section 6(2) of the *Indian Act* can be denied band membership.

This regime has also created significant inequalities among Aboriginal women because they are not all able to pass their status on to their children, an inability which carries grave consequences.

The Aboriginal child deprived of his or her status, or of band membership, is thus deprived of the right to take part in the life of his community, contrary to the provisions of Article 27 of the *International Covenant on Civil and Political Rights*, to the almost identical provisions of Article XIII of the *American Declaration of the Rights and Duties of Man*, which binds Canada since it became a member of the Organization of American States, in January of 1990, and of article 30 of the *Convention on the Rights of the Child*.

The Aboriginal child who is deprived of status or denied band membership is thereby deprived of the best means of preserving his identity, a right guaranteed under article 8 of the *Convention on the Rights of the Child*:

1. States Parties undertake to respect the right of a child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Under the terms of Article 4 of the Convention, Canada has also undertaken to adopt the necessary legislative, administrative and other measures to implement the rights protected under the Convention. Upon ratifying the Convention, it made the following declaration:

It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfilment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language.

Unfortunately, the Canadian Government has yet to put its words into action. In fact, that is what the Human Rights Committee told Canada in April of 1999:

... concerned about ongoing discrimination against aboriginal women. Following the adoption of the Committee's Views in the *Love/ace* case in July 1981, amendments were introduced to the Indian Act in 1985. Although the Indian status of women who had lost status because of marriage was reinstated, this amendment affects only the woman and her children, not subsequent generations, which may still be denied

membership in the community. The Committee recommends that these issues be addressed by the State party.⁴

The Canadian Government has yet to show any sign of its intention to comply with the recommendations of the Committee.

In summary, it is clear that, both on a national and on an international level, the entities which have looked at this problem have all concluded that the residual sex discrimination in the *Indian Act* is in violation of Canada's own constitution and its international obligations. It is also clear that the federal government is fully aware that this is the case.

Canada cannot allow the creation of areas within its borders in which there are no guarantees of basic human rights. The question is whether the Government of Canada is sufficiently concerned with good governance to take the action required to eliminate this legislated discrimination. The fact that there may be opposition from some of the entrenched aboriginal leadership whose self-interest leads them to resist any change to the *status quo*, cannot serve as an excuse.

5. Registration of a Child Whose Father is Unknown

In administering the *Indian Act*, government officials have decided that, in the case of the registration of children of unmarried women, the father must be named. If the mother is unwilling or unable to name the father and/or if the father is unwilling to sign a certificate of paternity or similar document, the child will be presumed to have had a non-Indian father. This affects the child's capacity to pass on Indian status to his or her own children. There is no such requirement in the *Indian Act* and this requirement is a matter of administrative policy which can, and should, be changed immediately.

The Standing Committee on Aboriginal Affairs and Northern Development, in its six months of hearings on the implementation of Bill C-31, heard a great deal about this form of discrimination, and dealt with it in its report.

As a result of testimony heard by the Committee, it noted that in cases in which the child is the result of rape or incest, if the father is married to someone else or if the relationship ended with bitter feelings by the man, it is not possible to obtain the father's signature on a certificate of paternity or other similar document. The Committee recommended (Recommendation #8):

«We recommend that as there is no legal requirement in the Act for unmarried Indian women to name the father of their children in order to establish their entitlement to registration and band membership, the practice be discontinued

⁴ *Concluding Observations of the Human Rights Committee: Canada.*, 07/09/99. CCPR/C/79/Add. 105 (Concluding Observations/Comments), 7 april 1999, para. 19

immediately. An affidavit or statutory declaration simply swearing or declaring the status of the father without naming him should be sufficient to satisfy the requirements of the application for reinstatement.»

In ignoring these recommendations, the Canadian government violates its international obligations. As pointed out by the Human Rights Committee:

The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth.⁵

These provisions are similar to those found in Article 2 of the *Convention on the Rights of the Child*. Consequently, the administrative policy requiring that unmarried women name the father of their child, failing which, the father is presumed to be non-Indian is incompatible with Canada's international obligations. This policy forces the mother to reveal the identity of the aboriginal father to avoid gravely penalizing her child. It constitutes arbitrary interference with her privacy, contrary to the provisions of Article 17 of the *International Covenant on Civil and Political Rights*.

Interference based on administrative policy and not on legislation has been deemed illegal within the meaning of Article 17 by the Human Rights Committee:

The term «unlawful» means that no interference can take place except in cases envisaged by the law.⁶

We re-iterate that the Report of the Standing Committee was tabled in 1988. Nothing has changed and the future of our children continues to be determined by administrative policy rather than by law. There is no excuse for refusing to discontinue this administrative practice. As stated by the Standing Committee, an affidavit or statutory declaration declaring the status of the father without naming him or requiring his signature, should be sufficient.

6. Residency

Women who have been reinstated faced, and continue to face, many problems in returning to their reserves. In many cases, there was, and is, simply not enough housing and land to provide homes for them. At the time of the introduction of Bill C-31, the Minister of Indian Affairs promised extra funding for housing and, where required, that extra land would be provided in order to assure that the already desperate situation faced by many bands would not get any worse.

As early as 1988, the Standing Committee on Aboriginal Affairs and Northern Development

⁵ *Rights of the Child (Art. 24)*, 07/04/89, CCPR, General Comment 17, Human Rights Committee (1989).

⁶ *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, 08/04/88. CCPR General Comment 16, para. 3, Human Rights Committee (1988).

had recommended (Recommendations #21 and #26) that the total costs of housing needed for C-31 registrants be supported and that an adequate land base be provided to First Nations for returning members. This was never done.

As the Auditor General of Canada noted 6 years after the passage of Bill C-31:

14.40 Despite the government's assertion that no band would suffer as a result of Bill C-31, DIAND did not, at the time of our audit, have a financial plan to identify how and when the existing and future housing shortfall would be met. Furthermore, although DIAND was aware that some reserves could not physically accommodate the requirements for more housing, it did not put forward any possible solutions to this problem.⁷

In some cases, despite more than adequate resources, band councils have attempted to block C-31 registrants in every way possible, even when they are returning to live, for example, in their parents' homes. A number of band councils have simply defied the 1985 amendments to the *Indian Act*. As the Auditor General of Canada reported in 1991:

14.41 Some C-31 registrants have gained status but have not been accepted by a band. Two Indian organizations estimate that 9 out of 10 C-31 registrants in Alberta have no band membership. Some bands have introduced restrictive membership codes that effectively block C-31 people from joining the band. One example is a code that requires a period of on-reserve residency, yet allows only band members to live there. This usually occurs with wealthy bands that fear dilution of the band wealth and disruption of the existing band power structures.⁸

This situation does not only exist in the west, it exists as well here in Quebec where several bands have consistently acted in defiance of the *Indian Act* amendments and have not only refused to allow C-31 registrants to return, but have also harassed, intimidated and attempted to forcibly remove women who have married non-Indians, even when those women have lived all their lives on reserve.

Non-Indian spouses are not guaranteed the right to live with their Indian wives on reserve, thus forcing women to wish to return to their home communities to either divorce their husbands, or remain in exile. Furthermore, the *Indian Act* only guarantees a right of residence for minor children of reinstated women, so that a child who has grown up most of his life on reserve, can be forced to leave at the age of eighteen.

Forcing a woman to choose between losing her husband and her children who are 18 years old, or being able to live in her community, is contrary to all basic notions of human decency and undermines the stability of the family.

⁷ *Report of the Auditor General of Canada to the House of Commons*, 1991, p. 335

⁸ *Report of the Auditor General of Canada to the House of Commons*, 1991, p. 335

The fact that non-aboriginal persons do not have a guaranteed right to reside with their Indian spouses on reserve, and are placed in a situation where they risk expulsion, is incompatible with the provisions of article 8 of the *Convention on the Rights of the Child* to the extent that family relations are not adequately protected.

In addition, this lack of guarantee is incompatible with the provisions of Article 23 of the *International Covenant on Civil and Political Rights* which affirms, in terms identical to those of Article 16 of the *Universal Declaration of Human Rights* that:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The *Indian Act* should be amended so as to guarantee the right of a non-Indian spouse to live with his wife in her community, and to have all their children live there as well.

7. Divorce

Another issue which we have repeatedly brought to the attention of the Government of Canada is a long-standing and urgent problem. The Supreme Court of Canada has decided that provincial laws relating to division of property upon divorce cannot apply to property on Indian reserves. The *Indian Act* is simply silent on this issue. Historically, lands and houses were always registered by DIAND in the male spouse's name. This all too often leaves women with no economic power and, in the case of divorce, a woman and her children find themselves homeless.

As the Aboriginal Justice Inquiry of Manitoba pointed out, quite aside from questions of legality, the lack of protection and fair treatment for aboriginal women encourages and leads to other forms of discrimination against them by both DIAND and by band councils.

«There is no equal division of property upon marriage breakdown recognized under the *Indian Act*. This has to be rectified. While we recognize that amending the *Indian Act* is not a high priority for either the federal government or the Aboriginal leadership of Canada, we do believe that this matter warrants immediate attention. The Act's failure to deal fairly and equitably with Aboriginal women is not only quite probably unconstitutional, but also appears to encourage administrative discrimination in the provision of housing and other services to Aboriginal women by the Department of Indian Affairs and local governments.»⁹

The Aboriginal Justice Inquiry of Manitoba specifically recommended that:

«The *Indian Act* be amended to provide for the equal division of property upon marriage breakdown.»¹⁰

⁹ *Report of the Aboriginal Justice Inquiry of Manitoba*, 1991, p. 485

¹⁰ *Report of the Aboriginal Justice Inquiry of Manitoba*, 1991, p. 486

Canada's failure to act upon these recommendations is contrary to its international obligations. As recalled by the Human Rights Committee in its General Comment 28 on Equality between man and women:

In becoming Parties to the Covenant, States undertake, in accordance with article 3, to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant, and in accordance with article 5, nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights provided for in article 3, or at limitations not covered by the Covenant. Moreover, there shall be no restriction upon or derogation from the equal enjoyment by women of all fundamental human rights recognized or existent pursuant to law, conventions, regulations or customs, on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.¹¹

No later than last March, the Committee reminded all States Parties to the Covenant that:

To fulfill their obligations under article 23, paragraph 4, States must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to.... the ownership or administration of property, whether common property of property in the sole ownership on either spouse. States should review their legislation to ensure that women have equal rights in regard to the ownership and administration of such property where necessary.

States must also ensure equality in regard to the dissolution of marriage.¹²

Discrimination against women has been defined in article 1 of the *Convention for the Elimination of all Forms of Discrimination Against Women* as follows:

The term «discrimination against women» shall mean 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.

Under the *International Covenant on Civil and Political Rights*, the rights which must be protected against discrimination are not limited to those listed. Any legislation adopted by Canada must be non-discriminatory:

In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits

¹¹ *Equality of rights between men and women (article 3)*: 29/03/2000, CCPR/C/21/Rev.1/Add.10, CCPR General Comment 28, para. 9.

¹² *Id.*, para. 25-26

discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.¹³

Canada is in violation of its international commitments for not eradicating the discriminatory provisions of the *Indian Act*, including those which deprive Indian woman of the same patrimonial rights as their spouses.

Traditionally, aboriginal women played an important economic role in their societies whether through their efforts at farming, their skill in gathering of food, preparation of clothing and preparation of furs for market, to name but a few. A family unit could not survive without the economic input of both men and women. The imposition of European values in which men controlled access to goods and services, including land and housing, was a major disruption to the foundation of the aboriginal family. This balance must be redressed.

The *Indian Act* should be amended to provide either for a regime in which spouses are common as to property or a regime of community of acquests in which property acquired during the marriage becomes the common property of both spouses. This would have to be done retroactively in the same way as the marriage regime was retroactively changed in Quebec for all Quebecers. Failing this, the *Indian Act* must be amended to provide for an equal division of property upon the dissolution of the marriage.

¹³ *Non discrimination: 10/11/89*, General Comment 18 para.12

8. Conclusion

Bill C-7 makes a mockery of the concept of good governance.

Good governance cannot exist unless and until the Government of Canada takes the initiative to amend the *Indian Act* so as to eliminate all discriminatory provisions and to put an end to discriminatory policies within the Department of Indian Affairs. We also expect the Government of Canada to live up to its constitutional obligation to ensure that powers exercised by Band councils are exercised in a manner compatible with the Canadian Charter of Rights and the international human rights covenants and conventions to which Canada is a party.

We re-iterate:

- 1) the Standing Committee found that the *Indian Act* continued to discriminate against women in 1988;
- 2) the Minister of Indian Affairs admitted that there was continuing discrimination against women in 1990;
- 3) the Aboriginal Justice Inquiry of Manitoba, led by the Associate Chief Justice of that province, found in 1991 that the *Indian Act* continued to discriminate against women;
- 4) the United Nations' Human Rights Committee also came to the conclusion, in 1999, that the *Indian Act* continued to discriminate against women.

The Government of Canada's answer to this is special legislation to deal with administrative and financial practices and which will allow further discrimination against women in the area of voting rights!

9. Recommendations

The Quebec Native Women's Association therefore recommends the following:

1. That DIAND be required to report to this Committee the details of program monies disbursed by them to bands who refuse to provide benefits and services to re-instated women and their children and the details regarding monies spent in creating parallel services for those unable to obtain services from their bands because of discrimination, including a listing of those bands and the amounts involved;
2. That program funding be withheld from First Nations who defy the *Indian Act* by discriminating against re-instated women and children in the provision of programs and services;
3. That section 5 of the draft *First Nations Governance Act* be amended so that *all* leadership selection codes must respect the rights of all members, and that there be no distinction allowed between different classes of members' rights to vote;
4. That the *Indian Act* be amended so as to eliminate all forms of discrimination against women. This would require the reinstatement to both Indian status and band membership of not only the women who lost their status as a result of the historical discrimination against them, but also of their children and grandchildren;
5. That the *Indian Act* be amended so as to ensure that non-Indian persons who are married to Indians have a right to reside on reserve with their spouses and that the children born of these marriages be ensured of their right to reside on reserve;
6. That the *Indian Act* be amended to ensure equality between husband and wife in regard to property and to ensure that there is equality in the division of assets in the case of divorce;
7. That the administrative policy of the Department of Indian Affairs which requires the identification and/or admission of paternity of the father of a child born to an unmarried woman be immediately changed to a requirement that the mother of the child sign an affidavit or statutory declaration as to the status of the father of the child.

Good governance is not about the way in which paper is treated; it is about the way in which people are treated.