First Nations Perspectives on Bill C-44 (Repeal of Section 67 of *Canadian Human Rights Act*)

A submission to the House of Commons
Standing Committee on Aboriginal Affairs and Northern Development

by the
Assembly of First Nations

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ABOUT THE ASSEMBLY OF FIRST NATIONS

The Assembly of First Nations (AFN) is the national, political representative of First Nations governments and their citizens in Canada, including those living on reserve and in urban and rural areas. Every Chief in Canada is entitled to be a member of the Assembly. The National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens.

The role and function of the AFN is to serve as a national delegated forum for determining and harmonizing effective collective and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action and for advancing the aspirations of First Nations.

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OVERVIEW

On December 13, 2006, the Government of Canada introduced Bill C-44, *An Act to amend the Canadian Human Rights Act,* which provides for the immediate repeal of section 67 of the *Canadian Human Rights Act* (*CHRA*). The Assembly of First Nations (AFN) unequivocally supports the repeal of section 67 of the *CHRA*. Indeed, the objective of Bill C-44 is well intentioned. However, there are serious concerns with the limited scope of the Bill; that if it is not properly amended it may defeat the purpose it attempts to serve and may do more harm than good. A clear opportunity exists under the current legislative reform process to address both potential human rights violations as well as the collective rights of First Nation governments to self-govern. Bill C-44 must squarely and pro-actively address how the *CHRA* applies to the exercise of First Nations self-government because this legislative change directly impacts and engages the manner in which First Nation communities govern themselves.

Interestingly, quite apart from some of the key recommendations made by the Canadian Human Rights Review Panel and the Canadian Human Rights Commission on this matter, Bill C-44 falls short in three critical areas:

1. It fails to provide any measures to safeguard and balance individual and collective Aboriginal and Treaty Rights for First Nation peoples;
2. It lacks a realistic transition period for First Nation governments upon the application of the *CHRA*; and
3. It provides no consideration for the potentially significant organizational impacts on First Nation governments resulting from the application of the *CHRA*, particularly in relation to critical capacity necessary to ensure the successful implementation and full application of the *CHRA.*

Bill C-44 could be strengthened through the inclusion of a non-derogation clause to protect Aboriginal and Treaty rights, as well as an interpretative provision to guide the Canadian Human Rights Commission, Tribunal and Courts in achieving the delicate balance between individual human rights and the unique collective constitutional rights of First Nations peoples. Furthermore, to ensure the successful implementation of Bill C-44, First Nations must have sufficient time and resources to prepare for the application of the *CHRA.* Therefore, we recommend that the transition period be extended to at least 36 months and that federal commitments are made to ensure that First Nation governments have access to funding on a sustainable basis to address the circumstances that arise as a result of the application of the *CHRA*.

The AFN strongly believes that the recommendations contained herein would strengthen Bill C-44 and achieve the degree of certainty necessary to introduce the *CHRA* in a reasonable and just manner. Such measures are in keeping with the constitutional imperative to reconcile First Nation legal traditions regarding dispute resolution amongst their citizens and contemporary Canadian laws on human rights, the protection the Aboriginal and Treaty Rights, and to ensure that no undue financial hardship is imposed on already impoverished First Nation governments and communities.

SUMMARY OF RECOMMENDATIONS

In 1977 a political commitment was made by the federal Crown to First Nation leaders that consultations would precede the application of the *CHRA*. The honour of the Crown is directly implicated by this commitment; however, the introduction of Bill C-44 makes it explicitly clear that the federal government does not intend to engage discussions with First Nations on this very important issue. While such consultations are integral to the legitimacy of both the process and substance of Bill C-44, the following recommendations, being critically important to the Bill, are not intended to replace or dismiss the duty of the federal government to consult directly with First Nations regarding the application of the *CHRA* to First Nation communities.

Recommendation No. 1 - Non-Derogation Clause: That Bill C-44 be amended to include a non-derogation clause in the *CHRA*, similar to section 25 of the *Constitution Act* 1982, to protect established and asserted Aboriginal and Treaty Rights. The suggested language of a non-derogation clause is set out in Schedule 'A' to this submission.

Recommendation No. 2 - Interpretive Provision: That Bill C-44 be amended to include an interpretative clause so that the Human Rights Commission, Tribunal and courts will be guided in their application of the *CHRA* to the unique collective inherent rights, interests and values of First Nation peoples and communities. The suggested language of an interpretative provision is set out in Schedule 'B' to this submission.

Recommendation No. 3 - Transition Period: That section 3 of Bill C-44 be amended to extend the transition period for First Nations from 6 months to 36 months.

Recommendation No. 4 - Operational Review: That Bill C-44 be amended to include a provision for a joint First Nations - Canada operational review to commence immediately, and no later than 18 months after the Bill receives Royal Assent. This will enable Canada and First Nations to identify the extent of preparation, capacity and fiscal and human resources required to comply with the application of the *CHRA* and to engage discussions regarding sustainable fiscal arrangements.

Recommendation No. 5 - Financial Resources and Capacity Building: That the repeal of section 67 be conditioned upon a federal commitment to establish sustainable fiscal arrangements with First Nations that will enable First Nations to develop appropriate institutions and dispute resolution mechanisms critical to ensure compliance with the *CHRA*, fulfill new responsibilities and manage new risks.

Recommendation No.6 - First Nation Institutions: That the federal government endorse and implement the recommendation by the Human Rights Commission to establish independent First Nations institutions to consider complaints against First Nation governments, agencies and institutions. This is an important opportunity to address access to justice issues and incorporate culturally appropriate alternative dispute resolution and community level redress mechanisms.

Recommendation No. 7 - Aboriginal Authority: That section 3 of Bill C-44 be amended to define "aboriginal authority" to include "any First Nation government including a band council, tribal council or governing authority operating, or administering programs and services pursuant to the *Indian Act*."

1.0 INTRODUCTION

When the *CHRA* was introduced in 1977, the Government of Canada assured First Nations that it would not apply the *CHRA* to the *Indian Act* and force consequential amendments to the *Indian Act* without full consultation with First Nations communities. Section 67 was the temporary mechanism used to shield the *Indian Act,* and actions taken pursuant to the *Indian Act,* from human rights scrutiny pending a full and open discussion regarding First Nation human rights.

Thirty years later, the exemption remains intact despite previous attempts at repeal by successive governments, recommendations by various domestic and international bodies, including the Canadian Human Rights Review Panel and the Canadian Human Rights Commission. As well, there have been similar calls from various First Nation individuals and organizations across Canada. It is clear that the exemption is a historical anomaly, and that the repeal of section 67 of the *CHRA* is both necessary and inevitable – *but such a repeal must be carried out correctly to safeguard the unique circumstances of First Nations*.

Human rights are fundamental to all peoples. The AFN and First Nation governments are committed to ensuring that the full range of human rights of our citizens are protected and advanced. Indeed, in the past year alone, we have witnessed many missed opportunities to alleviate the crushing poverty that prolongs some of the most pressing human rights issues in our communities, such as the chronic housing shortage, lack of access to safe drinking water, and child welfare issues. There is no question that *all* First Nation citizens must have access, as a minimum, to human rights standards and protections equivalent to those enjoyed by *all* Canadians. At the same time, however, First Nation peoples have inherent and constitutionally entrenched collective Aboriginal and Treaty Rights that constitute a unique set of human rights that must not be jeopardized in the zeal to apply "individual" human rights to First Nations. Therefore, the crux of this issue is about the best way to balance the individual human rights and collective constitutional rights of First Nation peoples in Canada.

2.0 THE CONSTITUTIONAL IMPERATIVE

The premise upon which Bill C-44 is proceeding is of utmost importance. Because this legislative change directly impacts both individual and collective rights of First Nation peoples, it necessarily engages the process of reconciliation between First Nations and the Crown that is demanded by the *Constitution Act*, s. 35(1). Reconciling First Nations' jurisdiction with the assertion of Crown sovereignty necessarily involves adapting Canadian laws and legal systems in a manner that accommodates First Nations governance. Such accommodation and adaptation must provide opportunities for the expression and exercise of First Nation governance within the adjudication of human rights disputes. Ultimately, any legislative change must provide space and opportunity for First Nations to institute their governance structures in keeping with constitutional principles, including the protection of both individual and collective rights.

The honour of the Crown is always at stake in its dealings with First Nation peoples. In keeping with this constitutional principle, at a minimum, the federal government must honour the promise made to First Nations in 1977 to engage in consultations prior to the application of the *CHRA* to the *Indian Act*. Quite apart from the promise made to First Nations in 1977, recent court cases have confirmed that the federal government cannot unilaterally proceed with enacting legislation that has the potential to infringe Aboriginal or Treaty Rights or affect

Aboriginal interests without first consulting with, and possibly accommodating, First Nations rights and interests.

Ideally, the federal government ought to have engaged in discussions with First Nations prior to the unilateral repeal of section 67 of the *CHRA*. At a minimum, the honour of the Crown and the requirement for reconciliation of First Nations and Crown sovereignty imposes an obligation on the federal government to analyze the potential impacts of the repeal of section 67 on the Aboriginal and Treaty Rights of First Nation peoples <u>before</u> proceeding with the enactment of this legislation. Rather, the federal government chose to defer review of the application of the *CHRA* five years after its application. Understandably, this raises questions amongst First Nations regarding the depth of the Crown's honour.

2.1 Addressing Potential Impacts on Aboriginal and Treaty Rights

a.) Non-Derogation Clause

The Supreme Court has repeatedly acknowledged the unique and distinct legal, historical, political and cultural status of First Nation peoples in Canada, which should be reflected in the application of the *CHRA* as it is in the *Charter of Human Rights and Freedoms.* In 1982, Parliament determined that it was necessary to include a non-derogation clause when enacting the section 15 equality rights provision of the *Charter* in order to ensure the protection and preservation of the inherent collective Aboriginal and Treaty Rights contained in section 35(1) of the *Constitution Act* 1982.

The essence of human rights legislation is the protection of individual rights of Canadian citizens. However, First Nations also possess constitutional rights that are collective in nature, and cultural values, norms and legal traditions that are distinct to First Nations. Therefore, the dynamic, complicated process of reconciliation cannot be achieved by unilateral legislative Crown action. The necessity of striking the appropriate balance in the application of the *CHRA* to First Nations via the *Indian Act* is central to the reconciliation process and must be achieved in a collaborative manner. To do otherwise may create significant potential for the *CHRA* to adversely impact the constitutionally protected collective rights of First Nation peoples.

In its Report entitled "A Matter of Rights - Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of *CHRA*", the Human Rights Commission did not support the inclusion of a non-derogation clause in the *CHRA.* The Commission argued that "such a provision would be redundant" because section 25 of the Charter is a constitutional provision that all Canadian laws are subject to. Section 25 of the *Charter* provides a mechanism for balancing the collective rights recognized by section 35(1) of the *Constitution Act, 1982*, and the individual rights guaranteed by section 15 of the *Charter.* In particular, section 25 provides, in part that:

> The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada…

However, section 25 of the *Charter* does not apply to the *CHRA.* There are clear examples of cases that strengthen the need to include a non-derogation clause to protect Aboriginal and Treaty Rights from application of the *CHRA*. Without such a clause it is safe to assume that First Nations, who in good faith exercise their governance authority to protect the Aboriginal and Treaty Rights of their citizens, will be forced to bring constitutional challenges on a number of areas, including the allocation of land and citizenship in the community, among others. It may be, for example, that a First Nation has a licensing service that provides preferential allocation of fishing privileges to First Nation citizens as compared to persons who are non-First Nation citizens. A non-First Nation citizen then files a complaint of discrimination under the *CHRA*.

In these circumstances, a non-derogation clause would provide a complete defense to an allegation that a non-First Nation citizen has suffered discrimination and would make costly litigation unnecessary. That is, if the language of the *CHRA* expressly accommodates Aboriginal and Treaty rights through a non-derogation provision, no constitutional challenge alleging that the *CHRA* violates a section 35 right could be brought.

Further, the lack of uniform or consistent legislation in this regard may also create unnecessary ambiguity surrounding the weight or role of Aboriginal and Treaty rights within the context of applying the *CHRA*. The discrepancy in the language between the *CHRA* and *Charter* could, at minimum, result in the application of different legal analyses and inconsistent outcomes with regard to the same or very similar fact patterns and legal principles simply due to the lack of uniformity.

Currently, Bill C-44 does not contain any provision for the protection and safeguarding of constitutionally protected Aboriginal and Treaty Rights. Owing to the fact that the non-derogation clause contained in section 25 of the *Constitution Act, 1982*, does not apply to the *CHRA*, a provision analogous to section 25 is required in the *CHRA* to ensure that it is interpreted in a manner that respects, rather than adversely impacts, constitutionally protected Aboriginal and Treaty Rights. Therefore, Bill C-44 requires an amendment to include a non-derogation clause similar to section 25 of the *Constitution Act* 1982.

Recommendation No. 1 - Non-Derogation Clause: That Bill C-44 be amended to include a non-derogation clause in the *CHRA*, similar to section 25 of the *Constitution Act* 1982, to protect established and asserted Aboriginal and Treaty Rights. The suggested language of a non-derogation clause is set out in Schedule 'A' to this submission.

b.) Interpretive Provision

While a non-derogation clause provides a general form of protection by preventing the application of the *CHRA* in a manner that does not abrogate or derogate Aboriginal and Treaty rights, an additional interpretative provision is necessary to more specifically guide adjudicative analyses in order to strike an appropriate balance between individual and collective rights. It is instructive that both the Canadian Human Rights Review Panel and the Human Rights Commission recommended that an interpretive provision be introduced to assist the Commission and Tribunal in adjudicating claims against First Nation governments, agencies and institutions. However, Bill C-44 does not contain an interpretive clause or set out any process for development of an interpretive clause.

Once the *CHRA* is applicable, the Canadian Human Rights Commission, tribunal and courts will be required to strike the delicate balance between collective and individual rights. In our view it is critical that Bill C-44 be amended to include such a provision to ensure that the *CHRA* is undertaken in a manner consistent with the exercise of First Nation governance authority, including customary laws, values and traditions that have provided form and substance to First Nation governments since time immemorial. This is of particular concern to First Nations given that the Human Rights Commission, tribunal and the *CHRA* itself has evolved in context of protecting individual human rights, and has not been informed by the unique constitutional and cultural realities of First Nation peoples. Traditional knowledge and laws ought to be considered and accommodated by a human rights adjudicator when seeking a balance between competing individual and collective rights. This can be most readily achieved through an interpretive provision.

An interpretive provision is also of vital importance to ensure that special programs and services can continue to be provided to First Nations under the *Indian Act.* Without an interpretative provision in the *CHRA*, currently, First Nations will only have the benefit of relying on the "bona fide justification defense", which has become an increasingly difficult threshold to meet. For example, First Nations who exercise their authority to govern under the *Indian Act* in areas of allocation of lands and resources, citizenship, or even in the delivery of programs and services, will face an onerous evidentiary burden under the *CHRA* to justify any preferential treatment to address matters of priority within the community among their own citizens. As well, ironically First Nation governments would also be vulnerable to claims by non-First Nation people against action taken for their own citizens that ameliorate the current inequalities in, for example, areas of education, employment and economic development, even where warranted.

Therefore it is strongly recommended that Bill C-44 be amended to include an interpretive provision that will statutorily obligate the Canadian Human Rights Commission to develop the appropriate guidelines and regulations to achieve an appropriate balance between individual and collective rights of First Nations, including the inherent authority of First Nations to address the human rights of their citizens.

Recommendation No. 2 - Interpretive Provision: That Bill C-44 be amended to include an interpretative clause so that the Human Rights Commission, Tribunal and courts will be guided in their application of the *CHRA* to the unique collective inherent rights, interests and values of First Nation peoples and communities. The suggested language of an interpretative provision is set out in Schedule 'B' to this submission.

3.0 IMPLEMENTATION ISSUES

The AFN has consistently advocated for implementation issues to be dealt with before any repeal of section 67. Our primary interest in advancing this option is to minimize the potential financial hardship and other impacts that the repeal of section 67 will have on First Nation communities. First Nations require adequate time and resources to prepare for and meet the needs of their communities given the potentially significant impacts flowing from a repeal of section 67 and the full application of the *CHRA.*

Successful implementation of the *CHRA* would be reasonably attainable by the extension of the transition period to 36 months. During this period, First Nations would require a federal commitment to undertake a joint First Nation-Canada operational analysis and commitments

to negotiate sustainable fiscal arrangements that address the capacity building needs of First Nations. Furthermore, an appropriate transition period could provide an opportunity address some access to justice issues, including the development of First Nation institutions and community level redress mechanisms that recognize the inherent authority of First Nations to address the human rights of their citizens and more accurately reflect First Nation legal traditions, customs and practices.

3.1 Addressing Implementation Issues

a) Transition period

In its Report, the Human Rights Commission recommended the immediate repeal of section 67 with a deferral of the application of the *CHRA* to First Nations for a period of 18 to 30 months to provide time to develop an interpretation clause and work out implementation issues. However, section 3 of Bill C-44 merely provides a 6 month period of immunity for First Nations from complaints in regard to acts or omissions "made in the exercise of powers or the performance of duties and functions conferred or imposed by or under the *Indian Act."* If successful transition is to be achieved, an appropriate transition period must be chosen which provides the necessary time for change at the community and institutional levels.

Application of the *CHRA* has the potential to trigger critical capacity, implementation and planning issues for First Nations, as well as related changes to administrative policies and specialized training requirements. In light of the volume of preparation required to responsibly plan for the application of the *CHRA* and the labour intensive nature of the work that must be done, it is strongly recommended that the current transition period in Bill C-44 be extended from 6 to 36 months. It is precisely the period and the approach adopted by Parliament when it enacted Section 15 of the *Charter of Rights and Freedoms* in 1982. Subsection 32(1) of the *Charter* provides that it applies to federal, provincial and territorial legislatures; however, Subsection 32(2) deferred the operation of the equality provisions in Section 15 for a three year period. Clearly, at the time the *Charter* was promulgated, Parliament understood the mammoth task faced by provincial, federal and territorial governments in order to prepare for and ensure compliance with Section 15. The same consideration ought to be given to First Nation governments once section 67 of the *CHRA* is repealed.

Recommendation No. 3 - Transition Period: That section 3 of Bill C-44 be amended to extend the transition period for First Nations from 6 months to 36 months.

i.) Operational Analysis

In keeping with the honour of the Crown, the federal government should work with First Nations during the extended 36 month transition period to prepare for application of the *CHRA*. Specifically, the federal government should ensure that mutually satisfactory implementation measures and concomitant resources are in place so that First Nations can prepare for and meet new responsibilities flowing from the application of the *CHRA.* This is necessary so that all First Nation citizens and our governments suffer no undue financial hardship. The inadequacy of resources provided to First Nations to implement Bill C-31 in 1985, and the hardships and internal divisions that followed serves as a painful reminder of the effect of deferring implementation issues *after* passage of a bill. It would be irresponsible for the federal Crown to proceed with a repeal of section 67 of the *CHRA* without first ensuring

that First Nations are provided adequate resources, mechanisms and institutions to fulfill new responsibilities and mitigate risks. It is a matter of simple due diligence.

Thus, we propose that that Bill C-44 be amended to include a provision for a joint First Nations - Canada operational review to commence immediately, and no later than 18 months, after Bill C-44 receives Royal Assent. This will enable Canada and First Nations to identify the extent of preparation, capacity and fiscal and human resources required to comply with the application of the *CHRA* and to engage discussions regarding sustainable fiscal arrangements.

Recommendation No. 4 - Operational Review: That Bill C-44 be amended to include a provision for a joint First Nations - Canada operational review to commence immediately, and no later than 18 months, after the Bill receives Royal Assent.

ii.) Financial Resources and Capacity Building

Most First Nations lack the financial and human resources to undertake preventative or remedial measures to minimize risks and to manage the new exposure to potential liability that they will face if Bill C-44 is adopted. For example, many First Nations have public buildings in their communities that, due largely to an arbitrary 2% cap on federal funding, are not accessible to persons with physical challenges. Without an infusion of financial resources from the federal government, most First Nations lack the resources to improve access to public buildings in their communities.

Similarly, First Nations also face significant exposure to liability as a result of chronic housing shortages on most reserves. With estimates of shortfalls ranging between 20,000 and 87,000 housing units on reserve, even under the most conservative of scenarios, there is enormous potential for complaints to be brought by First Nation citizens on the basis of various enumerated grounds.

It is unlikely that the critical housing backlog will be reduced in 6 or even 36 months. It is highly probable that the Commission will be flooded with complaints against First Nation governments in respect of acts and omissions that they lack the financial resources to rectify in areas such as housing, education, or access to safe drinking water. Without adequate sustainable funding to respond to and/or avert such complaints, limited First Nations resources will have to be re-directed to defending against such complaints and, eventually, taking remedial action. Both First Nation individuals and First Nation governments will be negatively impacted if funding for essential programs and services has to be diverted in already critically under resourced communities.

Recommendation No. 5 - Financial Resources and Capacity Building: That the repeal of section 67 be conditioned upon a federal commitment to establish sustainable fiscal arrangements with First Nations that will enable First Nations to develop appropriate institutions and dispute resolution mechanisms critical to ensure compliance with the *CHRA*, fulfill new responsibilities and manage new risks.

iii.) First Nations Institutions

In their Report, the Canadian Human Rights Commission raises the need for viable community level redress mechanisms and the possible enactment of a First Nations Human Rights Act, as well as the establishment of First Nations institutions similar to the Commission and Tribunal.

The AFN strongly endorses the recommendation by the Commission to establish First Nations institutions to consider complaints against First Nation governments, agencies and institutions.

Based on the need to achieve a balance between individual and collective rights, there may be other bodies more suited than the Canadian Human Rights Commission and Tribunal processes to adjudicate claims against First Nation governments, agencies and institutions and restore social harmony in First Nations communities. First Nations concerns regarding the appropriateness of the Commission and Tribunal to adjudicate claims on reserve will be heightened if the federal government proceeds with the repeal of section 67 without enacting a non-derogation clause or an interpretive clause.

Recommendation No.6 - First Nation Institutions: That the federal government endorse and implement the recommendation by the Human Rights Commission to establish independent First Nations institutions to consider complaints against First Nation governments, agencies and institutions. This is an important opportunity to address access to justice issues and incorporate culturally appropriate alternative dispute resolution and community level redress mechanisms.

b) Aboriginal Authority

Section 3 of Bill C-44 requires greater clarity with respect to the use of the language "aboriginal authority". Because the *Indian Act* applies exclusively to First Nation peoples, governments, tribal councils or other institutions that administer programs and services or perform duties or functions under the *Indian Act*, and because the *Indian Act* does not define "aboriginal authority", the AFN proposes that Bill C-44 clearly articulate the subjects that fall under the transitional provision.

Recommendation No. 7 - Aboriginal Authority: That section 3 of Bill C-44 be amended to define "aboriginal authority" to include "any First Nation government including band council, tribal council or governing authority operating, or administering programs and services pursuant to the *Indian Act*."

4.0 CONCLUSION

While the need for a repeal of section 67 of the CHRA is great, the need to do so properly and effectively – while protecting precisely those rights that are unique to First Nations – is even greater. Hasty action will only lead to hasty results; First Nations cannot afford either. Legislative change will not, in and of itself, remedy the range of intolerable situations facing First Nation citizens. If the real interest is in ensuring that First Nations have a level of human rights that is both comparable to other Canadians *and* reflective of their own unique circumstances, then governments will have to work *with* First Nations to not only apply the *CHRA,* but to ensure that the sub-standard social and economic living conditions of many First Nations is also addressed. As has been referenced in this submission, the arbitrary 2% cap on core spending for First Nations, implemented in 1996 and continuing to this day, would be the most fruitful starting point. Human rights legislation, without an adequate focus on building a sound socio-economic base, is only a small step towards addressing the real human rights deficiencies experienced by many First Nations in Canada. We hope that this Committee – this Government – will see the wisdom in this.

Schedule "A"

Non-Derogation Clause

The repeal of Section 67 of the *Canadian Human Rights Act* shall not be construed in a manner which abrogates or derogates from any Aboriginal or treaty rights, including customary laws and traditions that pertain to the First Nations peoples of Canada such as:

a. any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
b. any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Schedule "B"

Interpretative Provision

The interpretation and application of the *Canadian Human Rights Act* shall take into account:

a. the entitlement of a First Nation government to provide programs and services whether exclusively or on a preferential basis to its members; and
b. the entitlement of a First Nation government to give preference to its members in training and hiring employees and contractors; and
c. the entitlement of a First Nation government to give preference to its members in the allocation of land, resources or other economic benefits to its members; and
d. the entitlement of a First Nation government to give preferential or exclusive treatment to its members in matters relating to the exercise of cultural, spiritual or other traditional practices or activities; and
e. the entitlement of a First Nation government to give preferential or exclusive treatment to its members in matters of concern and priority to the community, where reasonably necessary; and
f. the entitlement of a First Nation government to consider and apply indigenous legal traditions and customary laws in a manner in keeping with principles of equality and justice.