Aboriginal Affairs and Northern Development Canada
Affaires autochtones et Développement du Nord Canada

Report to Parliament on the Five-Year Review of the Repeal of Section 67 of the *Canadian Human Rights Act*

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EXECUTIVE SUMMARY

Overview

The *Canadian Human Rights Act* (*CHRA*), which was enacted in 1977, aims to ensure equality of opportunity and freedom from discrimination in federal jurisdiction. However, section 67 of the *CHRA* previously shielded the provisions of the *Indian Act* and any decisions made or actions taken by the federal government and Band Councils under or, pursuant to, the *Indian Act* from the application of the *CHRA*. While this shield was intended to be a temporary measure, the *Indian Act* exemption remained in effect until the passage by Parliament of *An Act to Amend the Canadian Human Rights Act* (Bill C-21) in 2008.

An Act to Amend the Canadian Human Rights Act (*Act*), which received *Royal Assent* on June 18, 2008, repealed section 67 of the *CHRA*, thereby lifting the exemption of the application of the *CHRA* in respect of decisions made or actions taken by the federal government and Band Councils under or, pursuant to, the *Indian Act*. The repeal was effective immediately in June 2008 for the federal government, but provided for a three-year grace period before coming into force for Band Councils in June 2011. Decisions, actions or omissions made under or pursuant to the *Indian Act* that may be subject to a complaint must, however, fit within the *CHRA*'s area of application, that is, employment and the provision of goods, services, facilities or accommodation customarily available to the general public. Consequently, it is only to the extent that these are deemed to be a service, the provision of facilities or accommodation, or employment that decisions or actions taken pursuant to, or under the *Indian Act* may be subject to a complaint made under the *CHRA*.

The Canadian Human Rights Commission (CHRC) is responsible for the ongoing administration of the *CHRA*, including the screening and investigation of complaints, the provision of mediation and conciliation services for the settlement of complaints, where warranted, the referral of complaints to the Canadian Human Rights Tribunal (CHRT) and representing the public interest before the CHRT and courts. In keeping with this mandate, and as part of the implementation of the amendments to the *CHRA* lifting of the section 67 exemption, the role of the CHRC was expanded to include activities relating to the readiness of First Nations to comply with the *CHRA*. Following the repeal of section 67, the CHRC received $5.7 million in funding over 2009-2014 for the Commission's engagement and implementation activities with First Nations and other stakeholders, as well as for the purpose of building its organizational infrastructure to be ready to respond to new demands of the repeal.

The *Act* requires the Government of Canada to prepare two reviews jointly with organizations representing the interests of First Nations, culminating in reports to be tabled in Parliament.

The first of these reviews, on the readiness of First Nations to comply with the amended *CHRA*, was undertaken by AANDC with funding provided to the Assembly of First Nations (AFN), the Native Women's Association of Canada (NWAC) and the Congress of Aboriginal Peoples CAP) to conduct independent reviews and contribute chapters to the report, which was tabled in Parliament on June 17, 2011.

The *Act* also requires the Government of Canada to undertake jointly with organizations representing the interests of First Nations peoples a comprehensive review of the effects of the repeal of section 67

of the *CHRA* within five years after the day on which the *Act* received *Royal Assent*, and to submit a report of this review to both Houses of Parliament.

In keeping with the legislative requirements under the amended *CHRA*, Aboriginal Affairs and Northern Development Canada (AANDC or the Department) worked in cooperation with National Aboriginal Organizations to conduct the five-year review and received information from the CHRC to develop a report on the impacts of the 2008 repeal of section 67 of the *CHRA*.

The Department made available resources to the AFN, NWAC and CAP to lead activities with their respective membership, as a means of review, information gathering and reporting on the effects of the repeal of section 67 on First Nations and their governments.[1] AANDC also gathered data provided by the CHRC on the number and nature of post-repeal complaints against the federal government and Band Councils, which it supplemented with departmental information on complaints. Finally, the Department forwarded letters to the Chiefs and Councils of all First Nations across Canada operating under the *Indian Act* inviting them to voluntarily provide written comments and input on the impact of the repeal of section 67, and launched an online web tool through which individuals could provide their views and perspectives.

This report contains information on the impacts of the repeal since 2008, including: the number and nature of complaints filed with the CHRC against the Government of Canada and Band Councils that can be linked to the repeal; the findings of the respective reviews of the NWAC and CAP on the impacts on First Nations of the repeal of section 67 of the *CHRA*; and the input received from individuals through AANDC's online process.

In order to provide context in respect of the findings of the five-year review, this report also presents an overview of the *CHRA*, including section 67 and information on the purpose, intent, application and implementation of the 2008 amendments to the *CHRA* through the repeal of section 67. In addition, the report provides highlights of the findings of the study on the readiness of First Nations communities, governments and organizations to comply with the *CHRA*, which was previously submitted to Parliament in June 2011.

The results of this review will provide the CHRC, the Government of Canada, First Nations governments and communities, and other stakeholders with the information needed to better identify potential issues.

Summary of the Effects of the Repeal of Section 67 on Human Rights Complaints

As part of the five-year review and for the purposes of preparing this report, the Department received information from the CHRC on the number and nature of complaints against both the Government of Canada and Band Councils covering the post-repeal period, from June 18, 2008 to March 4, 2014. Information provided by the CHRC relating to human rights complaints against the federal government and contained in this report, has been supplemented by data on the number and nature of complaints against AANDC that is tracked and monitored by the Department.

[1] While the AFN initially agreed to participate in the five-year review, it subsequently withdrew its participation in this initiative following a Chiefs Resolution passed during its Annual General Assembly in July 2014.

According to this information, the CHRC reports that it had received a total of forty-nine (49) complaints against the federal government since June 18, 2008 that would have otherwise been shielded by section 67 prior to the June18, 2008 amendments. Forty-four (44) of these complaints were against AANDC, one (1) against the Canada Mortgage and Housing Corporation, two (2) against Canada Revenue Agency and two (2) against Health Canada. Of the forty-nine (49) complaints received, the Commission accepted twenty-six (26), of which, twenty-five (25) have been filed against AANDC and one (1) against Health Canada. All other complaints have been closed by the CHRC. One of the key administrative functions of the CHRC is to screen all formal complaints that are submitted pursuant to the *CHRA*, to determine whether to accept a complaint for further action or whether to close a complaint because it does not meet the grounds for complaint set out in the *CHRA*.

The majority of the twenty-five (25) active (open) post-repeal complaints against AANDC that are relevant to the review of the effects of the repeal of section 67 cite national or ethnic origin, family status or race as the grounds for discrimination and relate to the following main issues:

- Indian registration pursuant to the *Indian Act*.

- Funding of programs for individuals with disabilities and their families, child and family services, and special education.

- Other issues such as leasing, Band custom election, and consultation issues.

In respect of post-repeal complaints against Band Councils, the Commission reported that, between June 18, 2011 and March 4, 2014, it received ninety-nine (99) complaints against First Nations governments dealing with subject matters that were previously shielded by section 67, prior to the amendments going into effect for First Nations governments on June 18, 2011. According to the CHRC, thirty-six (36) of the ninety-nine (99) complaints directly related to the post-repeal were accepted by the Commission. The bulk of the complaints against First Nation governments cited family status and national or ethnic origin as discriminatory grounds, and pertained to employment, the provision of services and retaliatory action(s).

Summary of the Findings of the National Aboriginal Organizations

The Native Women's Association of Canada (NWAC) and the Congress of Aboriginal Peoples (CAP) respectively established their own approaches to the collection and analysis of information on the impacts of the repeal of section 67 on First Nations. NWAC conducted an online survey to collect data and information on the views and perspectives of individuals and held discussions with its membership on this subject during its July 2014 Annual General Meeting. CAP held a one-day roundtable session with its affiliate organizations to gather perspectives on the effects of the repeal.

It is important to note that, while the National Aboriginal Organizations outlined their approach and/or methodology to their respective reviews, the perspectives expressed by the organizations in their respective reports and as presented in this report are entirely their own. Neither AANDC, nor any other department or agency of the federal government has verified the information, conclusions and recommendations contained in their reports.

NWAC's review focuses on the impacts of the section 67 repeal on First Nations governed under the *Indian Act*, and in particular the impacts on First Nations and other Aboriginal women residing on and off-reserve. As part of its analysis of the findings of the engagement with its membership, NWAC identified the following general observations:

- Aboriginal women continue to face multiple barriers and discrimination in their daily lives.

- While the amendments to *CHRA* have begun to facilitate Aboriginal women's access to human rights protection, many challenges remain in respect of public education and training for First Nations governments, employers and for the women themselves in understanding their rights and responsibilities, and how they can launch a complaint or address discrimination.

- More time, effort, training and education for both the federal government and the First Nations governments, and the CHRC is required to effectively address the needs of Aboriginal women in a culturally relevant way so that they feel safe and are able to participate in the complaints process.

- Aboriginal women consistently raised the need for access to training so that they can be made aware of their rights, and how to implement them, whether at the community level or with the CHRC.

- Aboriginal women repeatedly identified issues relating to the lack of access to justice and to information in order to bring their complaints forward. They indicated that the CHRC process is daunting and difficult to navigate. They will often sacrifice their own personal well-being by choosing to abandon a claim and not proceed with an investigation, because they feel it is too difficult for them to manage.

- Aboriginal women also identified complicated legal and cultural issues that are often at odds with one another in identifying a resolution. They indicated that because the *CHRA* and the 2008 amendments to the legislation are not designed in a manner that is culturally responsive to First Nations, it is difficult to reconcile the two when searching for a solution to a problem. They stated that the legislation, in general, does not respect Aboriginal cultures and traditions.

- Aboriginal women reported that filing a *CHRA* complaint can be difficult if they live in a small or remote community, where there is less anonymity. They indicated that they fear for their well-being and often abandon discrimination complaints before they reach the investigation stage because of their fears of retaliation. They have also indicated mistrust in the ability of the CHRC or the complaints process within the justice system to be able to protect and/or help them and view it as inaccessible and re-victimizing. Additional obstacles to accessing the *CHRA* complaints process stem from poverty, parenting and family responsibilities, low educational attainment and literacy levels, or limited access to information technology within their home or community.

- Most women indicated that they did not believe that the First Nations governments had access to training or the capacity required to take the steps needed to comply with the *CHRA*, and to provide what is required in law or any type of accommodation within the workplace for any women alleging discrimination.

CAP's report adopts a more pan-Aboriginal approach to the review and analysis of the effects of the lifting of the section 67 exemptions. As part of its findings CAP identified the following issues:

- A general lack of awareness of the *CHRA* amongst the Congress' constituents.
- Insufficient capacity for Aboriginal peoples, their communities and organizations to fully access the *CHRA* and the protections it is supposed to provide.
- Insufficient financial and human resources required to address human rights issues and to prevent the full range of possible complaints under the *CHRA*.

Both organizations emphasized that the issues they had identified, as part of the First Nations needs assessment study, which was tabled in Parliament in June 2011, continue to persist and both organizations reiterated the recommendations they respectively tabled as part of that study in their reports of the five-year review.

Summary of the Findings of AANDC's Outreach and Online Process

The Department received limited input from First Nations governments and individuals through its outreach and online process. However, individuals who did provide their views and perspectives raised issues and concerns that echoed many of the findings of both the NWAC and CAP reviews. All the respondents identified as members of a First Nation government and outlined the following key issues and concerns pertaining to First Nations governments:

- The lengthy and costly process in defending against and adjudicating *CHRA* complaints.
- The lack of preparation, training, capacity and resources of First Nations governments to implement the changes to the *CHRA* for compliance.
- The need for resources to update community buildings in order to accommodate the access needs of disabled community members.
- The need for government support to First Nations in the development of their own laws in accordance with their indigenous ways, traditions and cultures, including the development First Nations-specific human rights protections and mechanisms.

CHAPTER 1: THE APPROACH AND PURPOSE OF THE FIVE-YEAR REVIEW

An Act to Amend the Canadian Human Rights Act, which received *Royal Assent* on June 18, 2008, repealed section 67 of the *CHRA*, thereby lifting the exemption of the application of the *CHRA* in respect of decisions made or actions taken by the federal government and Band Councils under or, pursuant to, the *Indian Act*. The repeal was effective immediately in June 2008 for the federal government, but provided for a three-year grace period before coming into force for Band Councils on June 18, 2011.

The *Act* requires the Government of Canada, to undertake jointly with organizations representing the interests of First Nations peoples, a comprehensive review of the effects of the repeal of section 67 of the *CHRA* within five years after the day on which the *Act* received *Royal Assent*, and to submit a report of this review to both Houses of Parliament.

> *2. (1) Within five years after the day on which this Act receives royal assent, a comprehensive review of the effects of the repeal of section 67 of the Canadian Human Rights Act shall be jointly undertaken by the Government of Canada and any organizations identified by the Minister of Indian Affairs and Northern Development as being, in the aggregate, representative of the interests of First Nations peoples throughout Canada.*
>
> *(2) A report on the review referred to in subsection (1) shall be submitted to both Houses of Parliament within one year after the day on which the review is undertaken under that subsection.*[2]

In keeping with this legislative requirement, resources were made available to the AFN, NWAC and CAP to lead activities with their respective membership, as a means of review, information gathering and reporting on the effects of the repeal of section 67 on First Nations and their governments. The AFN was also offered funding and had initially agreed to participate in this initiative. It subsequently withdrew its participation in the five-year review following a Chiefs Resolution passed during its Annual General Assembly held in Halifax, Nova Scotia, July 15-17, 2014.[3]

Each of the participating organizations established its own approach to the collection and analysis of information on the impacts of the repeal of section 67 on First Nations communities and governments. NWAC conducted an online survey to collect data and information on the views and perspectives of respondents and held discussions with its membership on this subject during its July 2014 Annual General Meeting. CAP held a roundtable session with its affiliate organizations to gather perspectives on the effects of the repeal.

In addition to the contributions of the participating National Aboriginal Organizations, AANDC received information from the CHRC on the number of human rights complaints related to the repeal of section 67 of the *CHRA* since 2008. To this end, the Department received data from the CHRC on the number

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[2] *An Act to Amend the Canadian Human Rights Act*, S.C. 2008, c.30. Available online at: http://laws-lois.justice.gc.ca/eng/annualstatutes/2008_30/page-1.html.

[3] *Five Year Review of the Application of the CHRA on First Nations,* Resolution No. 21/2014, Assembly of First Nations, Annual General Assembly, Halifax, Nova Scotia, July 15-17, 2014. Available online at: http://www.afn.ca/uploads/files/resolutions/afn_aga_2014_resolutions.pdf.

and nature of complaints against both the Government of Canada and Band Councils covering the post-repeal period, from June 18, 2008 to March 4, 2014. Information provided by the CHRC relating to human rights complaints against Canada was supplemented by data on the number and nature of complaints against AANDC that is tracked and monitored by the Department.

Finally, the Department forwarded letters to Chiefs and Councils of all First Nations across Canada operating under the *Indian Act* inviting them to voluntarily provide written comments and input on the impact of the repeal of section 67, and launched an online web tool inviting input and comments from interested individuals on the effects of the repeal.

The purpose of this report is to provide information on the effects of the repeal of section 67 of the *CHRA* on the Government of Canada and on First Nations and their governments. Accordingly, the report contains information on the number and nature of human rights complaints filed with the CHRC against both the federal government and Band Councils and heard by the CHRT that are linked to the repeal. The report also includes highlights of the analysis and findings of the reviews conducted by NWAC and CAP, based on their respective engagement activities with their membership, as well as on the input received from individual respondents through the Department's online process.

In order to provide a level of context in respect of the findings of the five-year review, this report also presents an overview of the *CHRA* and section 67 of the *CHRA*, and on the purpose, intent, application and implementation of the 2008 amendments to the *CHRA* through the repeal of section 67. In addition, the report provides highlights of the findings of the study on the readiness of First Nations communities and organizations to comply with the *CHRA*, which was submitted to Parliament in June 2011.

The results of this review will provide the CHRC, the Government of Canada, First Nations governments and other stakeholders with the information needed to better identify potential issues.

CHAPTER 2: BACKGROUND ON THE *CANADIAN HUMAN RIGHTS ACT* AND THE REPEAL OF SECTION 67

2.1 Overview of the *Canadian Human Rights Act*[4]

The *CHRA*, which was enacted in 1977, prohibits discriminatory practices in areas of employment, accommodation and the provision of goods and services that are customarily available to the public. The *CHRA* applies to federal legislation, federal government departments, agencies and Crown corporations, as well as to federally regulated businesses and industries such as those within the banking and communications sectors. The *CHRA* outlines eleven prohibited grounds of discrimination:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex (including pregnancy and childbirth)
- Sexual orientation
- Marital status
- Family status
- Physical or mental disability (including previous or present drug or alcohol dependence)
- A conviction for which a pardon has been granted or a record suspended.

To ensure effective protection against discrimination in each of these prohibited grounds, the *CHRA* provides a system for the investigation and resolution of discrimination.

Individuals or groups can access human rights protection by filing complaints of discrimination in employment and the provision of services within federal jurisdiction to the CHRC for investigation. The CHRC administers the *CHRA,* including the evaluation and investigation of complaints, providing conciliation services for the settlement of valid complaints, and where warranted, refers complaints to the CHRT.

The CHRT is the quasi-judicial body that is separate from, and independent of, the CHRC. It has the power to conduct hearings, review evidence and make decisions on whether or not discrimination has occurred. The CHRT adjudicates on matters referred to it, and possesses broad remedial powers to address complaints. The Federal Court may enforce decisions of the CHRT.

In addition to its role in administering the complaints process, the CHRC also conducts research and undertakes projects to inform the general public about their rights under the *CHRA*. The Commission also monitors federal programs, policies and legislation that might impact upon the equality rights of vulnerable groups in Canadian society. Moreover, the CHRC works with federally regulated organizations to prevent discriminatory conduct within their environments.

[4] *Canadian Human Rights Act*, R.S.C., 1985, c. H-6. Available online at: http://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html.

With few exceptions, no legislation or action carried out by the federal government or a federally regulated entity is free from human rights scrutiny. However, prior to the June 2008 amendments, section 67 of the *CHRA* ran contrary to this inclusive approach.

2.2 Section 67 of the *Canadian Human Rights Act*

Despite the protections put in place by the *CHRA* in 1977 there was one area which complaints could not be made until June 18, 2008. Section 67 of the *CHRA* explicitly exempted the federal government and Band Councils from complaints of discrimination relating to decisions made pursuant to, or actions arising from, the *Indian Act*. Section 67 stated:

> *Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.*

This exception was originally adopted in 1977 as a temporary legislative provision to allow sufficient time for amendments to provisions of the *Indian Act* that were acknowledged to likely become the subject of *CHRA* complaints against the federal government and Band Councils operating under the *Indian Act*.

The section 67 exemption mostly affected those individuals registered or entitled to be registered as Indians and members of Indian Bands pursuant to the *Indian Act*, as well as individuals (both Aboriginal and non-Aboriginal) ordinarily resident on-reserve, and prevented the application of the *CHRA* to any *Indian Act*-related decision or action, whether by the federal government or Band Councils.[5]

Since its inclusion in the *CHRA*, it was the intention of the Government of Canada to eventually repeal section 67 in order to ensure that all individuals had access to the same protection of human rights. However, it took Parliament three decades to remove the *Indian Act* exemption from the *CHRA*. After numerous attempts between 1992 and 2006, Parliament passed *An Act to Amend the Canadian Human Rights Act*, which came into force on June 18, 2008 for the federal government and June 18, 2011 for First Nations governments, and resulted in the repeal of section 67 of the *CHRA.*[6]

2.3 *An Act to Amend the Canadian Human Rights Act*

An Act to Amend the Canadian Human Rights Act, which received *Royal Assent* on June 18, 2008, repealed section 67 of the *CHRA*, thereby lifting the exemption of the application of the *CHRA* in respect of decisions made or actions taken by the federal government and Band Councils under or, pursuant to, the *Indian Act*. Section 3 of the *Act* states:

> *…an act or omission by any First Nation government, including a band council, tribal council or governing authority operating or administering programs or services under the Indian Act, that*

[5] The *Indian Act* does not apply to the Inuit, Métis and non-status Indians, and therefore, these Aboriginal groupings were not similarly affected by the section 67 exemption, unless individuals of these groupings ordinarily resided on-reserve.

[6] *An Act to Amend the Canadian Human Rights Act*, S.C. 2008, c. 30. Available online at: http://laws-lois.justice.gc.ca/eng/annualstatutes/2008_30/page-1.html.

> *was made in the exercise of powers or the performance of duties and functions conferred or imposed by or under that Act shall not constitute the basis for a complaint under Part III of the Canadian Human Rights Act if it occurs within 36 months after the day on which this Act receives royal assent.*

Sub-section 1.2 of the *Act* includes a provision that requires the CHRC, the CHRT and the courts to consider First Nations legal traditions and customary laws when applying the *Act* in relation to a complaint made against a First Nations government. However, this rule has certain limits in that the First Nation legal tradition or customary law must respect the principle of gender equality.

In anticipation of the passage of the *Act* in 2008, First Nations leaders emphasized that they required additional time to prepare for compliance with the *CHRA*. As a result, the repeal of section 67 was effective immediately in June 2008 for the federal government, but provided for a three-year grace period before coming into force for Band Councils on June 18, 2011. The 36-month grace period for Band Councils was intended to provide First Nations with sufficient time to determine what the repeal meant for their communities and their governments.

Coinciding with the three-year grace period, Section 4 of the *Act* requires the Government of Canada to undertake a study, in collaboration with organizations that represent the interests of First Nations peoples, to identify the extent of the preparation, capacity and fiscal and human resources that will be required in order for First Nations communities, governments and organizations to comply with the *CHRA*. The readiness study was conducted jointly with the AFN, NWAC and CAP and the findings of the study were tabled in Parliament on June 17, 2011.

Section 2 of the *Act* also requires the Government of Canada to undertake jointly with organizations representing First Nations peoples a comprehensive review of the effects of the repeal of section 67 and submit the findings of this review to Parliament. As previously outlined, the five-year review focuses on the effects of the repeal of section 67 on the Government of Canada and First Nations and their governments, and has been conducted in cooperation with the NWAC and CAP, and with information from the CHRC. The findings of the five-year review are presented in Chapter 4 of this report.

2.4 The Application of the Repeal of Section 67

Despite the shield provided by section 67 prior to the amendments to the *CHRA* in 2008, it is important to note that the decisions and actions of many First Nation governments have always been subject to the *CHRA*, as many of these decisions and actions (or omissions) are made pursuant to authorities outside of the *Indian Act*. Examples of decision-making areas that were always subject to the *CHRA*, and remain unchanged by the repeal of section 67, include:

- Decisions of Band Councils and administrators surrounding human resources, such as hiring and dismissal.

- Decisions of Band Councils and administrators relating to infrastructure, such as accommodating persons with disabilities.

- Laws, codes, policies passed by Band Councils and enacted outside of the *Indian Act*, such as First Nations laws passed pursuant to the *First Nations Land Management Act*.
- The decisions of First Nations governments that are not operating under the *Indian Act*, such as self-governing First Nations.[7]

It is also important to note that, the repeal of section 67 did not change the operation of the *Indian Act*. Its provisions continue to apply to those who are registered or entitled to be registered as Indians, members of Indian Bands, Chiefs and Band Councils operating under the *Indian Act* and the federal government.

As of June 18, 2011, decisions or actions of a First Nation government made pursuant to the *Indian Act* may be the subject of a *CHRA* complaint, including decisions and actions relating to:

- By-laws passed and enacted pursuant to section 81 (by-law making powers), section 83 (money by-laws), and section 85.1 (intoxicants) of the *Indian Act*.
- The management of moneys held in trust for Bands.
- The management of Indian lands.

Decisions, actions or omissions made under or pursuant to the *Indian Act* that may be subject to a complaint must, however, fit within the *CHRA*'s area of application, that is, employment and the provision of goods, services, facilities or accommodation customarily available to the general public. Consequently, it is only to the extent that these are deemed to be a service, the provision of facilities or accommodation, or employment that decisions or actions taken pursuant to, or under the *Indian Act* may be subject to a complaint made under the *CHRA*.

It should also be noted that a complainant may be required by the CHRC to pursue other available avenues of recourse before the processes and remedies made available under the *CHRA* can be accessed. Similarly, a decision made by AANDC or other federal departments and agencies, and/or a First Nation government may be considered to fall outside of the jurisdiction of the CHRC because it is not the provision of a good or a service or an employment issue.

As previously mentioned, the application of the *CHRA* affects all First Nations governments who operate under the authority of the *Indian Act.* The three main constituencies that have been identified as being most affected by the repeal are:

- Registered Indians (residing on and off -reserve).
- Members of Indian Bands (residing on and off -reserve).
- Residents on-reserve (both Aboriginal and non-Aboriginal).

[7] The repeal of section 67 of the *CHRA* will not have a significant impact on First Nations that have successfully negotiated self-government arrangements because all First Nations governments operating under self-government are subject to the *CHRA*, as well as the *Charter of Rights and Freedoms*, and largely operate outside of the *Indian Act* regime.

2.5 Implementation of the Repeal of Section 67

The Role of the Canadian Human Rights Commission (CHRC)

The CHRC is responsible for the ongoing administration of the *CHRA*, including the screening and investigation of complaints, the provision of mediation and conciliation services for the settlement of complaints, where warranted, the referral of complaints to the CHRT and representing the public interest before the CHRT and courts. In keeping with this mandate, and as part of the implementation of *An Act to Amend the CHRA* and the lifting of the section 67 exemption, the role of the CHRC was expanded to include activities relating to the readiness of First Nations to comply with the *CHRA*.

Following the repeal of section 67, the CHRC received $5.7 million in funding over 2009-2014 for the Commission's engagement and implementation activities with First Nations and other stakeholders, as well for the purpose of building its organizational infrastructure to be ready to respond to new demands of the repeal.[8]

Under the auspices of its *National Aboriginal Initiative* the CHRC has a leading role in the continued implementation of the repeal of section 67 of the *CHRA* by working with First Nations and other stakeholders to promote and protect the human rights of people throughout Canada. The purpose of the *National Aboriginal Initiative* is to ensure that the Commission, First Nations governments, Aboriginal peoples and other key stakeholders understand and are prepared to deal with the changes that come with the repeal of section 67. As part of this mandate the Commission has been:

- Meeting with First Nations governments and other stakeholders.
- Developing policy and conducting research.
- Providing training sessions for interested First Nations governments and raising awareness.
- Developing relevant guidance on investigative and community-based dispute resolution processes.[9]

As an outcome of these activities, a variety of new resources have been developed and made available to assist in the ongoing implementation of the repeal of section 67 and in supporting First Nation compliance in respect of the *CHRA*, including:

- The development of culturally appropriate training materials for First Nations.
- The facilitation of a research project on community-based conflict resolution processes.
- The development of best practices tool-kits for the use of First Nations governments.
- The development of operational guidance on balancing collective and individual rights for CHRC staff in the review of complaints and for its role of representing the public interest before the CHRT and the courts.[10]

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[8] *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations,* Canadian Human Rights Commission, June 2011. Available online at: http://www.chrc-ccdp.gc.ca/sites/default/files/nmr_eqd-eng.pdf.

[9] Ibid.

[10] *2010 Annual Report*, Canadian Human Rights Commission, 2011. The CHRC *2010 Annual Report* was previously accessed at: http://www.chrc-ccdp.gc.ca/publications/ar_2010_ra/toc_10_tdm-eng.aspx, however, it was no longer available online at the time of the writing of this report.

The Role of Federal Departments and Agencies

All departments and agencies across the federal government are subject to the *CHRA*, with a requirement to deliver programs and services in a manner that fully respects and protects human rights. This includes the thirty-seven (37) federal government departments and agencies that provide programs and services to First Nations.

The Government of Canada recognizes First Nations governments as possessing, like other governments in Canada, the powers and authorities necessary to prepare their communities and organizations for the full application of the *CHRA*. Over time, as complaints arise that highlight possible breaches of the *CHRA*, First Nations governments will be able to further adjust their practices to respond to complaints in order to prevent them from arising again in the future.

Programs and services are available through a number of federal departments and agencies to assist First Nations communities and organizations with these adjustments. Several of these programs and services are highlighted in Chapter 3 of this report. In addition and as previously outlined, the CHRC, within its limited resources, is working to raise awareness of the *CHRA* within First Nations communities, strengthen its relationship with First Nations governments, and to provide the information that they require as they continue to enhance their capacities to reach full compliance with the *CHRA*.

CHAPTER 3: HIGHLIGHTS OF THE STUDY ON THE READINESS OF FIRST NATIONS TO COMPLY WITH THE *CANADIAN HUMAN RIGHTS ACT*[11]

Section 4 of *An Act to Amend the Canadian Human Rights Act* requires the Government of Canada, together with the appropriate organizations representing First Nations peoples to *"undertake a study to identify the extent of preparation, capacity and fiscal and human resources that will be required in order for First Nations communities and organizations to comply with the Canadian Human Rights Act."*

In keeping with this statutory requirement, the Minister of AANDC tabled a report in Parliament on June 17, 2011, on the readiness of First Nations to comply with the *CHRA*. The report was prepared jointly with three National Aboriginal Organizations – the AFN, NWAC and CAP – identified as representing the interests of the First Nations peoples of Canada.

Pursuant to section 4 of the *Act*, the organizations were asked to undertake a study to:

> *…identify the extent of preparation, capacity and fiscal and human resources that will be required in order for First Nations communities and organizations to comply with the Canadian Human Rights Act.*

3.1 General Findings of the First Nations Readiness Study[12]

Given that First Nations communities across Canada range in size, population and location, the analysis and findings of the needs assessments studies submitted by the AFN, NWAC and CAP confirm that communities were at different level of preparedness for the repeal of section 67 of the *CHRA* at the time the studies were undertaken and the report was submitted to Parliament. Moreover, the report found that although a great deal of work had been carried out by First Nations to prepare for the full application of the *CHRA*, there was still much work to be done before First Nations communities and organizations could be said to be fully *CHRA* compliant.

An analysis of the studies conducted by the three organizations revealed some common issues:

- A low level of awareness among First Nations of the *CHRA* itself, of the rights that are protected by the legislation, of the CHRC and the complaints process, and of the repeal of section 67 and its possible effects on First Nations individuals, communities, governments and organizations.

- Insufficient capacity of some First Nations communities, governments and organizations to prepare for the full application of the *CHRA.* This includes the resources and capacity to review laws and

[11] *A Report to Parliament on the Readiness of First Nations Communities and Organizations to Comply with the Canadian Human Rights Act,* Aboriginal Affairs and Northern Development Canada, June 2011. Available online at: http://www.aadnc-aandc.gc.ca/eng/1314987774142/1315022171511.

[12] The perspectives and conclusions drawn by each of the three National Aboriginal Organizations in their respective studies, included in the report to Parliament, were entirely their own. Neither AANDC nor any other federal department or agency has verified the data used, information presented or the conclusions made in their findings.

procedures; training and tools to evaluate accessibility of infrastructure; and First Nations based mechanisms to resolve complaints.

- The need for financial and human resources to support both the building of awareness and capacity, as well as possible gaps in the accessibility of infrastructure on First Nations reserves.

Awareness

The studies conducted by the three National Aboriginal Organizations concluded that there was generally a low level of awareness of the *CHRA* and the rights it seeks to protect, of the CHRC and its complaints process, and of the repeal of section 67 and its possible impacts on First Nations.

In its report, the AFN noted that greater communication was required at two levels: first, at the level of Chief and Council and their staff, and second at the level of community members to ensure that they are aware of their rights under the *CHRA*. Similarly a lack of awareness of the *CHRA*, the effect of the repeal of section 67, and harmonization with First Nations legal traditions and customary laws were reported both by NWAC and CAP following community dialogue sessions and focus groups. These findings suggested that First Nations communities did not have adequate knowledge of, nor were they adequately prepared for the legislative change brought about as a result of the repeal of section 67.

Given the mandate of the CHRC to administer the *CHRA* and to *"foster understanding and commitment to achieving a society where human rights are respected in everyday practices,"* the Commission has a significant role in reducing the gaps among First Nations communities, governments and organizations in respect of awareness of the *CHRA*. As reported in its 2010 Annual Report, the CHRC has undertaken a number of initiatives to respond to this need. The Commission established the *National Aboriginal Initiative* with the objective to:

> *"…strengthen relations with Aboriginal groups and foster a dialogue on how to incorporate the unique context of First Nations communities into human rights protection mechanisms. Its focus is on making the Commission's programs more accessible and culturally sensitive to First Nations people and communities, and on supporting First Nations human rights."*[13]

Since its inception, the *National Aboriginal Initiative* has sought to improve awareness of the *CHRA* and reduce the possible effects of the repeal of section 67 by strengthening the CHRC's relationship with First Nations communities and providing information to First Nations governments. However improving public knowledge on the *CHRA* will take time to translate into demonstrable improvements in respect of the level of awareness amongst First Nations individuals, communities, governments and organizations.

The findings of the readiness study suggest that the work of the CHRC, at the time of the report to Parliament, was not sufficient and the manner in which further work in this area can be supported or expanded in the years ahead needs to be determined.

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[13] *2010 Annual Report*, Canadian Human Rights Commission, 2010. The CHRC *2010 Annual Report* was previously accessed at: http://www.chrc-ccdp.gc.ca/publications/ar_2010_ra/toc_10_tdm-eng.aspx, however, it was no longer accessible online at the time of the writing of this report.

Capacity of First Nations Communities, Governments and Organizations

The second area of gaps in terms of First Nations' readiness that was identified by the three National Aboriginal Organizations is the capacity of First Nations communities, governments and organizations to prepare for the full application of the *CHRA*. Specific gaps identified in the study included:

- *Resources and Capacity to Review Laws and Procedures* – Insufficient resources and capacity in most First Nations communities to adequately support the legal review of their own laws to ensure they are complaint with the *CHRA.*

- *Training* – Lack of adequate training for First Nations government staff to prepare for the full application of the *CHRA*.

- *Tools to Evaluate Infrastructure and Accessibility* – Insufficient reliable information to effectively evaluate the degree to which infrastructure is accessible in First Nations communities.

- *First Nation-Based Mechanisms to Resolve Complaints* – A strong interest in ensuring that First Nation-based mechanisms for addressing and resolving complaints be developed to parallel or supplement those provided by the CHRC.

Beyond First Nations communities, governments and organizations, the capacity and ability of institutions such as the CHRC and CHRT to understand and interpret First Nations customs and traditions was also raised as an issue within the readiness study. For example, the NWAC noted the need for the CHRC to apply a gender-specific lens to its consideration of *CHRA*-related complaints and cultural considerations mandated by the interpretive clause of the *CHRA* itself. Although NWAC argued for the need to develop skills and tools within these institutions to effectively balance individual and collective rights in the Aboriginal context, the CHRC does offer programs and services to *"foster understanding and commitment to achieving a society where human rights are respected in everyday practices."*

The report of the readiness study recommended that First Nations communities, governments and organizations contact the CHRC for further information on how the Commission's programs and services might assist them in ensuring *CHRA* compliance. The report also noted that the Government of Canada has existing programs and services aimed at building capacity in First Nations communities, including such programs as Band Support Funding, By-Law Advisory Services and the Elections Unit through AANDC, Labour Canada's Racism-Free Workplace Strategy, and the Social Development Partnership Program through Human Resources and Skills Development Canada.

Financial and Human Resources

Financial resources are an important component identified by the National Aboriginal Organizations in supporting increased awareness and capacity-building activities referenced in their studies. As previously mentioned, $5.7 million in funding over 2009-2014 was provided to the CHRC following the passage of *An Act to Amend the Canadian Human Rights Act,* to undertake activities in these areas. Nevertheless, the findings of the readiness studies conducted by the National Aboriginal Organizations and as outlined in the report to Parliament suggested that more resources are required if First Nations

are to reach full compliance with the *CHRA*.

The 2011 readiness assessment report to Parliament did not purport to accurately quantify the specific requirements of First Nations in terms of capacity, or the fiscal and human resources required to comply with the *CHRA*. It would be difficult to quantify the extent to which a First Nation community, government or organization is in compliance with human rights legislation because, being a complaint-driven process would require an ability to predict the numbers of complaints, the nature of the actions or omissions that led to the complaints, as well as a means of estimating the amount of awards and/or costs to remedy the action or omission in question. However, it is possible to estimate the financial and human resources necessary to address areas where deficiencies can be more easily measured, most notably gaps in accessibility to infrastructure on First Nations reserves.

Although it is acknowledged that there is a critical lack of current data on the numbers of First Nations people on-reserve living with physical disabilities and the cost of retrofitting buildings, considerable attention was paid by the AFN on community infrastructure, and on the cost estimates associated with ensuring that infrastructure on First Nations reserves would be *CHRA* compliant. In its study and report, the AFN noted that significant financial and human resources were needed to address possible impediments to the full accessibility of on-reserve infrastructure to persons with disabilities.

The National Building Code (NBC) of Canada sets out technical provisions for the design and construction of new buildings. It also applies to the alteration and demolition of existing buildings. Any new construction, renovation, and/or retrofit activity both on and off -reserve must reflect the current NBC of Canada. As the NBC mandates accessibility for public buildings, construction of public buildings on-reserve must meet these standards of accessibility. In addition, in its funding agreements AANDC stipulates that the NBC must be followed for the construction or renovation of buildings. Therefore, all buildings constructed or renovated pursuant to these terms should be built in accordance with the standards set out in the NBC.

Older buildings, however, built in accordance with previous versions of the building code, may not meet these standards. Given that the Government of Canada does not currently track accessibility data, it is impossible to estimate the degree to which older infrastructure would require retrofits. As an initial step, AANDC is implementing reforms to the Asset Condition Reporting System that will help to identify whether public buildings meet NBC standards.

The Government of Canada provides programming through which First Nations communities and organizations may obtain funds to address accessibility issues. These programs include:

- On-Reserve Residential Rehabilitation Assistance Program for Persons with Disabilities (CMHC)
- Home Adaptations for Seniors Independence Program *(CMHC)*
- Capital Facilities and Maintenance Program (AANDC)
- Enabling Accessibility Fund (HRSDC – Office for Disability Issues)
- Public Works and Government Services

CHAPTER 4: THE FINDINGS OF THE FIVE-YEAR REVIEW

This chapter contains the results of the five-year review as coordinated by AANDC on behalf of the Government of Canada. It contains the findings of the review and analysis of the number and nature of post-repeal complaints against the federal government and Band Councils based on data provided by the CHRC and departmental information. It also contains highlights of the findings of the review conducted by NWAC and CAP and as submitted to AANDC by both organizations for inclusion in this report, as well as information submitted by respondents to AANDC's online process.

It is important to note that the data provided by the CHRC on complaints filed against the federal government and Band Councils, only provide limited information for tracking and reporting purposes, as the vast majority of complaints filed that are captured in the CHRC data fall outside the scope of complaints directly related to the repeal of section 67. Moreover, the information relating to the number and nature of human rights complaints in this report is broadly presented in order to protect the privacy rights of the individuals and/or entities involved in these complaints, whether as complainants or defendants.

An analysis of the findings submitted by NWAC and CAP and as presented in this report indicates considerable room for differences of opinion and interpretation regarding the impacts of the repeal of section 67 on First Nations and their governments, the nature and scope of the application of the *CHRA*, as well as in respect of the roles and responsibilities of institutions responsible for the ongoing implementation of the amended *CHRA*. For example, while NWAC findings concentrate on the impacts of the section 67 repeal on First Nations governed under the *Indian Act*, and in particular First Nations and other Aboriginal women residing on and off-reserve, CAP's report adopts a more pan-Aboriginal approach to the review and findings and in some instances extends beyond the parameters and application of the *CHRA* and the populations affected by the lifting of the section 67 exemptions.

While the National Aboriginal Organizations outlined their approach and/or methodology to their respective reviews, the perspectives expressed by the organizations in their respective reports and as presented in this report, are entirely their own. Neither AANDC, nor any other department or agency of the federal government has verified the information, conclusions and recommendations contained in their reports.

4.1 Post-Repeal Complaints against the Government of Canada

As part of the five-year review and for the purposes of preparing this report, the Department received information from the CHRC on the number and nature of complaints against the Government of Canada, and more specifically AANDC, brought before the Commission since the repeal of section 67 on June 18, 2008. This information has been supplemented by data produced by the Department through its tracking and monitoring of complaints against AANDC. The information was prepared for the purposes of the five-year review and covers the post-repeal period from June 18, 2008 to March 4, 2014.

While the number of active (open) post-repeal related complaints against AANDC reported by the Commission matched the number of cases being tracked and monitored by the Department, the CHRC information relating to issues, closures, stage of the complaints and discriminatory grounds could not

be reconciled with AANDC's numbers. In addition, information pertaining to the reasons for acceptance or denial of complaints by the CHRC, the closures of complaints, and discriminatory grounds cited were provided on a broad and general level that could not clearly be linked to specific complaints against AANDC. In effect, there were no direct correlations made between the information provided and the active complaints against the Department. As a result of these issues, no attempt was made to reconcile the two data bases, and the information reported in this section is based on the current tracking of active (open) complaints by the Department.

In the report provided to AANDC, the CHRC reported that during the June 18, 2008 to March 4, 2014 time period it had received one hundred and sixty-seven (167) service-related complaints against the federal government relating to Aboriginal issues (excluding employment-related complaints). Of these one hundred and sixty-seven (167) service-related complaints, one hundred and one (101) were accepted for processing. Of those total complaints received, one hundred and seventeen (117) would always have been receivable (prior to section 67 repeal), one (1) complaint was not in the CHRC's jurisdiction and forty-nine (49) complaints would have otherwise been shielded by section 67 prior to the amendments to the *CHRA* of June18, 2008. Of the forty-nine (49) repeal-related complaints, forty-four (44) were against AANDC, one (1) was against the Canada Mortgage and Housing Corporation, two (2) against Canada Revenue Agency and two (2) against Health Canada. Of the forty-nine (49) repeal-related complaints received, the Commission accepted twenty-six (26), of which, twenty-five (25) have been filed against AANDC and one (1) against Health Canada. All other complaints have been closed by the CHRC.

Of the forty-four (44) complaints filed against AANDC that directly relate to the repeal of section 67, twenty-five (25) remain active (open) complaints against the Department, and many of these complaints remain before the CHRC under review. Six (6) have been referred to the Tribunal for review and hearing and four (4) are before the courts under Judicial Review of decisions made by the Commission or Tribunal. However, post-repeal there is only one (1) active (open) complaint that has been filed against a First Nation and where AANDC has also been named as a party at the Judicial Review stage.

The majority of the twenty-five (25) active (open) post-repeal complaints against AANDC cite national or ethnic origin, family status or race as the grounds for discrimination and relate to the following main issues:

- Indian registration pursuant to the *Indian Act*.
- Funding of programs for individuals with disabilities and their families, child and family services, and special education.
- Other issues such as leasing, Band custom election, and consultation.

Complaints Relating to the Registration Provisions of the *Indian Act*

The largest trend in complaints against AANDC relates to decisions made or actions taken in relation to Indian registration pursuant to the *Indian Act.* For the most part, the complainants are challenging the denial of registration under the *Indian Act* or registration under a category different than the

complainant desires as being discriminatory under the *CHRA*. These challenges have been filed against the registration provisions of the 1985 *Indian Act* as defined commonly by Bill C-31, the recent 2011 amendments to the *Indian Act* under the *Gender Equity in Indian Registration Act (Bill C-3)*, and the Qalipu Mi'kmaq process. The complaints claim discrimination based on national or ethnic origin, race and family status.

The Tribunal has ruled in two of the early registration-related complaints (*Andrews* and *Matson*) that it lacked the jurisdiction to hear complaints relating to Indian registration in that they are direct challenges to federal legislation, and nothing else. In addition, the Tribunal did not identify discriminatory practices within the meaning of section 5 of the *CHRA*, as decisions relating to Indian registration pursuant to the *Indian Act* do not fall within the realm of employment, or the provision of goods, services, facilities or accommodations customarily available to the general public. More specifically, registration pursuant to the *Indian Act* was not found to constitute a service that was available to the general public.

The CHRC has filed judicial review challenges before the Federal Court of the Tribunal's decisions in both the *Andrews* and *Matson* Indian registration-related complaints. The application for judicial review was heard on August 28, 2014 and is pending court decision. The decision of the judicial review may have an impact on the remaining registration-related complaints, of which most have been stayed until a decision is rendered. Specifically the judicial review decision will assess whether complaints relating to the provisions for Indian registration pursuant to the *Indian Act* fall within the jurisdiction of the CHRT and are subject to the application of the *CHRA*.

Complaints Relating to Program Funding

Program funding complaints relate to issues around programs for individuals with disabilities and their families, child and family services and special education funding. Many of the complaints make comparisons between funding under the *Indian Act* and funding provided to non-Aboriginal individuals under provincial regimes. The complaints claim discrimination based on national or ethnic origin, race and disability.

It is important to note that the high profile human rights challenge filed by the First Nation Child and Family Caring Society and the AFN alleging inequitable funding for the provision of on-reserve child and family services currently being heard by the CHRT was filed in 2007 prior the repeal of section 67, is not directly applicable to the repeal, and therefore does not fall within the realm of the five-year review of the repeal of section 67 nor is it highlighted in this report.[14]

Other Complaints

This category contains complaints challenging the policy/practices of granting ministerial leases for residential land, lack of consultation and limiting funding of programs and services to specific groups and individuals, and the rejection of an individual's candidacy in a custom election matter. The custom

[14] The First Nation Child and Family Caring Society and AFN complaint was filed in 2007 and was initially dismissed by the Tribunal for lack of proper comparison group and the Federal Court and Federal Court of Appeal have returned the matter to the Tribunal for a definitive ruling on whether funding constitutes a service pursuant to the *CHRA* and whether discrimination can be based upon comparison funding by federal and provincial governments.

election complaint was filed against the First Nation and AANDC was brought into the matter at the judicial review stage of the Commission's decision to refer the matter to the Tribunal.

In relation to land leasing issues, the Tribunal has ruled in two separate complaints filed by *Louie and Beattie.* In both complaints, the Tribunal found that, AANDC discriminated against the complainants on the basis of race and national or ethnic origin and provided a service to locatees in granting Ministerial leases for residential land under the *Indian Act*, as defined by section 5 of the *CHRA.* In one complaint, AANDC was required to reconsider the applications for a locatee lease in accordance with the Tribunal's decision and Order, to cease its discriminatory practices and take measures, in consultation with the CHRC, to redress the practices or to prevent the same or similar practices from occurring. In the second complaint, as the Department was working to comply with the first Order, AANDC was ordered to only pay compensation costs in addition to granting the lease in question.

AANDC worked closely with the Commission to comply with the first decision. To this end AANDC: entered into productive discussions with the Commission; signed an implementation agreement (the first of its kind); held a two day leasing workshop with selected First Nation representatives; amended the nominal rent locatee leasing portion of the Lands Manual and organized a human rights training workshop for certain managers that was facilitated by the Commission. The implementation agreement sets out a proactive forward-looking approach both in respect of compliance and prevention of discriminatory practices as it pertains to locatee leasing.

4.2 Post-Repeal Complaints against First Nation Governments

The Commission reported that it had received three hundred and twenty (320) complaints against First Nations governments relating to "Aboriginal issues," from June 18, 2011 to March 4, 2014. Of the three hundred and twenty (320) complaints, ninety-nine (99) dealt with subject matters that were previously shielded by section 67, prior to the amendments going into effect for First Nations governments on June 18, 2011. The CHRC reported that thirty-six (36) of the ninety-nine (99) complaints directly related to the repeal were accepted by the Commission. The bulk of the complaints against First Nation governments cited family status and national or ethnic origin as the discriminatory grounds and pertained to employment, the provision of services and retaliatory action(s).

Similar to the information provided on the complaints against Canada, the information provided by the CHRC pertaining to complaints against First Nations governments, including reasons for acceptance or denial of those complaints by the CHRC, the closures of complaints, and the discriminatory grounds cited, were provided on a very broad and general level.

4.3 Highlights of the Findings of the Native Women's Association of Canada (NWAC)[15]

The Native Women's Association of Canada (NWAC) works collaboratively with other Aboriginal and equality-seeking human rights organizations to empower Aboriginal women by facilitating their participation in legislative and policy reforms that promote equality in all areas of their lives. Its Provincial-Territorial Member Associations (PTMAs) across Canada include the:

- Native Women's Association NWT
- Yukon Aboriginal Women's Council
- BC Native Women's Association
- Alberta Aboriginal Women's Society
- Saskatchewan Aboriginal Women's Circle Corporation
- Manitoba Moon Voices
- Ontario Native Women's Association
- Québec Native Women Inc.
- Nova Scotia Native Women's Association
- Newfoundland Native Women's Association
- Aboriginal Women's Association of Prince Edward Island
- New Brunswick organizations

Through activism, education, policy analysis and advocacy, NWAC works to advance the well-being of Aboriginal women and girls, as well as, their families and communities. This work includes identifying gaps in the equal enjoyment of human rights by Aboriginal women and mobilizing action to address these gaps.

A fundamental premise of NWAC's work is that the civil, political, cultural, social and economic rights of Aboriginal Peoples cannot be realized without identifying the gender impacts of laws and policies applied to Aboriginal Peoples and specifically addressing the needs of Aboriginal women, in a culturally relevant way.

NWAC has worked to raise the profile nationally and internationally on many issues such as: violence against women, the lack of justice response, high rates of women in prison, the under-funding to on-reserve education, multiple forms of discrimination, poverty, and ongoing sexual exploitation and trafficking of women and girls, the lack of access to clean water, along with the many other violations to our basic human rights. Part of raising this profile includes participating in the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the Universal Periodic Review and making submissions to these bodies.

Over the last 40 years, NWAC has demonstrated knowledge and expertise and shown true leadership in advocating for change with respect to the rights and interests of Aboriginal women in Canada. As an organization, it continues to build on the success and best practices learned in all areas of social, political, cultural, economic, and spiritual health and well-being and to seize opportunities to bring

[15] The final report of the Native Women's Association of Canada, entitled, *"NWAC Report on the Five-Year Review of the Impacts of the Repeal of Section 67 of the Canadian Human Rights Act,"* July 31, 2014 and related documents are available online at: http://www.nwac.ca.

evidence to action.

NWAC has worked collaboratively with the CHRC to develop specific information kits and presentations about the *CHRA* and changes to the *Act* from 2010 – 2013, which included Aboriginal perspectives on human rights and approaches to conducting culturally relevant gender-based analysis.

NWAC also participated in the study on the readiness of First Nations to comply with the *CHRA* and contributed the findings of its study and report to the broader AANDC report, which was tabled in Parliament on June 17, 2011.

Overview of NWAC Activities for the Five-Year Review

As part of the five-year review, NWAC organized and held both an online engagement and in-person meetings with its Board Members, PTMAs and other members to gather information, views and perspectives on the impacts of the repeal of section 67 of the *CHRA*.

The online engagement strategy consisted of a voluntary survey, which was posted on the NWAC web site to gauge the views and perspectives of its members in respect of the impacts of the repeal of section 67 of the *CHRA*. In addition to the online survey, NWAC held in-person meetings of its Board Members, PTMAs and other members between July 12-14, 2014, coinciding with NWAC's Annual General Meeting held in Halifax, Nova Scotia, to discuss the section 67 repeal and gather additional information on the views and perspectives of participants on the impacts of the repeal of section 67.

In order to further inform participants of both the online survey and the in-person meetings of the issues, NWAC developed a bibliography of culturally relevant gender-based resources, background documents and fact sheets on issues relating to the *CHRA*. These materials along with three handbooks on the *CHRA* prepared by the CHRC with input from NWAC were posted on NWAC's web site and distributed to its PTMAs and Board Members to inform and guide their discussions in July 2014. NWAC also promoted and invited online participation in the engagement process and survey completion through social media, including through Twitter and Facebook. Finally, NWAC dedicated an entire section of its Spring/Summer 2014 Newsletter on the five-year review. The Newsletter was distributed both electronically and in print to its membership and partners.

NWAC's final report outlines the findings of the in-person discussions and online survey and provides the views and perspectives expressed by participants in the discussions and respondents to the survey. Highlights of the results are outlined below. The NWAC final report also reiterates the findings and recommendations of past research and analysis that the organization has conducted on the *CHRA* and the section 67 repeal, including on: the *Indian Act* and gender-based analysis; defenses and interpretive provisions within the CHRA; CHRC tribunal powers; First Nations legal traditions and customary laws; and culturally appropriate dispute resolution mechanisms.

In its report NWAC informs that its Board Members, representatives of PTMAs and other participants attending the NWAC Annual General Assembly expressed extreme concern over the five-year review process stating that it was supposed to be a comprehensive approach. They explained that they felt the Department of AANDC rushed the process by having to complete the review over a six-week time period and indicated that it was too short a timeframe for each of the national Aboriginal organizations

to gather sufficient information from their membership. They also indicated that their participation did not constitute a legal consultation but was merely a quick engagement.

NWAC further states that although there were time pressures and a short window to engage with Aboriginal women, NWAC received an unusually high amount of input from its members who were eager to tell their stories and to share in their experiences of discrimination, as defined by the *CHRA*. Many continue to face discrimination, but now have some tools on how to proceed with their current complaints.

Outcome of the Discussion with the NWAC Board of Directors

NWAC provided Board Members with an overview of the changes to the *CHRA*, the purpose of the five-year review, NWAC's past and present participation in studies pertaining to the section 67 repeal and drew attention to handbooks that were available at the NWAC booth for delegates to take back for use in their communities, entitled: *"Your Guide to Understanding the Canadian Human Rights Act," "Human Rights Handbook for First Nations Managers"* and *"A Toolkit for Developing Community-based Dispute Resolution Processes in First Nations Communities."* Fact sheets on the *CHRA*, along with a list of resources were also available for their information.

NWAC provided an overview of the on-line survey entitled, "5-Year Review of the Effects of the Repeal of section 67 of the *Canadian Human Rights Act,*" and fielded questions from Board Members, including on:

- The roles of, and complaints under, provincial/territorial and federal human rights commissions.
- The differing experiences of Band members living on and off-reserve.
- Specific scenarios of discrimination within their respective territories.
- The approach of the CHRC as being of a remedial/healing nature rather than punitive and decision-makers under the *CHRA*.
- The need to give due regard to First Nations' traditional laws.

Outcome of the Discussion with PTMAs and Other Members

As part of the discussion with PTMAs and other members, NWAC provided a review of the many documents available on the changes to the *CHRA*, the implementation of their human rights and distributed the booklets and materials available on the topic. NWAC also provided an overview of the five-year review process and the on-line survey and invited participants to complete the survey.

A representative of the CHRC was present at the discussion as an observer and agreed to answer any questions for clarification that arose during the meeting, including how complaints of discrimination before the Commission are dealt with. The CHRC representative informed participants that since the legislative changes to the *CHRA*, over five hundred individuals have filed complaints of discrimination with the Commission and of those, three hundred were against First Nations. The representative also indicated that because of the remedial nature of the *CHRA*, the Commission encourages settling complaints at an early stage and resolving issues in a good way as opposed to one that is punitive. Discussion ensued regarding the types of complaints that are currently being filed with the

Commission. Participant questions included issues relating to: the role of the CHRC; the challenges faced when filing complaints; problems regarding jurisdictional issues among the provincial, territorial and federal human rights commissions; the differing experiences of Band members living on and off-reserve; and the application of the *CHRA* to self-governing First Nations.

Participants raised the following issues and concerns as part of the discussion:

- There should be no distinctions among jurisdictions and the approach of the CHRC should give due regard to First Nations' traditional laws and territories when reviewing complaints.

- NWAC and/or the CHRC should find available funding from the federal government to conduct workshops and training sessions on the *CHRA* for Aboriginal women in communities because there are still many women who are not aware of the changes to the legislation, what rights and recourses are available to them and that the CHRC or the CHRT exists to implement the human rights of Aboriginal women.

- Participants emphasized that while there are a lot of services that are available for the on-reserve population, off-reserve Band members are experiencing discrimination in accessing these services. This was described as a common problem among women living off-reserve.

- Another concern raised was the fact that many of the Chiefs and Council do not have any legal education or knowledge on how to implement the changes to the *CHRA*, and if they do have the training, they are often no longer in the same position in a few years. There is no continuity of corporate knowledge and/or training within these positions of power.

- Members discussed the lack of punitive measures in place that are severe enough to make Band Councils change discriminatory practices.

Summary of Findings of the NWAC Online Survey[16]

There were a total of eighty-nine respondents to the NWAC survey. Five (5) surveys were partially completed, five (5) surveys were completed by women who identified as non-Aboriginal, five (5) surveys were completed by individuals who identified as "other"[17] and another five (5) surveys were completed by Indigenous women residing in countries other than Canada. One respondent identified as Inuit and five (5) as Métis.

While there were participants who identified as Métis, Inuit, and "other," the majority of respondents identified as First Nation (79.7%). Of respondents who identified as First Nation, 91% are a registered, status or Treaty Indian, and 8.5% are not. In addition, 92.6% of First Nation survey respondents are members of an Indian Band. Almost all of the respondents are female (95.6%), however, there were two males and one trans-gendered woman who also participated in the survey. Two-thirds of survey respondents (64.7%) reside off-reserve and 35% stated that they reside on-reserve.

[16] The NWAC survey questionnaire can be accessed online at: http://www.nwac.ca.

[17] Respondents who identified as "other" cited reasons such as, they preferred the term Indigenous, they identified as having multiple Aboriginal identities, or identified as Indigenous to South America.

As the survey was designed to prevent non-Indigenous participation, fifteen (15) surveys (partially completed surveys and those completed by individuals who identified as "non-Aboriginal" or as "indigenous" residing outside of Canada) were removed from the analysis. Therefore, of the 89 respondents, a total of seventy-four (74) surveys that were completed by Aboriginal individuals (First Nation, Inuit, and Métis) living in Canada were analyzed and included in the results.

Thematically, the NWAC survey covers broad issues such as respondent experiences with discrimination (as described in the *CHRA*) and with the *CHRA* complaints process, as well as the level of knowledge and understanding of the *CHRA* and the section 67 repeal among individual respondents and First Nations in general. The following provides a summary of the survey results by theme.

Theme: Experience with Discrimination As Described in the CHRA

- When asked if they had experienced discrimination as described in the *CHRA*, the majority of respondents (63.7%) stated that they had experienced discrimination, 24.6% said they did not know and 11.5% of respondents stated that they had not experienced discrimination.

- The majority of respondents (74.4%) reported discrimination based on race and sex, while 27.6% stated that there were other reasons for discrimination aside from the list of 11 discriminatory grounds outlined in the *CHRA*. One respondent explained that she was unhappy with the discriminatory Indian registration (status) system, which restricts her children from receiving their Indian status rights. Another respondent explained that she felt discriminated against for attempting to use her status card when picking up a prescription. Four respondents told of unhappiness with how their Band deals with Band members living off-reserve. Language, both French and Aboriginal, as well as living a traditional lifestyle were also identified as reasons for discrimination.

- Sixty per cent (60%) of respondents reported that their discrimination complaint to the CHRC involved behaviour that occurred on-reserve and 40% stated that their complaint involved discriminatory behaviour that occurred off-reserve.

Theme: Experience with the CHRA Complaints Process

- Although the majority of respondents stated that they had experienced discrimination under the *CHRA*, most respondents (63.9%) had never contacted the CHRC about a discrimination claim. Approximately, one-third of respondents (32.7%) said they had filed a discrimination claim, while 3.2% were not sure.

- Of those who reported contacting the CHRC about a discrimination claim, 75% experienced difficulties/ challenges when dealing with the Commission. Some of the challenges identified are as follows:
  - The individual was told to contact the Department of Indian and Northern Affairs.
  - The individual was told there was no way to help them.
  - An individual had to quit their job because of harassment, however, the individual was unable to make a complaint because they were told by the CHRC that they had to stay in their job to complain and couldn't make a complaint after leaving the workplace.

- An individual complained about the lack of transparency on their reserve and the CHRC said that it was a Governance issue and that they had no authority over their case.
- The CHRC said it would investigate but the individual's boss covered his tracks so there was no one to prove the individual's story of being sexually harassed by their boss.
- The CHRC suggested working out the issue within the individual's community.
- No one at the CHRC responded to messages and the individual was put on hold numerous times.
- They were told to take their case to court because the *CHRA* didn't apply on-reserve.
- The CHRC does not always view discrimination the way an Aboriginal woman would.

- Many of the participants (60%) stated that their case was considered for an investigation by the CHRC before 2008, while 25% reported that their case was considered for investigation after 2008.

- Forty per cent (40%) of participants said that a formal complaint was filed after they explained their claim and the CHRC did an investigation. However 45% stated that no formal complaint was filed, and 15% said they did not know if their case did proceed to a formal complaint.

- Sixty-five per cent (65%) of respondents said it was a difficult process to lodge a complaint for several reasons. These included: they did not want to have to retell their story, or they felt embarrassed or traumatized and didn't want to relive it again. Twenty-five percent (25%) said they did not have any difficulty and 10% stated that they do not remember why it was difficult. For those who did not experience difficulty, one participant remarked that it was because she was a lawyer and was able to navigate the system without difficulty.

- Once their complaint was filed, 40% of respondents admitted to experiencing retaliation from the person against whom they had filed the complaint, while 55% said they had not. One participant explained that the complaint she made against her Band led to her family being removed from their home on the reserve. Another respondent told of how she was labelled as a drunk and a drug-addict by her employer in retaliation to her complaint.

- Ninety per cent (90%) of participants stated that they tried to resolve the complaint on their own before contacting the CHRC. When asked what prevented respondents from filing a complaint, almost all respondents identified that they did not have knowledge of the process necessary for making a complaint. Respondents explained that they did not know who to contact or where to seek help in respect of the complaints process.

- Respondents that reported having previously filed a complaint with the CHRC were asked whether they had received help or support throughout the complaint process after filing the complaint. Only 15.5% of respondents replied that they had received help or support. The remaining 47.5% replied that they had not received assistance and 37.3% said that they did not remember. Three participants indicated that a human rights officer assisted them throughout their process.

- When asked if they participated in any alternative dispute resolution (ADR) process to resolve their complaint of discrimination, a small percentage of 8.7% replied yes. The majority of participants (66.7%) replied that they did not take part in any ADR and 24.5% replied that they did not know. Three participants indicated that an ADR was desired but was not carried out.

- Only 12.5% of respondents reported being successful in resolving their complaint and 44.6% said that they were not, with 42.8% responding that they did not know. Some participants shared their stories of discontent with the results of their complaint. One participant shared that the person against whom she had filed a complaint received a large severance package in order to resign, despite the multiple complaints against this individual.

- Only 1.9% of participants in the survey felt that the CHRC, the CHRT or the court respected First Nations legal traditions and customary laws when dealing with their complaint of discrimination. The majority of respondents (56.6%) said that they did not feel First Nations legal traditions were respected by these institutions and 41.5% felt they were somewhat respected.

- Finally when asked if they felt satisfied with which ever process they underwent, 55.6% of participants replied that they were not satisfied. The remaining 5.6% replied that they were satisfied and 40.7% percent said that they were somewhat satisfied.

Theme: Knowledge and Understanding of the CHRA and the Section 67 Repeal

- The majority of survey participants (66.1%) reported having some knowledge of the *CHRA*, 16.9% of respondents reported having an excellent understanding of the *CHRA* with and equal percentage of respondents (16.9%) reporting that they have no understanding of the legislation and the repeal of section 67.

- Sixty-four percent (64%) of participants said that they did not know if the repeal of section 67 has helped First Nations women experiencing discrimination. In regards to helping First Nations women experiencing discrimination in the future, 50% said that the repeal of section 67 will help First Nations women, 42.1% stated they did not know, and 7.8% said it would not help them.

- Many of the respondents (43.7%) indicated that they did not have access to free legal resources in their community to help them understand the impacts of the repeal, and/or to inform them of the work of the CHRC. Thirty-seven percent (37%) said they did not know whether they could access resources and only 18.7% stated they have access to resources.

- When asked if they knew whether their Chief and Council and/or fellow Band members have access to legal training about the changes to the *CHRA*, 12.7% of respondents answered yes, 41.3% said no, and the remaining 46% said they did not know. Similarly, when asked if they knew if their Chief and Council or Band employees are aware of the work being done by the CHRC, 12.7% responded yes, 44.5% responded no, and 42.9% said they did not know.

- Almost one-half of respondents (46%) did not know if anyone in their community has access to legal training to help them understand the changes to the *CHRA* or to help them understand their rights and 38% reported not knowing anyone. Sixteen percent (16%) of participants reported knowing someone in their community that has access to legal training.

- When asked if anyone in their community is aware of the work of the CHRC, 20.6% replied knowing someone in their community with this knowledge, while 33.3% said no. The majority of

participants (46%) indicated that they did not know anyone in their community with knowledge of the CHRC.

4.4 Highlights of the Findings of the Congress of Aboriginal Peoples (CAP)[18]

Founded in 1971 as the Native Council of Canada (NCC), The Congress of Aboriginal Peoples (CAP or the Congress) is a national political organization that advocates on behalf of the rights and interests of status, non-status, Métis and the Southern Inuit of Labrador living in urban, rural and remote areas of Canada. The Congress is also the national voice for its provincial and territorial affiliate organizations throughout Canada. For over forty-three years, CAP has been providing input and feedback to the federal government, agencies and departments on policy issues and program design on behalf of its constituency.

Overview of CAP Activities for the Five-Year Review

The Congress hosted a one-day roundtable engagement session on July 17, 2014 in Ottawa with the National Chief, Vice-Chief and affiliate organization provincial and territorial Chiefs, to discuss the effects of the repeal of section 67 to date, and gather the perspectives of the participants. Affiliate/Provincial-Territorial Organization (PTO) participants included: NunatuKavut Community Council, Native Council of Nova Scotia, Native Council of Prince Edward Island, New Brunswick Aboriginal Peoples Council, Alliance Autochthones du Québec, Ontario Coalition of Aboriginal People, Qalipu Mi'kmaq First Nation Band, Aboriginal Affairs Coalition of Saskatchewan and the United Native Nations Society.

Prior to the roundtable session, CAP made available to participants the recommendations it outlined in its 2009-2010 First Nations needs assessment study as a source of information and to assist participants with their recollection of the issues. Participants were asked to review the recommendations prior to the engagement session and to be prepared to speak on the subject matter as it pertains to their own experience, area of interest and knowledge.

CAP's engagement session was not a consultation, and the findings were limited to the knowledge, views and experiences of the Presidents and Chiefs of the Congress' affiliates.

Discussion and Outcomes of the One-Day Roundtable Engagement Session

Participants in the CAP roundtable session focused their discussion on the effects of the repeal of section 67 of the *CHRA* on the affected populations and constituencies:

- registered (status) Indians (residing either on or off-reserve);
- members of Indian Bands (residing either on or off-reserve); and
- residents on-reserve (both Aboriginal and non-Aboriginal).

[18] The final report of the Congress of Aboriginal Peoples, entitled, *"The Congress of Aboriginal Peoples Engagement Session on the Post-Repeal of Section 67 of the Canadian Human Rights Act,"* July 17, 2014, is available online at: http://www.abo-peoples.org/wp-content/uploads/2014/09/Section-67-Assess-Final-Report-ENGLISH.pdf.

The participants began the discussion by identifying the following themes and areas of concern as a guide to their discussion, and then proceeded to provide their assessment and understanding of the effects of the repeal of section 67 in these areas:

- Education and awareness of the *CHRA*.
- Cultural competency of those involved in the system.
- Access to the human rights system.
- Strengthening protection in the *CHRA* for Aboriginal complainants.
- Canada's responsibility for promoting and respecting the human rights of Aboriginal peoples.
- The larger environment of Aboriginal equality and human rights.

During the discussion participants reviewed and examined the list of twenty-four (24) recommendations outlined by CAP in its report of the needs assessment study performed in 2009/10 and evaluated whether any action by the Government of Canada has taken place to fulfill the proposals. Participants also considered next steps and recommendations in moving forward.

After reviewing the twenty-four (24) recommendations, all of the participants agreed that the recommendations and the issues they address continue to be relevant today. One participant noted that: *"…essentially we must resubmit our recommendations to AANDC as it seems nothing has been done to rectify the needs of our constituents since our initial report in 2010. None of our recommendations have been acted on."* Another participant stated that: *"…the passage of laws, such as Bill C-21 and the repeal of section 67, unaccompanied by certain measures, provides no more equality to our peoples."*

All participants agreed that there continues to be:

- A general lack of awareness of the *CHRA* amongst the Congress' constituents.

- Insufficient capacity for Aboriginal peoples, their communities and organizations to fully access the *CHRA* and the protections it is supposed to provide.

- Insufficient financial and human resources required to address human rights issues and to prevent the full range of possible complaints under the *CHRA*.

The participants then decided to review each recommendation made in 2009-2010 and updated the language where necessary for resubmission to AANDC. The participants also included an additional recommendation in reference to the Congress' lead in the *Daniels* case, which is currently before the *Supreme Court of Canada*. The following lists the recommendations agreed upon by the participants during the roundtable session:

1. Information on the *CHRA* is vital for Aboriginal peoples. The level of awareness about the *CHRA*, CHRC and CHRT is low. More sessions on the *CHRA* should be held.

2. The enumerated grounds of discrimination in the *CHRA* are too narrow. For example, status as a "Bill C-31 Indian," "Bill C-3 Indian" and "Aboriginal peoples living on their traditional land" are not enumerated grounds in the *CHRA*. They should be included as enumerated grounds.

3. Jurisdictional disputes between the provincial and federal governments over the funding and delivery of services will make it difficult for Aboriginal people to determine which human rights commission (provincial or federal) should receive and hear their complaints. Jurisdictional disputes should be resolved by agreement between the federal and provincial governments so that Aboriginal people can file and have their complaints processed and heard in a timely and cost-efficient manner. If the issue of jurisdiction is not clarified, the burden of proving jurisdiction will fall to the individual complainant involving costly, lengthy, and extensive litigation in the court system.

4. The federal government offered the CHRC as a forum to address complaints of discrimination arising from the *Indian Act.* However, the federal government is defending some claims of discrimination on the basis that the CHRC does not have jurisdiction to hear the complaints. In addition, AANDC appears to be very resistant to the repeal of section 67 of the *CHRA* and is setting a double standard: the *CHRA* applies to decisions of Band Councils but not to the decisions of AANDC. This double standard creates confusion and tarnishes the honour of the Crown. The federal government should immediately change its position on the jurisdiction of the CHRC and CHRT over the *Indian Act*.

5. Canada is defending claims of discrimination arising from section 6 of the *Indian Act* on the basis that the CHRC does not have jurisdiction to hear the complaint because the determination of Indian status is not a "service" within section 5 of the *CHRA*. If successful with this defense, Aboriginal people will not be able to seek a remedy for discrimination arising from section 6 of the *Indian Act* through the *CHRA*. The federal government should clarify its position on the CHRC's jurisdiction over complaints arising from the *Indian Act*.

6. Greater cooperation is needed between the CHRC, provincial/territorial human rights commissions and CAP to ensure that our constituents are aware of the full range of legal options (including the CHRC and litigation) available to them to address discrimination.

7. Workshops on specific issues of discrimination, such as employment, housing, and education, etc., should be offered to Aboriginal people and tailored to meet their needs.

8. More plain language tools (i.e. information packages, booklets etc.) to increase awareness on the CHRA, CHRC, and CHRT are needed and should be produced in English, French and Aboriginal languages. Participants also noted that while there seem to be plain language tools available and specific to the needs of Aboriginal women, very little, if any tools and materials exist that are targeted to Aboriginal men.

9. Research is required to determine the enforceability and implementation of decisions made by the CHRT against Band Councils. For example, do Band Councils acknowledge the jurisdiction of the CHRC and CHRT and are their decisions implemented on-reserve?

10. Most Aboriginal people do not have the financial means to hire lawyers to present their complaints to the CHRC and CHRT. Financial and legal assistance will be required for individuals to file complaints with the CHRC and CHRT.

11. The process and procedures of the CHRC and CHRT are complex and lengthy and individuals may become discouraged and possibly not follow through on their complaint. Aboriginal people will need to be educated on the process and procedures of the CHRC and CHRT.

12. Research is needed on the process and procedures of and decisions by the CHRC and CHRT to determine the success of individuals who choose to represent themselves. This research would determine the specific needs of individuals who appear on their own behalf before the CHRC and CHRT.

13. The CHRC and CHRT lack the requisite knowledge of the seventy-three nations of Aboriginal peoples and their cultures, laws, traditions, views, etc. Aboriginal peoples also have the inherent right of self-government, which entails the right to resolve disputes internally. Research is required to determine the best alternative dispute resolution process for Aboriginal peoples, as we require a separate system that meets our diverse cultural identities. In the interim, the federal government should significantly invest in the CHRC and CHRT to improve the dispute resolution process, as well as recruit and hire Aboriginal people to process, investigate and hear complaints.

14. The customary laws, traditions, and practices of Aboriginal peoples should be gathered, compiled, and stored after obtaining free, prior and informed consent of Aboriginal peoples. This traditional knowledge and cultural information should be protected in a *sui generis* model to prevent cultural misappropriation. Access to this information should only be granted to Aboriginal complainants, the CHRC and CHRT.

15. Band Councils will more than likely raise the right of self-government to defend claims of discrimination. Research will be required to determine the CHRT's capability and expertise to examine and decide issues pertaining to section 35 of the *Constitution Act, 1982*. Processes may be needed to improve the CHRT's expertise in deciding issues pertaining to Section 35 of the *Constitution Act, 1982*, i.e. provide education seminars and appoint Aboriginal lawyers to the CHRT.

16. To date, the federal government has not provided adequate investments for off-reserve Aboriginal organizations to educate and assist their constituents concerning the *CHRA*. Investment in capacity building (leadership, education on human rights/equality, policy and program development, review and delivery) will be required to meet the equality rights of their members.

17. Investment in all Aboriginal communities and Aboriginal Representative Organizations is required to further the equality rights of individual members. The concept of an Ombudsman process should be examined and introduced to provide oversight and advocacy for the human rights of Aboriginal peoples and the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.

18. All Aboriginal peoples, regardless of status or residency, should be educated on human rights and equality.

19. Aboriginal youth, regardless of status or residency, must be educated about human rights and equality. Partnerships need to be formed with provincial/territorial ministries of education to support

education on human rights in the school system. Partnerships should also be formed with non-governmental organizations that have youth as a core part of their membership (e.g. YMCA).

20. The federal government needs to invest and address systemic racism against Aboriginal employees within its own system. The federal government should hire Aboriginal people in senior management positions, i.e. Deputy Ministers and Assistant Deputy Ministers. Full and substantive equality for Aboriginal people will not be achieved until AANDC, and the whole of government, addresses systemic racism within its own institutions.

21. Newcomers to Canada may harbour stereotypical views, which can lead to bias and racism in their encounters with Aboriginal people. Newcomers must be educated about the history of Aboriginal peoples and be able to demonstrate cultural sensitivity as a requirement for entry into Canada and Canadian citizenship.

22. The interpretive clause in Bill C-21 is confusing for Aboriginal people and has not yet been applied by the CHRC and CHRT. Research from both an Aboriginal collective and Aboriginal individual perspective is required on how the interpretive clause should be applied by the CHRT. The Congress, as the representative body for non-status and status Indians living off-reserve and Métis has the expertise, and with appropriate funding, can undertake such an analysis.

23. The *Indian Act* contains many discriminatory provisions and should be repealed. However, a proactive review of the *Indian Act* should take place with an objective to replace it, if necessary, with one or more pieces of legislation that will meet the needs and rights of Aboriginal peoples in an equitable manner. Aboriginal peoples also have the right to self-government; therefore, this review should take place by all Aboriginal peoples in a process that is determined by them and supported by the federal and provincial/territorial governments.

24. The federal government must provide financial resources for CAP and each of its PTOs to hire two people to provide assistance and information on the CHRC and CHRT procedures and processes for Aboriginal peoples who wish to file complaints of discrimination with the CHRC.

25. The federal government should provide adequate funding to CAP and its affiliate PTOs to conduct an analysis of how the *Daniels* decision could impact the application of the *CHRA*. For example, the analyses would address questions such as who has jurisdiction and responsibility to protect the rights of Métis, non-status Indians and Aboriginal peoples.

Participants in the roundtable concluded that while the repeal of section 67 can be considered a step in the right direction to realize the fulfillment of full equality for Aboriginal peoples in Canada, however, more research and actions are required before the *CHRA* is able to provide adequate protection and prevent discrimination against Aboriginal peoples. The passage of laws, such as Bill C-21 and the repeal of section 67, unaccompanied by certain measures, such as those listed in the recommendations proposed by the Congress and its affiliates, fail to provide the equality Aboriginal peoples need and deserve.

4.5 The Findings of AANDC's Outreach and Online Process

The Department invited input from Chiefs and Councils of all First Nations across Canada that operate under the *Indian Act* and from individuals through its online process. However, it received limited response. Only three (3) individuals provided their views and perspectives on the impacts of the repeal of section 67 through AANDC's online process.

All three (3) respondents identified as status Indians and members of Bands, and all three indicated that they are members of a First Nations government. These respondents outlined the following issues and concerns:

- The lengthy and costly process in defending against and adjudicating *CHRA* complaints. One respondent reported that their community has spent over $200,000.00 in defending against one complaint and another complaint took two years to resolve. While the latter complaint was resolved in favour of the Nation, the lengthy process was costly in terms of both human and financial resources.

- First Nations lack preparation to implement the changes to the *CHRA* and there is no capacity or resources to review laws and processes for compliance and to resolve complaints. Resources are required for adequate training in these matters.

- Resources are required to update community buildings in order to accommodate the access needs of disabled community members.

- The *CHRA* serves to undermine the collective nature of First Nations communities. Changes to the legislation were passed with no consultation with First Nations.

- The government needs to support First Nations in the development of their own laws in accordance with their indigenous ways, traditions and cultures, including in the development First Nations-specific human rights protections, mechanisms and supports.

CONCLUSION

The purpose and objective of the five-year review was to report on the effects of the repeal of section 67 of the *CHRA* on the Government of Canada and on First Nations and their governments, as well as on the number and nature of human rights complaints filed against the federal and First Nations governments post-repeal.

Based on the findings of the five-year review and as time progresses following the repeal of section 67 of the *CHRA*, the AANDC and the Government of Canada are managing the complaints accepted by the CHRC and precedential case law is being developed. With each decision, further clarity is gained by the Government of Canada on what elements of the *Indian Act* may need adjustment to comply with the *CHRA*, or what areas are considered to fall outside of the jurisdiction of the CHRC, because they are not within the provision of a good or a service or an employment issue.

The Department will continue to analyze the impacts of the *CHRA* on the *Indian Act*, both in response to complaints filed with the CHRC, but also in respect of reviews and analyses of the business practices and aspects of the *Indian Act* applied by the Department.

The findings of the National Aboriginal Organizations and the online input received from individuals indicate that, while the amendments to the *CHRA* have begun to facilitate access to human rights protections for First Nations operating under the *Indian Act*, challenges remain in respect of: the level of knowledge and understanding of the *CHRA* and the complaints process; the capacities of First Nations governments to comply with the legislation; and recognition of, and respect for First Nations legal traditions and customary laws, as well as culturally appropriate dispute resolution mechanisms as part of the human rights complaints process.

The Government of Canada recognizes First Nations governments as possessing, like other governments in Canada, the powers and authorities necessary to prepare their communities and organizations for the full application of the *CHRA*. Over time, as complaints arise that highlight possible breaches of the *CHRA*, First Nations governments will be able to further adjust their practices to respond to complaints in order to prevent them from arising again in the future.

Programs and services are available through a number of federal departments and agencies to assist First Nations communities and organizations with these adjustments. They include:

- Band Support Funding, By-Law Advisory Services and the Elections Unit (AANDC)
- Capital Facilities and Maintenance Program (AANDC)
- Racism-Free Workplace Strategy (Labour Canada)
- Social Development Partnership Program and Enabling Accessibility Fund (Human Resources and Skills Development Canada)
- On-Reserve Residential Rehabilitation Assistance Program for Persons with Disabilities and Home Adaptations for Seniors Independence Program (Canadian Mortgage and Housing Corporation)

In addition, the CHRC continues in its work to raise awareness of the *CHRA* within First Nations communities, strengthen its relationship with First Nations governments, and to provide the information that they require as they continue to enhance their capacities to reach compliance with the *CHRA*.

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