# Social Justice: Put your money where your mouth is

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In their speech from the throne, the Conservative government promised to venture where angels fear to tread; that is, to again tackle the delicate balancing act between individual human rights and First Nations self-government and autonomy.

In November, the government subsequently re-introduced legislation (Bill C-21) to guarantee people living on reserve the same protections other Canadians enjoy under the Canadian Human Rights Act (CHRA). It is anticipated that First Nations women in particular would be impacted by such a change.

The Conservatives are not the first party to come to mind as arch defenders of gender equality rights. Wasn't it just last year the government declared women to be already equal in slashing the budget of Status of Women Canada and removing equality from its mandate?

This newfound concern for the human rights of First Nations women might just warm the cockles of conservative hearts, though the women might have been forgiven for asking Harper, "And, ain't I a woman?" harkening back to Sojourner Truth circa 1851.
Regardless of whether this legislation is a cheap political trick in order to look like a government that cares about rights, the issue is very live.

S. 67 of the CHRA was enacted in 1977, providing that nothing in the act affects the Indian Act, leaving status Indians without protections that other Canadians have. S. 67 operates to prohibit anyone on reserve lands from claiming an Indian Act band council decision is discriminatory; its repeal would mean First Nations women and others can benefit from the act's protection.

Legislative history indicates this was meant to be a temporary measure at a time when the government was struggling (albeit unsuccessfully) to deal with gender discrimination in the then Indian Act.

Yet opposition MPs derailed the government's first legislative attempt in July, largely in response to the First Nations' position that there was neither adequate consultation nor funds to effect changes required to meet the act's requirements. The Assembly of First Nations has asked for a three-year transition period for education and preparation. The government offered up 18 months, but no new funding or extended consultation.
The need for consultation with First Nations peoples is not debatable; its scope and ultimate outcome is.

On the one hand is the paternalistic muddle that has repeatedly been generated by the government unilaterally moving ahead with aboriginal legislation; on the other is that great driver of legislative change: litigation risk. There is no doubt that the CHRA exemption would likely not stand charter muster; even the commission itself has said so.

And there is no excuse on the government side. Thirty years and yet no years have passed. No years of funded public education, capacity building and prep time on the CHRA for communities.
As many First Nations communities have continued to struggle with the most basic health and safety, education, and employment, combined with the legacy of colonialism and residential schools, it is hardly realistic to expect that compliance with the CHRA will get priority billing.

In this context, three years combined with adequate funding for educational measures doesn't sound unreasonable.
In its 2005 report, the commission called for the immediate repeal of s. 67, while allowing room for the devolution of human rights resolution processes to First Nations.

The commission supported a transitional period, and an interpretative provision requiring that complaints against First Nations be considered in the context of their particular circumstances.

Finally, the commission stressed the need for adequate human and financial resources to design and implement viable human rights systems: "It is essential that First Nations not be forced to divert resources from critical programs, such as housing and education, in order to fulfil statutory human rights obligations."

This raises the question of what real government commitment to human rights in First Nations communities would look like. With due respect to the limited mandate of the commission, it would certainly involve more than the formal application of legislation.

The experience of some First Nations women of sex discrimination on reserve is inextricably interconnected and indivisible from the systemic and pervasive nature of aboriginal inequality in Canadian society.
One might question how useful a tool the CHRA will be if not paired with a broad socio-economic approach, such as that represented by the Kelowna Accord, killed off by this very same government. Government should learn from the lessons of the past.

Legislation from on high will only be effective if implemented after meaningful consultation with First Nations men and women, and if paired with community–based initiatives that attempt to holistically address the myriad factors contributing to systemic inequality. Otherwise, clean water, housing, and basic social services will surely continue to trump initiatives relating to the CHRA, regardless of the status of s. 67.

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*Michelle Mann is a Toronto-based lawyer, writer, consultant and host of @issue on the ichannel. Check out her web site at* www.michellemann.ca

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