

**Speaking Notes for
National Chief Kevin Daniels
Congress of Aboriginal Peoples**

**Senate Standing Committee
on Aboriginal Affairs**

Indian Act Elections

**Ottawa, Ontario
June 3, 2009**

Good Evening Chairman St. Germain, Senators and participants.

Thank you for inviting me to attend this meeting on issues regarding elections held under the Indian Act regime. It is a pleasure to be here on the traditional territory of the Algonquin people.

The Congress of Aboriginal Peoples (CAP) represents the interests of Status and non-Status Indians living off-reserve and Métis. We were established in 1971, and have been a participant in all the Constitutional negotiations, and it was my cousin Harry Daniels who negotiated Métis into Section 35 (2) of the Canadian Constitution.

I am from the Cree Nation in Saskatchewan and grew up on the road allowance on the outskirts of the Gordon First Nation. My family was part of the first wave of off-reserve Indians to move into north central Regina, which now has the distinction of being the worst neighbourhood in Canada.

In 1951, the Census of Canada reported that 6.7% of Aboriginal people lived in cities.

In 2006, the census reported that 60% of the ancestry-based population now reside in urban areas and 80% live in non-reserve areas.

The migration of Aboriginal peoples into urban centres is the most significant Aboriginal demographic for anyone looking at revision of the Indian Act. Federal policy seems stuck where it was 50 years ago – 90% of the \$10 billion that Ottawa spends each year goes to Indian Act reserves. This is an enormous mismatch of resources to people.

In June 1969, a White Paper on Indian Policy was tabled in the House of Commons. The *Indian Act* was to be repealed and the department itself phased out over a five-year period, with services being transferred to the provinces. These ideas were opposed by Indians from across Canada, who wanted the *Indian Act* to remain, but with significant changes.

Today, the Indian Act continues to be the principal instrument of federal jurisdiction over the lives and affairs of Status Indians living on and off-reserve. The guiding star of the *Indian Act* has always been paternalism this is essentially the same policy that has been in existence for the last 138 years.

In our view, the use of the term “First Nations” is inappropriate when referring to *Indian Act* Reserves. Professor Morse has told you that the *Indian Act* has resulted in a breaking down of the historic nations into ever smaller parts. The RCAP report referenced the historic First Nations in Canada, not *Indian Act* reserves.

When this Senate committee speaks about seeking the views of affected First Nations and other interested groups, we trust that you are talking about the historic First Nations and not referencing the off-reserve in a category of “other interested groups.”

I agree with Professor Morse that looking at the *Indian Act* in a piecemeal fashion is an exceedingly difficult task.

I don't agree with Professor Morse, when he recommended to you that a Bill be drafted jointly by Canada and the Assembly of First Nations for changes to the *Indian Act*. This would be a recipe for social conflict.

Over the years, many INAC Ministers have attempted to change the *Indian Act* without much success. In 2000, the government of the day revisited the *Indian Act* and proposed a First Nations Governance Act. CAP was very active on this file and took a leadership position on the issue of governance and self-determination. We believe that our rights to self-determination are a fundamental human right.

Article 21 of the 1948 Universal Declaration of Human Rights states:-

Everyone has the right to take part in the government of his or her country directly or through freely chosen representatives.

and

The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be led by secret ballot or by equivalent voting procedures.

In order to achieve these rights, John Corbière had to go all the way to the Supreme Court of Canada. Without his determination and will, Status Indians living off-reserve would not be involved in the governance of their Bands.

As of today, there is no consistent understanding of the impact of the Corbière decision on custom elections. Back in 2000, the Band councils who had moved to custom elections were required to demonstrate Corbière compliance. Today, some Bands allow off-reserve members to vote; others do not. There is no way to determine the number of custom elections that are in compliance with Corbière. As you have heard from INAC officials, the department does not even have copies of the current custom electoral codes for all Band Councils. INAC officials can't tell you whether a Band Council is complying with the Corbière decision.

This Committee has heard testimony of officials that 54% of the Indian Act reserves elect their leaders through customary codes outside of the *Indian Act*. During 2007/08, CAP undertook a study of existing customary codes and reported the following:

1. Many of these codes have fundamental flaws in either their substantive or procedural elements
2. These flaws constitute potential violations of:
The Canadian Charter of Rights and Freedoms;
The Canadian Human Rights Act;
The Privacy Act;
Personal Information and Electronic Documents Act;

The Corbière Decision;
as well as the principle of natural justice and international legal standards.

The potential for social conflict is high in regard to custom election codes. We all recognize that many codes rely on concepts and policy that might have been acceptable at one time, but are no longer reflective of modern democratic principles and practices. These custom codes should not be frozen in time and need to be updated. They need to be harmonized with the Canadian Charter of Rights and Freedoms, the Corbière decision and other jurisprudence.

The realization of democratic rights for off-reserve, including our right to participate in Band Councils... is a matter of justice. Voting rights are human rights and they must be guaranteed to all with no exceptions. Where there is a conflict between fundamental rights and custom election codes, then human rights must prevail.

I was surprised to read in the transcript of your May 13th meeting, that the Atlantic Chiefs are interested in balancing councils to better reflect the needs of the community. The underlying message here is that the vote of a Status Indian on reserve is worth more than one off-reserve. We would never accept this and stand on the principle...one person; one vote.

During discussions with our constituents in information sessions, we learned that the custom electoral system is not working well for off-reserve Band members. Many participants were not aware of what electoral process the Band was even using! Because urban Aboriginal peoples deal with people who have come from different Bands, there is confusion over the various practices and rules. They develop the impression that Band Councils are making up the rules as they go along.

The outcome of this situation is many off-reserve have lost faith in Band governance and the electoral process. The result of this lack of participation and representation for the off-reserve has resulted in a lack of access to programs and services. We found that people are either very angry about this or are apathetic.

In one focus group of Aboriginal youth, we discovered that they were enthusiastic to cast their vote and make the right choice, but they were frustrated with the lack of information about candidates, issues, notice of elections and the election process. Many thought that there was a need for impartial guidance and training.

For the overwhelming majority of Aboriginal people, there is a common complaint about the lack of information, election timing, rules and procedures, and issues. People have advised us that they are being excluded from voting and have difficulty keeping their names on Band voter lists.

Many people have told us that they do not vote because they don't have access to local polling stations or the mail-in ballot system. What this means is that in order to exercise their right to vote, they need to spend their own money to travel back to the reserve.

We've also talked with INAC regional officials to understand some of the issues involved with custom elections. They were concerned about the impact of electoral conflicts in communities and the challenge of managing the department's response.

It is remarkable that INAC has no policy in place to ensure that it has up-to-date and accurate copies of custom election codes. We cannot accept that once Band councils move away from the *Indian Act* election regime, that the department is no longer involved and there is no necessity to secure updated or amended election codes.

Like many of the members on this committee, we are concerned with the lack of consideration of custom code elections and the link to reserves that are under third party management. The potential for abuse is self-evident and the fact that the only remedy available to the off-reserve is a court challenge, does not strike me as a fair process.

Dysfunctional councils result in loss of economic opportunities. The functional problems related to custom elections revolve around voter and candidate qualifications, unwritten codes, lack of community review of revisions and amendments and the lack of an appeal or redress procedures.

The lack of progress in this area is impeded by the fact that 30% of Band councils using custom elections do not have written or community ratified election codes.

As members of this committee are aware, Section 67 of the Canadian Human Rights Act was repealed and there is a 36-month reprieve for reserves to prepare for potential outcomes. There has been no discussion about the potential impacts to custom elections. This means that off-reserve people will need to seek redress from the Canadian Human Rights Commission.

Distrust of INAC and the Indian Act by off-reserve Status Indians is recognized by members of this committee. The Indian Act both directly and indirectly, is the foundation for discrimination against the majority of Aboriginal peoples in Canada. The legislation is outdated and inadequate in providing direction on Band Council governance systems.

When the suggestion is made to extend the term of office for Chiefs and Councils, we know this means that accountability will be delayed. We would not be opposed to fixed election dates and removal mechanisms being in place.

When I notified our affiliate leadership that I was presenting to this committee, many felt that this would be a waste of time... but I remain optimistic that the members of this committee will understand the discrimination that is taking place against off-reserve Status Indians. We agree with Senator Brazeau that our constituency, as well as the general Canadian public, want to know that Custom Codes are compliant with the Canadian Charter of Rights and Freedoms.

We recommend that this committee highlight the fact that off-reserve Band members are being denied their inherent Aboriginal right, and their human right to meaningful participation in the governance of their Bands. Decisions made by Band Councils that exclude such a large percentage of Band members cannot be seen as representative of the collective. They are contrary to Article 18 of the UN Declaration on the Rights of Indigenous Peoples.

We believe that there are best practices among many of the custom election codes and we have identified some of them. The government of Canada needs to ensure that the basic human rights of Aboriginal people are protected and legislate minimum requirements for the custom election codes. Band Council elections need to reflect the distribution and residency of Band members. Our constituency needs to be assured that they have both the right to vote and the right to be elected in Band elections.

The right of all citizens to vote underpins the legitimacy of democracy. It is a fundamental human right and must be guaranteed to all with no exception. As off-reserve Aboriginal people, it is our duty to question the state of Aboriginal democracy.

With our rights and obligations fully protected, we can truly prepare for the future of the next generations.