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**Tuesday, May 7, 2013**



**Chair**

**Ms. Lysane Blanchette-Lamothe**



## Standing Committee on the Status of Women

Tuesday, May 7, 2013

• (1100)

[Translation]

**The Chair (Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP)):** Welcome, everyone. This is the 75th meeting of the Standing Committee on the Status of Women. Today, we are continuing the study of S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

Joining us today are Chief William K. Montour, Chief R. Donald Maracle and Chief Joel Abram from the Iroquois Caucus. Welcome.

You have 10 minutes that you can share for your opening statement. Then, by videoconference, we will hear from

[English]

the Nishnawbe Aski Nation, with Deputy Grand Chief Alvin Fiddler, and Madam Jackie Fletcher, the women's council representative.

You will have 10 minutes for your opening remarks. Then we'll go to our rounds of questions with the MPs around this table.

Mr. Montour, I welcome you and invite you to start your opening remarks.

**Chief William K. Montour (Member, Iroquois Caucus):** Thank you, Madam Chair.

*She:koh sewakwe:koh.* I'm the elected chief of the Six Nations of the Grand River. I put a written submission in to the clerk back on April 25, so you have that in your package. In general, my remarks are going to be representing the Iroquois Caucus.

The Iroquois Caucus is an independent organization representing 70,000 Six Nations people in Canada. We have concerns that this legislation is an abuse of our people, and I might say a continued abuse of our people, because your Indian Act, back in 1867, took suffrage from our women. I think it's wrong that it be perpetuated today.

The Six Nations Council has enacted our own legislation, as I said, but on behalf of the caucus, we're concerned about the process. There is supposed to have been extensive consultation. We don't know who with, because as representatives of the communities of those 70,000 Six Nations people, we have never seen anyone consulting us.

I believe, as do my colleagues, that our relationship is embodied in the Guswenta, *Tekeni Teiohate*, or the Two Row Wampum Treaty. I'll reiterate what it says: We will not be like Father and Son, but like Brothers. [Our

treaties] symbolize two paths or two vessels travelling down the same river together.

One, a birch bark canoe, will be for the Indian People, their laws, their customs and their ways. The other, a ship, will be for the white people, their laws, their customs and their ways. We shall...travel the river together, side by side, but [each] in our [own] boat. Neither of us will make compulsory laws or interfere in the internal affairs of the other. Neither of us will try to steer the other's vessel.

What we have here, committee, in my estimation, is someone trying to steer our canoe.

As I said, the remarks I'm making are on behalf of the caucus. We're concerned, as I said, with the consultation process with the AFN and the Native Women's Association. They don't represent the people that this is going to affect: the people in the communities.

With that, I'll ask my colleagues to make their presentations, because they haven't done their presentations yet. I'll be open for questions later on.

Thank you very much.

• (1105)

**The Chair:** Thank you.

**Chief R. Donald Maracle (Member, Iroquois Caucus):** *Seken sewahkwekenh.* Good morning, everyone. My name is Chief Don Maracle. I am the chief of the Mohawks of the Bay of Quinte. I concur with what my colleague Chief Montour has said.

The Mohawk Nation is part of the Iroquois Confederacy. We're part of the Iroquois Caucus and part of the Association of Iroquois and Allied Indians. We live near Belleville, Ontario. Our current membership is 9,053 members. Our people live on just about every continent in the world.

Since the passage of the McIvor legislation, we have seen our membership increase by 819 members and there are other applications pending registration at the Department of Aboriginal Affairs. We have 2,200 members who live in our community, and an estimated 1,200 non-native, non-status people who live in our community and are attached to families.

With the implementation of Bill C-31 and in the past two years, our membership has increased by 10%. Many of the funding formulas are for people who live on the territory. Some of the funding formulas are for the entire membership. The new registrations have placed additional financial burdens on our community and on the council, with no additional funding to offset the increase in membership. These provide pressure on housing and education.

We have the third largest membership of aboriginal communities in Ontario and the ninth largest in Canada.

Our ancestors were military allies of Great Britain and participated in most of the wars in the last 300 years. After the American Revolutionary War and the signing of the Treaty of Paris in 1783, our ancestors were required to choose a homeland on the north shore of Lake Ontario and the traditional hunting territory of the Iroquois Confederacy.

We are very disappointed that this legislation has once again surfaced in the House without prior consultation. The views of Wendy Grant-John, who was commissioned by Canada to travel across the country to gather the views of first nations people, have largely been ignored in the bill.

The government has a duty to consult and to also honour its own laws, and to date the government has not followed its own jurisprudence with respect to decisions passed on by the Supreme Court regarding the duty to consult. The duty to consult, accommodate, and obtain consent was reaffirmed by the Supreme Court when the government is considering action that could affect aboriginal and treaty rights.

This bill does impact on Treaty 3 1/2, which created the land base for the Mohawks of the Bay of Quinte. It's published by the Crown as Treaty 3 1/2, dated April 1, 1793.

We are also of the view that this committee is not the appropriate committee to be studying this matter. This issue is not really just about aboriginal women's rights. There are men in our communities who fall under the same situation, who have suffered abuse, and sometimes it's not always the man that's the abusing partner. We feel that the bill should protect the family as a unit, to have a more holistic view, and not be gender-based.

There's a great deal of focus on family violence with this bill. There are many reasons that contribute to the breakdown of a family. To focus on family violence is leading the public to believe that all first nation marriages break down as a result of family violence. That is not the case. It also brings to the public the view that all first nation men are violent to their partners. That is not the case.

This submission does not constitute consultation. Bill S-2 is paternalistic. It does not recognize that the jurisdiction over who can live on our land belongs to the first nation and not to the Government of Canada. The government purports only to understand that family law is a right of a first nation's jurisdiction, but in fact, all the government is doing is not recognizing their right, they're delegating authority to manage it to the first nation. The Royal Proclamation of Canada was a document the government spent millions of dollars on and that document recognized that family law is a matter of first nations' jurisdiction.

There is a requirement to hold a referendum to pass a law. There is no government anywhere in Canada that has to hold a referendum to pass a law. There is a lot of difficulty meeting the 25% threshold because many of our people, who have been added to the list through Bill C-31 in 1985 and the McIvor legislation, live in various parts of the world. They may not always participate in community decisions and a lot of them believe it's not appropriate for them to do so.

●(1110)

There's no clamour from our membership to participate in these kinds of decisions. To get to the threshold to even vote could be problematic in some of the communities. Also, there's a high cost to that manner of consultation, which the government does not fund, so it adds another financial burden on first nation communities to go through this type of process.

Our land is very integral to our people. There's a strong connection that our people have to the land. Our identity flows from that relationship to the land, and it holds a cultural and spiritual importance to our people.

**The Chair:** You have one minute left, Chief Maracle.

**Chief R. Donald Maracle:** The problem is largely the lack of housing and the chronic underfunding for infrastructure to build homes. People don't have a lot of choices. You can't just go and rent another house somewhere else in the community, because there are over 100 people on a waiting list for housing. This bill will create pressure to build more rent-geared-to-income housing. If a person has to give up a house, they have to live somewhere or else we'll have homeless people in our community, which will become another social problem.

When separations occur, some people simply have nowhere else to live, so people quarrel over who can live in the house. The previous Auditor General, Sheila Fraser, recognized that there was chronic underfunding. The chronic underfunding contributes to the violence because there's no alternative housing in the community—

**The Chair:** I'm sorry, Chief Maracle, I need to stop you because the 10 minutes have expired. We'll come back later with questions from members. Thank you very much.

I'm now turning to the Nishnawbe Aski Nation. I'll let you start. You have 10 minutes to share your opening remarks.

**Deputy Grand Chief Alvin Fiddler (Deputy Grand Chief, Nishnawbe Aski Nation):** Thank you, Madam Chair.

Thank you for giving us the opportunity to appear before this committee on this very important issue.

My name's Alvin Fiddler. I'm one of the deputy grand chiefs from Nishnawbe Aski Nation. With me is Jackie Fletcher. Jackie is a member of the NAN Women's Council.

Just briefly, to familiarize the committee with who we are, Nishnawbe Aski Nation represents 49 first nation communities situated right across northern Ontario, northwestern and northeastern Ontario. It covers roughly two-thirds of the province of Ontario, and those are the communities that signed Treaty No. 9 back in 1905-06, and the adhesions, which were signed in 1929 and 1930.

I just want to start off by saying that we recognize that we have a shared interest to protect families, to protect women and children in the event of a family breakup, in the event of a divorce in our communities. We need to ensure that every individual is treated with respect and that their interests are protected in that situation.

I also want to echo what my colleagues, Chief Montour and Chief Maracle, have brought forward to the committee. We've always had concerns about the process, how this bill was brought about, and how it's going through the process now.

One of the concerns we have is that, even though there were pockets of money to do consultations across NAN, we just feel that not nearly enough was done to properly consult with our members or to do them justice. I think that's one of the points we want to make today. There have to be adequate resources given—perhaps to NAN's Women's Council that will drive this—and adequate time to make sure we do it right.

One of the things that I want this committee to recognize and to acknowledge is that if you go ahead and impose this bill, impose these rules on our communities, the infrastructure isn't there to follow through with these rules. Right now we're involved in two processes just dealing with the justice system alone: the Iacobucci report, and also the fly-in court system. There's such a backlog. There's so much work that needs to be done to try to improve how justice is delivered and administered, especially in the remote north. Of the 49 communities, 32 of our communities are considered fly-in and remote communities.

The other piece of that is enforcement. I don't know what this committee's planning to do in terms of enforcing these rules. Some of you may be aware that policing is a real issue in our communities. In fact, we're struggling with our NAPS, our Nishnawbe-Aski Police Service. We're so under-resourced, we're so underfunded that we're having a hard time. We cannot guarantee public safety for our communities, as well as for our officers.

I'm telling you this because I'm not sure how familiar you are with the north. One thing we want to do is to invite members of this committee to come visit us, to come meet with our leadership, to come meet with the NAN Women's Council. If we're going to do this, I think we need to do it together. We need to work together to ensure that this is done right.

We're tired of having bills and rules imposed on us because they never work. They don't work for our communities. I think the message we want to convey to you today is for you to come up here.

• (1115)

That's why we're here. We just didn't feel it was worth our while to spend a couple of thousand dollars to come down there for 10 minutes to present to this committee. I think you need to also invest your time and your resources to work with us.

**Ms. Jackie Fletcher (Women's Council Representative, Nishnawbe Aski Nation):** Hi. My name is Jackie Fletcher. I'm a member of the Nishnawbe Aski Nation Women's Council.

I'm pleased to say there are nine members on the Nishnawbe Aski Nation Women's Council. We don't have a hierarchy. We don't deal with a president, vice-president, all those kinds of things, and it works really well. We are all equal at that table. That's a very important facet of how we used to be as aboriginal people before contact.

What I want to talk about on MRP has been said already by the three gentlemen—and I'm very pleased to see gentlemen here at this

table. I'm not sure who all are on the standing committee, but I understand there are 12 females, which is not very good representation, because this is not just a women's issue, this belongs to the community. As well as not being gender-based, we have same-sex marriages, we have men and women. We can't just have a cookie-cutter approach to this issue.

I also want to talk a little bit about the checkerboard effect. For example, if a non-native woman marries a native man and they separate, under this legislation the house goes to the female, who is non-native. You could end up with all non-native people on a reserve, so it doesn't make sense. I'm very concerned about that as well.

We appreciate the effort that is being put forward to address this issue. It is a very extreme issue in our communities, but we need the resources, as Deputy Grand Chief Alvin Fiddler talked about. We need the legal people there. I can't even understand a lot of this information that has come forward. We need to educate our people in the communities, and every community is different. We can't just say we'll put in this blanket solution for all the communities. I know some communities are using their housing policy now to address MRP. So it's up to the individuals.

I would also invite you to come to sit with us so we can come up with the solution. We are tired of being talked down to.

I have four sons right now, and they're all living on their own. When they move into their own houses, I don't go and say, "Okay, you have to live like this. You have to make your bed like this. You have to do this." They're living their own lives, yet they'll allow me to come in and give them some suggestions. That's what I would like to see this government do, come to hear what we have to say. Come to the communities and see what it's all about. It's very easy to sit in an office in Ottawa and make rules when you don't know what's going on in the communities.

As I said, I appreciate that this issue is being addressed. I would like to have more resources. There are three languages: Oji-Cree, Ojibwe, and Cree. We need to have the translation done. We need to go into the communities and consult with the communities.

Thank you.

• (1120)

**The Chair:** Thank you, Madam Fletcher.

We're now starting our first round of questions.

Madam Truppe, you have seven minutes.

**Mrs. Susan Truppe (London North Centre, CPC):** Thank you.

I'd like to thank everyone for being here and sharing your comments and thoughts on Bill S-2.

Can I just ask each of you, starting with Jackie, have you read Bill S-2? Have you read the bill and do you understand the bill?

**Ms. Jackie Fletcher:** I don't understand it totally, but I have read it.

**Mrs. Susan Truppe:** You've read it. Okay.

To Deputy Grand Chief Fiddler, I ask the same question.

**Deputy Grand Chief Alvin Fiddler:** I haven't read the whole bill. I've read a good chunk of it.

**Mrs. Susan Truppe:** Okay. Thank you.

The Chiefs who are here in person...?

**Chief William K. Montour:** I have.

**Mrs. Susan Truppe:** You've read it, yes.

**Chief R. Donald Maracle:** I've read it and I've been briefed on it.

**Mrs. Susan Truppe:** Thank you.

**Chief Joel Abram (Member, Iroquois Caucus):** I have as well.

**Mrs. Susan Truppe:** Jackie, I just want to clarify something. You mentioned something to the effect that a non-aboriginal would be able to take possession of a house on the reserve, and then there'd be all non-aboriginals living on the reserve. But that's not what this bill is about. The bill would give temporary access to the home—they wouldn't be able to keep it. For example, in the event of a death, if there was a non-aboriginal married to an aboriginal person, that non-aboriginal would have up to 180 days, let's say, to get their affairs and things in order, and then they would have to leave. I just wanted to clarify that.

I'm sure you're familiar with the Frontier Centre. Joseph Quesnel is a policy analyst for Frontier Centre for Public Policy. He said:

The continuance of federal jurisdiction and paternalism for a temporary period for the sake of providing...justice and protection for women seems like an honourable compromise, especially from the perspective of women denied equal rights.

They did a study—I think it was in 2010—and they asked three questions to male and female respondents in Manitoba, Saskatchewan, and Alberta. First, they asked if they were in favour of an equal division of marital assets in the event of marital breakdown. Some 77% responded “definitely” or “perhaps”.

Second, they asked the same number of respondents whether they thought the band government was doing enough to protect on-reserve women from violence, usually from domestic partners. A troubling 42% of respondents across the province said “not really” or “never”.

Do you find this troubling?

I will ask the chiefs, starting with Grand Chief Fiddler?

• (1125)

**Deputy Grand Chief Alvin Fiddler:** It's difficult for me to speak to what's happening in other parts of the country, whether it's Saskatchewan, Manitoba, or Alberta. I think what we're speaking about today, for myself and Jackie, is what's happening here in the NAN territory.

What we've said is that if we're going to do this, we need to do it right. We need to make sure that there is enough time and enough resources for us, and for you as well. That's why we're inviting you to visit our communities. We want you to speak with the leadership and the women directly to ensure that the work we will do is done right, to ensure that it's fair to all the individuals, and to ensure that it protects the women and it protects the rights of our children. I think they are the most vulnerable population in our communities. I find it difficult to speak about what's happening in other parts of the

country. What we're hearing and what we're conveying to you today is what's happening in our communities in the NAN territory.

**Mrs. Susan Truppe:** Thank you, Chief.

Chief Maracle?

**Chief R. Donald Maracle:** First of all, when there's family violence on the reserve, usually it's the police who are called, and they decide whether or not there's a level of violence that warrants the laying of charges. Those charges are not heard by the chief and council; they're heard by a court. If a court finds that a person is guilty, they'll put certain orders in place, usually non-communication orders. Often, whichever parent is going to look after the children will stay in the house and the other party has to stay away.

The chief and council get involved when it's a mixed marriage where one's a status Indian and the other's non-status, and the status Indian may want to borrow money from the band to pay the wife off so she can get a settlement and they can get on with their lives. We don't have the financial resources to accommodate those arrangements. That's how most marital breakdowns are handled—one party's paid off and they settle their differences through financial means. Alternatively, they may want another place for the husband to live so the wife and children can live in the house. Sometimes it's the father who has the children and the wife who has to leave.

**Mrs. Susan Truppe:** Right.

Thank you.

**Chief R. Donald Maracle:** We're usually involved when there's no money to pay the other party off or no alternative place to live. We don't have the resources to address those needs in our communities.

**Mrs. Susan Truppe:** Thank you.

**Chief R. Donald Maracle:** We don't have adequate policing either.

**Mrs. Susan Truppe:** Did you find that report troubling, though? A full 42% said that, to some degree, they didn't feel that the band government was doing enough to protect on-reserve women from violence?

**Chief R. Donald Maracle:** First of all, I would like to know whether or not the people who were interviewed had ever lived on a reserve. I don't know whether they canvassed the people who lived on the reserve. Quite often, people who are not living on the reserve have a misunderstanding of what goes on there. They're not confronted with the day-to-day problems that exist in a first nation.

**Mrs. Susan Truppe:** Thank you.

We acknowledge that Bill S-2 will not, and is not intended to, address the broad issues of poverty or housing shortages on the reserve. The bill is developed in response to women and men who asked the government to address this inequity. It provides equal rights to the family home and protection for primary caregivers, the majority of whom are women, and their children in situations of family violence, divorce, separation, or the death of a spouse or common-law partner.

**The Chair:** You have one minute.

**Mrs. Susan Truppe:** Thank you.

Do you believe that if you finance the construction and maintenance of the family home that your partner should be able to retain full ownership of the family home upon the breakup of your marriage or common law relationship? Can you justify denying someone access to legal recourse in a situation where they've paid for the home that no one affirms to be their own?

We did have a witness that was, sort of, in that same situation. She wasn't able to have her home after she paid all this money.

Can I ask you, Chief Abram?

**Chief Joel Abram:** Certainly.

I do believe in the case of Oneida that we already had processes in place, prior to signing housing loan agreements, where there is a couple involved. It already speaks to the disposition of the property should there be a separation occurring between the two. Those kinds of things are already occurring within our first nation.

That is something that we can handle as a government. We view that this bill is an affront to our aboriginal rights. Oneida was established in 1840 as a settlement; we actually bought the land. We were assured by the government of the day that we would be secured management of our lands, which we have done continually since 1840. The government does not have any documentation regarding our land transactions. We handle our own wills and estates. We have our own independent land holding system that has been in operation since 1840. We are quite capable of dealing with these things on our own without the intrusion by a foreign government.

•(1130)

**The Chair:** Thank you, Chief Abram.

[*Translation*]

Ms. Truppe's time is up.

I will now give the floor to Ms. Ashton for seven minutes.

[*English*]

**Ms. Niki Ashton (Churchill, NDP):** Thank you very much, Deputy Grand Chief, Chiefs, and Ms. Fletcher, for joining us here today.

We're hearing overwhelming opposition from first nations and certainly, overwhelming concern about the process: the lack of consultation; the lack of listening to the concerns that first nations have brought forward; the lack of non-legislative measures and support, whether it's housing, policing, women's shelters; questions about what the provincial courts are going to do; and questions that have gone unanswered.

I'm very thankful that you're here today to speak to us on behalf of the people that you represent. I just want to read into the record a statement made by the Minister for Status of Women, Hon. Rona Ambrose, who was quoted in as saying, "I think this about certain interested parties, namely some chiefs, who do not want to share their property. I believe strongly they're doing what they can quietly behind the scenes to get support from certain people and that's why you don't hear them come out".

Now, obviously, the minister isn't here today to see you, in public, in a televised meeting across the country, pronouncing your

opposition, much like leaders did last week. And we'll hear more tomorrow, as well.

Obviously, there's a statement out there by a minister of the Crown, who must have credibility. What would you say in response to that kind of a statement?

Maybe we can start with Chief Montour.

**Chief William K. Montour:** I would say that being a minister of the Crown does not give anybody omnipotent knowledge of any situation. I would also say that the minister of the Crown who made that statement really does not understand the reality.

As I said in my opening statements, the Iroquois society is a matrilineal society. In our society, in the past, women owned the land, the house, and the children. Men were husband visitors. So if we go down the line, we were thrown out. In the case of Iroquois communities, we still follow that line, that this is a shared responsibility between men and women. I took offence when I heard the minister indicate that male chiefs are scheming behind the scenes to hold onto power. I certainly am not.

**Ms. Niki Ashton:** And you're not, clearly, behind the scenes. You're here in the open, much like other leaders have done, expressing real opposition.

Perhaps we'll go to Deputy Grand Chief Fiddler, if you have any comments.

**Deputy Grand Chief Alvin Fiddler:** First of all, it's very disappointing to hear the minister of the Crown, representing the government, make those types of comments. I think what I said, right from the onset when I made my statement, was that we all agree and we all recognize the need to ensure that we protect the interests of the whole family, women and children especially, in the event of a marriage breakup.

We're very much interested in working together with whoever wants to work with us to ensure that we do this right, that we develop a process where it will work for our families and our communities. We're still committed to that. It doesn't sound like this minister is committed to doing the work, but we are. That's why we're here today.

**Ms. Niki Ashton:** We'll move on to another question. My colleague across the way asked about whether bands are doing enough.

Is the federal government doing enough to put an end to family violence on first nations amongst aboriginal women in particular? Is the federal government doing enough?

Perhaps we'll start with Ms. Fletcher. Could you tell us what you think, based on your involvement?

•(1135)

**Ms. Jackie Fletcher:** Thank you.

I don't believe the federal government is doing enough by a long shot. I'm also disturbed by the comments that I just heard. It makes it sound like aboriginal people don't know what they're doing. That's very wrong. The problem is that we're trying to fit into a system that's not ours. When federal legislation comes down, we don't understand it because we didn't help design it. You need to come and sit and talk with us. We need to help design what's going on. We know it's a problem in our communities. We're not stupid. The Nishnawbe Aski Nation Women's Council sent in a report five years ago, and we talked about needing money for translation. We need money for legal fees. We need money to go to the communities and do proper consultation so that people understand what this is all about. No, the federal government is not doing enough at this point in time.

The other point I wanted to make is that our customs are different. In some homes, you have extended families. How are you going to separate that when the grandparents are still in the home? In some communities, there are 13 or 14 people living in one house. I know we're not talking about housing issues here, but it's all related. You have to come and see what's going on in the communities. That's my message.

Thank you.

**Ms. Niki Ashton:** Perhaps Chief Fiddler or Ms. Fletcher, do you have an idea of what the housing shortage is in the non-territories? In terms of numbers, is there a ballpark number of how many houses your first nations need?

**Deputy Grand Chief Alvin Fiddler:** There have been a number of studies done in the past to try to assess the infrastructure needs of our communities. On housing a number of years ago, I believe the figure was about 20,000 to 25,000 units needed to try to catch up or bridge the gap in terms of the families that have been on a waiting list for many years. That's just one study, one figure, that I'm familiar with.

**Ms. Niki Ashton:** Quickly—

**The Chair:** Your time is over.

**Ms. Niki Ashton:** Oh, time is over. Thank you very much.

[Translation]

**The Chair:** I will now give the floor to Ms. O'Neill Gordon for seven minutes.

[English]

**Mrs. Tilly O'Neill Gordon (Miramichi, CPC):** Thank you, Madam Chair.

I want to thank you all for being here and making your presentations. I also want to reiterate what my colleague had just said. Bill S-2, we all know, and I acknowledge thoroughly, that it's not intended to address the broad issues of poverty or housing shortages on reserve. This bill was developed in response to men and women asking the government to do this. This is not just something we dreamed up. We were asked to do this, and that is why we are progressing with that. We've had witnesses who have been here already and who have spoken with passion on this issue. That is why we are going in this direction.

I also note that in 2007, the NAN held one consultation session, which included three focus groups over three days with approxi-

mately 30 participants. All these legislative options were put forward for consideration in the discussion paper. Since 2007, what progress has NAN made in developing family law templates for all the NAN communities? You said there were 49. I'm wondering what progress you have made in developing family law for all of these communities and matrimonial real property practices that incorporate restorative justice and the circle approach.

I will ask Chief Maracle.

**Chief R. Donald Maracle:** The Iroquois Caucus has drafted a law that is under discussion. What we have done in our communities is implemented practical solutions that work. We have a market-based system in housing. Most of the land that homes are built on are under Indian Act certificates of possession. We allow the one member to take out a mortgage on that house to pay the other partner off who's not going to live in that house when they're both band members. If the non-native person is not a member of the band, the native person borrows money, and then they're paid a financial settlement, which ends the fighting. They both can get on with their lives and have a place to live.

Those are tools that most people in Canada can access when their marriage breaks down. Those tools are not available for first nation people who live on a reserve. Believing that legislation alone will cure this problem is very naive and very unrealistic on the part of the government. It takes financial resources to settle differences about property.

• (1140)

**Mrs. Tilly O'Neill Gordon:** So have you contacted most of your communities?

**Chief R. Donald Maracle:** We've made the federal government aware of the need to create some options for first nations to go into debt and pay the other partner off. Nobody is disputing that one party is not entitled to a financial settlement.

**Mrs. Tilly O'Neill Gordon:** I'm glad to hear you say that.

Mr. Fiddler, how often have you consulted with your membership on this issue?

**Deputy Grand Chief Alvin Fiddler:** Thank you for asking that question.

You mentioned that 30 people attended a session a number of years ago. I think what you need to recognize is that there are 40,000 people right across the Nishnawbe Aski Nation, covering two-thirds of the province of Ontario.

I guess my point is that with the little bit of funding that the NAN Women's Council received a number of years ago, they tried their best to do it justice. But 30 people and one session is not nearly enough to do what we need to do here. I think we need real true consultations with our leadership, with our communities, and with the families, right across NAN.

As Jackie has mentioned, in order for us to do this, we need adequate time and adequate resources to do it right.

**Mrs. Tilly O'Neill Gordon:** I have to say that our government has made many consultations in the last years. We have had 103 consultations, at a cost of \$8 million, so we have met with your people. I was just wondering how well consulted your own members were and whether they are truly aware of the factors in Bill S-2.

When I talk about the facts of Bill S-2, I point to the bill, which says, “the best interests of any children who habitually reside in the family home, including the interest of any child who is a First Nation member to maintain a connection with that First Nation”. That is very important to your people. I realize that.

Another factor is the financial situation and the medical condition of the spouse or common-law partner. That's an important factor that's under consideration in this bill, as well as the availability of other suitable accommodations situated on the reserve. Someone also mentioned that sometimes there are elders who live in those houses, and that is a factor that's brought up in here as well. It says “the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either spouse or common-law partner is the caregiver”.

Now, I taught on a reserve for four years prior to becoming an MP, and I realize those situations exist, but I do feel—

**The Chair:** You have one minute, Madam O'Neill Gordon.

**Mrs. Tilly O'Neill Gordon:** —that these facts are very important. These are only a few of them.

I'm wondering what you think about these factors being included in this bill now.

**Deputy Grand Chief Alvin Fiddler:** Are you asking me?

**Mrs. Tilly O'Neill Gordon:** I'm sorry. Yes.

Alvin Fiddler.

**The Chair:** A short answer, please.

**Deputy Grand Chief Alvin Fiddler:** Thank you.

I think this committee needs to recognize the condition in our communities, the lack of housing, the lack of elders' homes, and the lack of emergency shelters for women and children. I think that's the reality in our communities.

I think my question to this committee would be, how seriously have you taken the consultations and the reports that you have received? I know my colleague Chief Maracle mentioned Wendy Grant-John's report and her recommendations. Are they reflected in this bill as it is now?

**The Chair:** Thank you, Mr. Fiddler. The time has expired.

I'm now turning to Madam Bennett for seven minutes.

**Hon. Carolyn Bennett (St. Paul's, Lib.):** Thank you very much, Madam Chair, and thank you, Deputy Grand Chief and Ms. Fletcher, as well as the chiefs.

Reflecting on what Ms. Tilly O'Neill Gordon has said, I think it speaks to how this government has drafted a bill and simply doesn't understand the situation. Some of the grandparents that Chief Maracle was referring to in a house with 12 people, some of those

grandparents may be 40 years old. They don't fit into the elder-infirm category. These are people who have been helping raise families.

I think, because the government doesn't understand that consultation means a two-way communication—send and receive—and because the government has refused to listen to Wendy Grant-John or to any of the overwhelming negative responses to this bill, and because of the debacle last week, to those of us on this side who have had experience on the Committee for Aboriginal Affairs and Northern Development it's very clear that sending a bill of this complexity to this committee that has no experience with legislation and no experience, expertise, or even cultural sensitivity to first nations, Inuit, and Métis people in Canada. Therefore I would like to move this morning:

That the Committee recommend to the House of Commons that Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves, be referred to the Standing Committee on Aboriginal Affairs and Northern Development, and that the said committee report its findings to the House.

I don't think we can go on to clause-by-clause with this continual failure to listen to what's been said in terms of how this has to be. I don't care how much money you've spent on consultation. If you have not listened, it makes absolutely no sense that this wasn't done properly. Wendy Grant-John was very clear that without the non-legislative tools in place, this will not solve this problem.

● (1145)

[Translation]

**The Chair:** Thank you.

Ms. Bennett has just introduced a motion that is now open for debate.

I invite the members to speak to the motion. We will vote afterwards. I would ask our witnesses to be patient while the committee deals with the motion.

Ms. Crowder, the floor is yours.

[English]

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you, Madam Chair.

I know that Chief Maracle, in his opening remarks, pointed out that this bill is before the wrong committee, and I would completely support Ms. Bennett's motion.

At the aboriginal affairs committee, we've just finished studying a private member's bill that included a section on wills and estates. It became very clear—and this relates directly to matrimonial real property—that taking into account the very complex land codes within first nation communities, the matter of wills and estates needed further study. With regard to matrimonial real property, it's very clear that we're not dealing with fee simple lands. We're dealing with custom allotment. We're dealing with certificates of possession. We're dealing with a variety of mechanisms around lands that do not simply mean that when there's a marital breakdown, person A stays in the house and person B goes somewhere else.

That is an important factor when we're talking about matrimonial real property.

Madam Chair, when David Langtry, the acting chief commissioner of the Canadian Human Rights Commission, came before this committee, he indicated that there were three questions this committee should be considering. One is fair access to justice, one is ability to access rights in a safe way, and a third one is whether communities have the capacity they need to develop and implement their own matrimonial real property systems. I would argue that all three of those questions need to be dealt with at the aboriginal affairs committee because the aboriginal affairs committee has a much broader perspective on the complexities facing first nation communities.

One matter that came up at the aboriginal affairs committee when we were talking about Bill C-428 was the issue around custom adoptions. Now, I haven't heard anybody talk about custom adoptions. When provinces are going to be dealing with allocating who gets to stay in a home when there is a marital breakdown, how are they going to deal with custom adoptions? Many provinces don't recognize the first nations' tradition of custom adoptions, so what would happen in such a case?

Chief Montour, Deputy Grand Chief Fiddler, Chief Maracle, Chief Abram—all of you have talked about the lack of resources. At the aboriginal affairs committee, I can tell you we're well steeped in hearing testimony from people about the lack of resources for housing, the lack of resources for education, the lack of resources for water, and the lack of resources for policing.

Deputy Grand Chief Fiddler, I know your communities have been struggling with issues of policing now for a long time, but it has been very prominent in the media over the last number of weeks because of that lack of resources for policing in your own communities.

We hear the government say that what's going to happen is that by passing Bill S-2, miraculously, somehow or other, people in communities are going to be protected. Well, who's going to enforce those protection orders? Where's the community going to get the resources for alternate dispute resolution and mediation? Where's the community going to get the resources for legal aid? Where's the counselling when families need help? Perhaps they could resolve issues with appropriate counselling. Where are those counselling dollars going to come from? How are the chief and council going to deal with the fact that there are such severe housing shortages?

As Deputy Grand Chief Fiddler and Ms. Fletcher pointed out, there could be 13 or 14 people living in a house. What happens if the custodial parent, the woman, is living with the husband whose whole family lives in the house? Now we're going to say, okay, the woman now has the house. Does that mean the grandparents have to move out because they're the parents of the young man?

This act has been touted by the opposition...I mean the government—opposition I could only wish. The government has indicated that this act will deal with violence against aboriginal women. I want to thank Chief Maracle and Chief Montour and others for rightly pointing out that aboriginal men, first nation men, are not violent by nature. When we're talking about marital breakdown, we're talking about the stressors of poverty and a lack of access to resources that complicates families in a way that many Canadians simply don't face.

On the issue of violence, Bill S-2 mentions family violence—not violence against aboriginal women, but family violence—eight times in this act, and it does nothing, absolutely nothing to deal with the factors contributing to family violence.

• (1150)

We saw in the past as the Aboriginal Healing Foundation funds sunsetted, which could deal with the intergenerational traumas that resulted from residential schools, for example, that money has disappeared.

So when you want to talk about what's happening and where this bill should rightly be it should absolutely be before the aboriginal affairs committee. I would support the calls that have come in from certainly the chiefs who are before us today, but many other chiefs and community members as well, about the duty to consult and accommodate.

It isn't just going out and self-selecting a number of communities, it is about that duty to consult, that free, prior, and informed consent that's been outlined in the UN Declaration on the Rights of Indigenous Peoples. So I certainly would encourage all members to vote in favour of Ms. Bennett's motion and have this bill dealt with appropriately at the appropriate committee.

Thank you, Madam Chair.

[Translation]

**The Chair:** Thank you, Ms. Crowder.

Ms. Truppe, you have the floor.

[English]

**Mrs. Susan Truppe:** Thank you, Madam Chair.

I move to go in camera.

[Translation]

**The Chair:** Ms. Truppe proposes that we go in camera. This motion cannot be debated. So we are going to proceed with the vote.

**Ms. Niki Ashton:** I call for a recorded vote.

**The Chair:** Certainly.

Madam Clerk, I will let you proceed.

• (1155)

**Mrs. Marlene Sandoval (Procedural Clerk):** I will start on the government side.

**The Chair:** Just so that everyone understands, the motion that you are voting on asks that we go in camera. The motion cannot be debated. As a result, we are going to vote. If you say “yes”, that means that you wish to go in camera. If you say “no”, that means that you wish the public proceedings to continue.

We will now move to the recorded vote. Madam Clerk, you may proceed.

**Ms. Lysane Blanchette-Lamothe:** (Motion agreed to: yeas 7; nays 4)

We will therefore move in camera.

My apologies to all the witnesses and guests who are here. I must ask you to leave the room until the committee decides to resume the public proceedings. At that time, you will be able to come back, if we still have time.

Let me point out that the first hour is up.

My thanks to the witnesses for being here today. Chief Montour, Chief Maracle, Chief Abram, Ms. Fletcher and Deputy Grand Chief Fiddler, thank you for appearing before the committee.

So we are going to ask all of you to leave the room so that we can go in camera.

[*Proceedings continue in camera*]

•(1155) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1210)

[ *Public proceedings resume*]

**The Chair:** We will now welcome the following witnesses: Viviane Michel, President of Quebec Native Women, and Joanne Ottereyes, Legal and Policy Analyst for the same organization. Thank you for joining us today.

Also joining us is Ellen Gabriel, as an individual. Thank you very much for being here today.

The representatives from Quebec Native Women will have 10 minutes for their presentation. I will interrupt you if you are running over time.

•(1215)

[*English*]

Madam Gabriel will have 10 minutes for her opening remarks. We will then go to questions and answers.

[*Translation*]

Ms. Michel and Ms. Ottereyes, the floor is yours. You have 10 minutes.

**Mrs. Viviane Michel (President, Quebec Native Women):** [*The witness spoke in her native language*]

Good afternoon, everyone.

Thank you, Madam Chair.

I would like to thank the committee for this opportunity to express our concerns about Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

Quebec Native Women has repeatedly expressed its concerns about this issue. We would like to provide you with our comments and recommendations on the latest version of the bill.

Bill S-2 is supposed to remedy the legislative gap that exists for first nations couples living on reserves after the break-up of the relationship or the death of one of the spouses. That includes the division of property and matrimonial rights or interests. However, the bill, in its present form, does not fully address the issue of matrimonial property and will not fully protect those who are most vulnerable.

I would like to highlight some factors that contribute to the complexity of this bill that, at worst, will create more problems for aboriginal women and children than it will solve and, at best, it will be wishful thinking only bringing temporary solutions to vulnerable women.

First, although we commend the government's efforts to enable first nations to develop their own matrimonial real property code consistent with their own traditions and customs, the bill does not take into account the jurisdiction of first nations over reserve property and their right to self-determination as it grants jurisdiction to provincial courts for enforcement. As a result, a provincial court will be imposing on communities the use of their own lands. In addition, if they do not develop their own code, the proposed legislation establishes federal laws that will be imposed on first nations. Even if first nations have an opportunity to create their own laws, it will only be a form of delegated authority.

Second, aboriginal women's groups have been asking all along that additional resources be provided so that first nations communities can both develop and enforce their own laws. Yet no funding or resources will be provided to first nations to access those provincial courts, which will therefore be too costly or complex for them in a number of cases. We are carefully watching the government's intent to establish a centre of excellence for matrimonial real property, which could assist idle communities in drawing inspiration from established best practices, but will not force them to use those practices, nor will it provide assistance to all the communities across Canada.

According to the website of Aboriginal Affairs and Northern Development, a maximum amount of just under \$5 million over five years will be earmarked for the centre. That corresponds to six full-time employees for five years helping 500 aboriginal communities across Canada to develop their own legislation. Not only does that seem like an impossible feat given the remoteness of the communities and the lack of human and financial resources within many band councils, but it also means postponing the detected implementation problems to the medium term. Supporting the development of those new family codes is a good idea if resources are also provided directly to the communities so that they can develop their own matrimonial real property laws.

•(1220)

Third, we want to ensure that minimum standards for the protection of aboriginal women are observed and that the following factors do not penalize women and their abused families or families affected by grieving or separation: exclusive membership codes, lack of housing, lack of legal resources and assistance within communities, as well as a different legal system.

From my experience as a first responder, the best resources to help aboriginal women are those that are culturally adapted and easily accessible within their own communities. Aboriginal women's groups and their communities must work together in order to develop a fair and equitable system that is based on cultural traditions and customary law. Consideration should also be given to setting up multi-tier aboriginal mediation systems and other practices or aboriginal legal and decision-making systems for matrimonial real property. There also has to be a recognition of the systems that are already in place.

Bill S-2 proposes a solution based on the common law of the federal system without considering the legal provincial diversities. In fact, this bill is asking provincial courts to implement a common law system to handle family law disputes and, as a result, to adapt to a number of legal systems, including the system implemented by various nations and communities, if applicable. The Civil Code of Québec does not grant the same rights to spouses and common-law partners. However, the opposite would be true for provisional laws.

Another consideration is having a judge who is familiar with the Indian Act. It becomes a very complex situation. Also, the bill would not protect aboriginal women living in communities governed by specific treaties such as the James Bay and Northern Québec Agreement, as well as the Northeastern Québec Agreement that brings some specific features to the Cree and Naskapi territories. In its present form, the bill will probably have no legal impact on the Cree and Naskapi communities and they will have to make laws so that matrimonial real property matters can also be incorporated in their own legal system. That is another legal framework that needs to be considered in the province of Quebec.

Since the rights and recourses by provisional federal rules will be handled by various provincial, federal and aboriginal legal systems, the federal government should conduct further analysis to determine whether this situation has an impact on Quebec's aboriginal communities and, if that is the case, to establish what the consequences would be. Ultimately, what makes aboriginal women vulnerable currently in cases of separation or domestic violence is the lack of housing and the non-settlement of land claims for all aboriginal nations across Canada. This type of settlement would enable communities to address the demographic pressure on their people and their needs for economic development. This is how the Harper government must do its part if it wants to help aboriginal women escape violence.

Bill S-2, in its present form, does not address this main concern. Furthermore, by refusing to take it into consideration, all it does is send the problem to the provincial courts and band councils. The unilateral approach taken by the government to resolve this issue through legislation will also fail to address systemic problems. The lack of resources, particularly the lack of housing in the communities, will be challenging, and so will the implementation of some provisions regarding the forcible removal of a spouse who will not easily find alternative housing in the community.

In addition, there is also an issue with public safety in the communities. The lack of human and financial resources in the police forces will make it difficult to effectively enforce emergency protection orders. We appreciate the changes to improve the bill, especially the 12-month transition period, but we note that it is a

short transition period given that the legal framework being set up in the communities is not good.

Let's talk about family rights. Not all communities are in the same place. They do not have the same human and financial resources to establish this regulatory framework and then implement it.

● (1225)

**The Chair:** Ms. Michel, I am sorry to interrupt you, but you have 10 seconds to conclude, please.

**Mrs. Viviane Michel:** Finally, the harmonization of concurrent jurisdictions and the various laws in force on reserves, under the Indian Act and Bill S-2 will be a considerable challenge and, with the particular features of the legislation in force in the province of Quebec, the challenge will be virtually impossible to overcome.

**The Chair:** Thank you very much, Ms. Michel. I am sorry, but your time is up.

Ms. Gabriel, you now have the floor.

[English]

You have a maximum of 10 minutes, Madame.

**Ms. Ellen Gabriel (As an Individual):** [*Witness speaks in Kanien'kéha*]

Greetings to the chair, honourable members of Parliament, and my esteemed colleagues from the Quebec native women's association. This is at least the fourth or fifth time I'm presenting on this issue, in previous times as the president of the Quebec native women's association, so it is a great honour indeed.

As in the previous forms of this bill, several persistent omissions must be taken into consideration if there are to be real and long-lasting solutions to this problem. They first must be placed in context to understand the root causes of this injustice, which originates in the Indian Act and the impositions of colonial and patriarchal values.

I am compelled to note that the goal of this bill is the fair and equitable distribution of matrimonial real property for Indian women on reserves upon the dissolution of a relationship.

This bill should not profess to address the chronic issue of violence against aboriginal women. The issue of violence is best addressed through a national plan of action by Canada, its provinces and territories, and through cultural sensitivity classes on Canada's colonial history for judges, lawyers, members of Parliament, and politicians. It should include a genuine process of reconciliation that recognizes the negative impact of colonialism, the Indian Act, and the Indian residential schools system on indigenous peoples' identity, culture, language, traditional forms of governance, and how they have affected the roles and authority of indigenous women in their nations and communities.

A holistic view is essential if the issue of MRP is to be properly addressed by all levels of government, but in particular within aboriginal forms of governance.

High unemployment rates, lack of sufficient housing, a growing population, dispossession of our lands and resources, the imposition of paternalistic values and processes, outdated funding formulas, poverty, and social ills rooted in colonialism have for generations affected indigenous women's ability to enjoy their fundamental human rights.

There are several areas of concern regarding this bill, which include, one, the incorrect assumption that this bill was accompanied by a consultation process; two, the lack of inclusion of the Constitution Act of 1982, which protects and affirms the inherent and treaty rights of aboriginal peoples; three, the lack of resources for communities in implementation of this bill, and potential court orders supported by a weak implementation process, considering the situation of policing on reserves; and four, the non-legislative measures and lack of access to justice, in particular for those women living in remote communities, and the financial burdens placed upon these women, where homemakers rely on spouses for their incomes.

On the matter of consultation, I must state sincerely that there was none. While engagement sessions were given by Wendy Grant-John—her report came out in March 2007—and an explanation of the issue of matrimonial property was provided, with some discussion on suggesting solutions, even the ministerial representative's report noted that there has not been sufficient time to reach consensus.

While the government firmly believes that there were consultations, I must remind them that the ultimate duty to consult rests with the Government of Canada and its duty to uphold the honour of the crown. It is important to state that there were no consultations on the specific details and nature of Bill S-2 on matrimonial real property.

It is of significant importance to note that during any consultation process, the process of reconciliation must be included and is always ongoing in Canada's relationship with aboriginal peoples. As per the policy of the Government of Canada in its duty to consult, the crown also consults because it is legally obliged to do so. It must give effect to reconciliation and uphold the honour of the crown—the government's ability to adversely affect aboriginal treaty rights is restricted in this reality—and crown conduct must demonstrate respect for aboriginal and treaty rights.

In remote communities women rely on travelling courts. Women must often travel in the same vehicle as their ex-partner to attend court. Remote communities do not have easy access to legal aid. The financial burden placed upon women is cumbersome in their quest for a fair and just settlement.

Access to justice is challenging. With regard to financial compensation to their ex-spouse, should they try to negotiate a fair and just settlement, their measure of worth, of contribution made as homemakers, is not considered. This causes aboriginal women to experience more vulnerability and discrimination, as low-income women would not be able to pay their ex-spouses for the value of their part of matrimonial real property.

●(1230)

The issue of policing on reserves is also an extremely serious question. Provincial courts would only be able to provide temporary occupation orders for the home, and a lot of times police who are reserve police might have trouble implementing them if they're related to the persons involved. In Quebec common law, as Ms. Michel has stated, relationships are not recognized.

If harmonization with provincial and territorial laws was the goal in this bill, then a consultation process that also included the customary laws of indigenous peoples, along with their free, prior, and informed consent, should also have been considered. The trend for over 100 years is to go to Canada's courts if we disagree with Canada's decisions. Aboriginal peoples should not have to go to Canada's courts to protect their inherent and treaty rights.

Another important issue is that of membership codes, the criteria created by the Indian Act, and many times it uses blood quantum. Should a woman not be a member of the community, the woman will never have the right to own the home and its implements, thereby creating another gap.

Lastly, a centre of excellence should not be included since this was never a topic of discussion during talks with Ms. Grant-John. A centre of excellence is another example of the paternalistic attitude of government. It ignores the customary laws of indigenous nations and ignores the inherent rights and treaty rights. It seems to be another part of the aboriginal industry where badly needed funding for communities will be directed toward an organization isolated from the communities, instead of going to institutions damaged by the Indian Act such as our languages and cultures and traditional customs and governance, as well as more emergency shelters in the communities, which are essential to this process of reconciliation.

If the centre of excellence is to be created, it should not be headed or controlled by any aboriginal organization. Instead, it should have indigenous women academics, elders with traditional knowledge, and front-line workers with experience in domestic and institutionalized racism and abuse.

Like many laws before it, Bill S-2 fails to consider the realities of first peoples and their communities who lack the much-needed financial and human resources for its implementation. Bands are already pushed to their limits by outdated funding formulas, as stated by former Auditor General Sheila Fraser in her 2011 June Status Report, in chapter 4, "Programs for First Nations on Reserves". She states, "Structural impediments explain the lack of progress on reserves". Ms. Fraser goes on to say substandard construction practices or materials, lack of proper maintenance, and overcrowding also contribute. Bill S-2 also does not accommodate the need for more land, nor the fact that in order to develop their own MRP codes, a band must already have been in or be in negotiations on their land.

Legislation that fails to consider the effects of colonialism and assimilation policies, like the Indian residential school system and the Indian Act, creates deficiencies in the promotion and protection of indigenous women's rights. In recent years, great accomplishments in the area of human rights, most notably regarding the collective and individual rights of indigenous peoples through comprehensive human rights instruments like the UN Declaration on the Rights of Indigenous Peoples, must be included in any remedies to injustices faced by indigenous women and their families.

Various human rights agencies, like the UN Permanent Forum on Indigenous Issues, have been created to reconcile past injustices experienced by indigenous peoples due to doctrines of superiority and colonialism, which regrettably still exist today in Canada. There is a movement forward to end the discriminatory practices perpetuated under Canada's Indian Act laws and policies. It behooves the Government of Canada to implicate itself wholeheartedly within the processes of reconciliation in all its dealings with aboriginal peoples. Canada must amend Bill S-2, listen to the voices of indigenous women and their communities, embrace human rights instruments, and repeal Bill S-2.

I guess my recommendations will come at a later time. Thank you very much for your consideration.

•(1235)

**The Chair:** Thank you very much, Madame Gabriel.

[Translation]

Ms. Ambler, the floor is yours.

[English]

You have seven minutes.

**Mrs. Stella Ambler (Mississauga South, CPC):** Thank you very much, Madam Chair.

Thank you to our witnesses today for being here to talk about Bill S-2.

Ms. Gabriel, you noted that you've spoken to a number of committees about this issue and others. I notice that in 2005 you testified before the Standing Committee on Aboriginal Affairs with regard to on-reserve matrimonial real property rights. You stated that you felt—and correct me at any point if I'm not right about what you said—that the best way to address the issue would be to amend the Indian Act in the following way: establish a matrimonial property regime that provides all property acquired during the marriage to be

the property of both spouses; ensure that men and women have equal rights to matrimonial property and guarantee a fair division of matrimonial property on the breakdown of a relationship; apply the matrimonial property amendments to common law couples; and allow the parent who has custody of the children to remain in the family home.

Does that sound about right? Would you have testified to that effect?

**Ms. Ellen Gabriel:** That was in 2005. I think that sounds about right.

**Mrs. Stella Ambler:** I know it was a long time ago. It sounds familiar to me, too, because all of these provisions are in Bill S-2.

Funding issues aside—and that seems to have been the theme of your comments today—at the end you recommended that we amend the bill and then repeal the bill. If we repeal the bill, do you believe, in principle, that women on reserves, indigenous women in Canada, should be afforded the same rights as other Canadian women in this area of matrimonial real property?

**Ms. Ellen Gabriel:** Firstly I'd like to say that I wasn't aware that the Indian Act was amended in this bill.

**Mrs. Stella Ambler:** No, I'm saying those provisions are in Bill S-2.

**Ms. Ellen Gabriel:** The provisions to amend the Indian Act before it's been... Is this like a future consideration for amendments to the Indian Act? One of the major problems.... I don't know if you heard all of my presentation.

**Mrs. Stella Ambler:** I did. I was here.

**Ms. Ellen Gabriel:** One of the problems has to do with membership codes. While you might have Indian status in Ottawa, the communities themselves are allowed to create their own membership codes and provide services for their members. So it becomes problematic, especially in certain communities where blood quantum is an extreme issue, so that a woman who's not a member of the community or who has partial status would not be able to become a member, and therefore not be able to have land. She could stay there probably for a certain period of time.

But the whole issue should not be looked at solely from a funding perspective. I quoted to you many things that have happened. Canada applied this Indian Act. They have an Indian residential school system, for which we received an apology, but there's been no reconciliation to undo the damages that have been done.

So, great, you have an Indian Act band system that's going to apply the policies of the Government of Canada, but it does not recognize nor does it follow the traditional governing systems or even recognize our sovereignty over our lands. There is an assumed sovereignty by Canada, and Canada's sovereignty is based on legal fictions, such as the doctrine of discovery and papal bulls.

You can have all the amendments you like, but still there are problems that need to be fixed within the community. Now that you've damaged all of our institutions and now that it's easier to embrace colonialism and assimilation and to adopt every single part of what was intended in the Indian residential school system, you want us to pick up the matrimonial real property according to what you think is the solution rather than listening to the solutions that have been provided.

We have rights wherever we go on our traditional territories. They should not just apply to reserves. Yes, we should have the same rights as anybody else, but within our own nations, under our laws that predate European arrival here. The issue is a lot more complicated than strictly saying it's a matter of funding. It's a matter of human rights. It's a matter of respecting inherent treaty rights. It's a matter of implementation and of reconciliation, which was required after the residential school apology.

• (1240)

**The Chair:** You have two more minutes, Ms. Ambler.

**Mrs. Stella Ambler:** Thank you.

Please forgive me, because I don't see the connection between reconciliation regarding residential schools and matrimonial property rights. I recognize that it was this government that issued the residential schools apology. That, to me, shows that... I hear colonialism and paternalism. Frankly, I see a government that's actually trying very hard to consult on this issue and others, and to do the right thing, especially with regard to residential schools.

Maybe my question to you should be this. Do you want Bill S-2 to solve all of the problems? That's not how I see it. I see it as solving one problem. It's one piece of the puzzle. You're right. It doesn't address residential schools and it doesn't address housing, but it does address a big issue. We've heard from witnesses who've lived through the nightmare of being kicked out of their homes, and we're trying to help them.

So we can talk about a national plan of action and we can talk about colonialism. With regard to consultation, you can say there was none, but there was. It may not have been enough, but there was consultation. We still think we're doing the right thing. Do you not think there are women who will be helped by this?

**The Chair:** Madam Ambler, time has expired.

**Mrs. Stella Ambler:** Sorry.

**The Chair:** I'm sorry, I have to interrupt both of you.

I'm turning now to Madam Day

[*Translation*]

You have seven minutes.

**Mrs. Anne-Marie Day (Charlesbourg—Haute-Saint-Charles, NDP):** Thank you, Madam Chair.

Ladies, welcome to this meeting of the committee. Thank you for travelling here. I am always happy to meet the witnesses.

Let me just say from the outset that some of the things I have heard this morning made my hair stand on end. I had to keep quiet. I heard people repeatedly asking the grand chiefs who spoke before you whether they had read Bill S-2. I found that to be incredibly

disrespectful. It is as if I were to ask Ms. Bateman, Ms. Young, Ms. Crockatt, Ms. Ambler and so on whether they had read Bill S-2. I apologize on behalf of those who showed disrespect.

In terms of consultations, the Six Nations of the Grand River have all said that they were not consulted. Consultations with the great first nations are expected and required. I think family law—and correct me if I am wrong—is also set out in the Indian Act, meaning that you have full rights in the way you govern your people, which is normal. That is what we do. They are your people and it is your nation.

My first question is for Viviane Michel.

Your organization has recently issued a news release outlining Quebec Native Women's concerns regarding the implementation of Bill S-2 in light of the provisions of the Civil Code of Québec. In your view, there are discrepancies that are particularly concerning for aboriginal women in Quebec since the Civil Code of Québec does not provide the same rights to common-law partners as it does to legally married persons. It is said that 40% of women in Quebec are in common-law relationships. The implementation of this bill could create more problems. Could you tell us more about your concerns regarding the Civil Code of Québec?

**Mrs. Viviane Michel:** As an Innu woman, I have a major concern. Love knows no borders. A number of aboriginal women are in common-law relationships with non-aboriginal partners. If this law is enforced and a verdict is reached, given all the problems facing our communities, including high rates of alcoholism and drug use, and if a woman experiences those problems and her partner is a Quebecker, he will have the right to live in the house.

So a Quebecker would be living in the house with the children. The woman would lose her children and they would be living in a community. Do you see how that could be a danger in aboriginal communities? That is the reality. I am not just talking about Quebeckers. It could affect other groups because more and more women have partners of different origins. So it can create such a gap in those communities. Women can lose everything, including their house and their children.

Joanne, do you have anything to add?

• (1245)

**Mrs. Joanne Ottereyes (Legal and Policy Analyst, Quebec Native Women):** I would like to add one thing about Quebec's civil law. It has been difficult to match common law with civil law in Quebec. We have tried to find ways in which to apply the same protection mechanisms for Quebec women, women living off reserve. We have found that civil law in Quebec has different mechanisms to protect women, such as the safeguard order. Once before the court, this gives them custody of the children, child support payments and the right to live in the family home. That would have to be considered if common law were to be applied on reserves.

**Mrs. Anne-Marie Day:** Ever since we began to study Bill S-2 in committee, the members of the governing party on the committee have repeated a number of times that first nations have been consulted. They talk about a hundred or so consultations in 76 locations and about the \$8 million that has been spent. That includes their last three attempts to get the bill passed. But your organization seems clear on the issue. You have shared several concerns during the consultation process and now, for the fourth time, the government is failing to respond to the requests of aboriginal women's associations.

You also state that Quebec Native Women as an organization has participated in a number of parliamentary committees and that you have forwarded your comments on previous versions of the bill. You have also specifically asked for more consultations in communities, but your opinions seem to have fallen on deaf ears. What do you think about that and what should have been done?

**The Chair:** You have a minute for your answer.

**Mrs. Joanne Ottereyes:** The consultations were done quickly. There was no time to consult all communities, as we would like to have done. I think that aboriginal women should have had the right to adequate consultation and to have had access to all the information in their language—that is important—and culturally adapted.

**The Chair:** Ms. Day, you still have 30 seconds.

**Mrs. Anne-Marie Day:** Ms. Gabriel, what are your recommendations about the problems you have mentioned?

[*English*]

**The Chair:** Very briefly, please, Madam.

**Ms. Ellen Gabriel:** Thank you.

I discussed the inherent treaty rights and how we can incorporate them into any kind of legislation that might be coming up.

The process of reconciliation was always one of the things that was very important as we tried to emerge from the residential school process that has damaged all our institutions. I think the implementation of the UN declaration is the framework for reconciliation where we are going to be acknowledging each other's differences and have a peaceful coexistence. Because at this time, we have been living for over a hundred years—

**The Chair:** Thank you, Ms. Gabriel.

**Ms. Ellen Gabriel:** —in ideological imperialism that has not yet given—

**The Chair:** I'm sorry. Time has expired.

[*Translation*]

Ms. Crockatt, you have seven minutes.

[*English*]

**Ms. Joan Crockatt (Calgary Centre, CPC):** Thank you to our witnesses for coming.

I know it takes a lot of work to get yourselves up and ready for these, so I really appreciate the fact that you're here to talk about this issue, which I think we all agree is an important issue, even though we may come at it from different positions.

Ms. Gabriel, I want to follow up on some of the things that you were alluding to. One is the matter of respecting the inherent treaty rights. I wonder what you think about the provision in this bill that actually allows for the federal government to move into this area, but it also very much allows for band councils to come up with their own laws, which many have. I'm wondering what you think about that provision.

We see that as an opportunity to address a matter of urgency. We've been told that this is urgent, that there are women who are dying. We've heard stories from people who say, "If there had been something like this bill in place, this woman would not have died".

I wonder how you feel about that provision, which we hoped would certainly address the need. Some bands are in a very good position, and some in fact have already addressed that issue of matrimonial property rights. This is an interim step.

• (1250)

**Ms. Ellen Gabriel:** It's unfortunate to hear those kinds of stories.

I'll come from a Mohawk perspective, so you'll understand where I am coming from. Mohawk women own the land. We have title to the land. We come from a very strong, very resilient nation that does not recognize the authority of band councils and does not see that band councils have been representing us properly. That's not to say that we have anything against their decision to hop out of our canoe and into the other boat, as the Two Row Wampum treaty states. It's very difficult, because they are not the treaty holders. The treaty holders are the traditional governments.

We have tried to work with them in the past. I agree that for certain communities this issue is urgent. The issue of violence comes in to play, but it's wrong to make a stereotype that all women in the communities are suffering. As I said in my opening statement, the issue of violence against aboriginal women needs to be addressed at another forum, not through MRP. I thank you for your efforts, and I appreciate your comments, because it has been very difficult. I have been presenting on this issue for a long time without seeing any progress, just seeing changes to the name of the bill.

If there were interim measures, and if we knew the details of what those interim measures would be, besides this bill, I think many women's groups would be interested.

**Ms. Joan Crockatt:** What about the centre of excellence? You had some interesting recommendations. We're thinking that, through this bill, we're getting to the same place that you're going by having an opportunity to be able to address the urgent need with the legislation within this bill, but also by leaving the door very much open to first nations to be able to devise their own laws, with the centre of excellence being there to assist with that.

We have also heard from the Haida, who have some very interesting ways of dealing with this issue. They feel that they can expand that out to other first nation groups across Canada.

Do you think that might get us to the same place?

**Ms. Ellen Gabriel:** First, just let me state that I'm not against looking and examining what are the best practices on this particular issue. However, as I stated in my opening remarks, the centre of excellence was not discussed during the consultations. This is something that was brought up by the government as an afterthought and presented as part of this. I think the centre of excellence funding could go, as I said, to the badly needed programs that are poorly underfunded.

Let's take a look at education in on-reserve schools. It would take 28 years for the quality of education for children and youth in reserve schools to catch up with what's found in the rest of Canadian society. We don't need another paternalistic institution. We need to be able to, in that process of reconciliation that I was talking about, look at our traditional governance structures where everyone had rights, everyone was equal, and everyone was protected, instead of this imposition of you're not Indian enough—"Indian" is the legal term under Canada's laws—and this whole impact of colonization on the mentality. It's more complicated. I know I'm running out of time and I'm trying to think of something, so I will just end it right there.

**Ms. Joan Crockatt:** Can I ask one more question about that, because I'm hoping to be able to get to this point. We understand the point you're making. This is not a panacea for all of the ills, and it's not intended to be able to fix every problem. But it is intended to try to go after this issue of matrimonial property rights not only for women but for men, and it's something that you've raised in the past in your testimony before committee.

The Frontier Centre for Public Policy has a very interesting study that showed that 42% of respondents—over 1,000 respondents—they studied on 78 bands said that they didn't feel that band governments were yet addressing this issue well enough. Now some are, but in the interim this is intended as a measure to help those women and men who are in this very difficult situation to be able to have a measure of protection until first nations people come up with their own solutions for that. Can we agree that might be an appropriate way to move forward?

•(1255)

**The Chair:** You have one minute to answer, Madam Gabriel.

**Ms. Ellen Gabriel:** I still disagree with the centre of excellence. I think that with all the time we've spent working on this issue, we should be so much more advanced than we are today.

Thank you.

**Ms. Joan Crockatt:** Thank you.

I don't think I have enough time, Viviane.

Do you want two seconds just to answer that? Or am I out of time?

**The Chair:** No, you have 30 seconds.

**Ms. Joan Crockatt:** That's fine, Madame, thank you very much.

[Translation]

**The Chair:** Thank you, Ms. Crockatt.

**Mrs. Viviane Michel:** I feel that it is important to consider our way of life and our cultural differences.

You want consultations. They took place; I was there as a participant from a community. In those consultations, we went quite

deep, not just into family matters, but also into matters of ancestral property. That means territory and that good old patriarchal law that is imposed on us as women. Matrimonial property and hunting and trapping grounds are in the male spouse's name.

Is the time up?

**The Chair:** Yes, I am sorry. I have to interrupt you. Ms. Crockatt's time ran out a few seconds ago.

Ms. Bennett, you have the floor.

[English]

**Hon. Carolyn Bennett:** Thank you very much.

Seeing we only have five minutes left, I think it would be very important for you to say what you need to say. I think that you didn't get a chance, Madam Gabriel, to answer Ms. Ambler's question, where she made the assertion that this would help. I think we've heard strongly that you're not sure this will help. It won't necessarily help resolve matrimonial real property unless the woman has the resources to buy out her partner. As somebody who has looked after the family, that may not be there. It's up to the band to decide whether they will help her do that or not.

Also, in terms of violence against women I think we've heard strongly that you're not sure this is the way to go. Also, I think we've heard strongly that in Quebec even the matrimonial real property may not work in terms of common law and the way it works. Could you just close with your advice for the committee.

[Translation]

**Ms. Ellen Gabriel:** Go ahead, Viviane.

**Mrs. Viviane Michel:** Maybe you want to hold nice consultations in the communities, but I know that you are going to pass Bill S-2 anyway, however much we tell you we are opposed to it. Your minds are already made up.

If you really want to consult, you have to do it in our language. That is very important. You also have to think in the long term, not in the short term. You cannot move quickly, but it happens each time. It is important to get first nations involved because the contact is easier then. People express themselves better in their own language. It is a big challenge for Quebec Native Women, which is trying to make women's rights better known in the communities. Not all women know their rights, in fact.

A lot of education remains to be done in that regard. And Bill S-2 comes up once more. I feel sorry for our chiefs, but they are not always up to date. We are suddenly presented with a bill and we have to become informed quickly. We have to work together and to react. What are the positions of all our nations? That is a lot of work and it has to be done quite quickly.

This also has to be looked at in the long term. Some things do not work. Your laws do not work for us because we are different. We have a way of thinking that has existed for a long time. It is innate. It is not written down on paper, but it applies nonetheless. We have always had equal relationships. Failing to take that into consideration can also lead to shortcomings.

•(1300)

I am sorry, it is not possible. We have time constraints.

**The Chair:** Thank you. Unfortunately, I have to interrupt you.

We have to end the meeting because it is 1:00 p.m.

[*English*]

On behalf of the committee, I would like to thank you for accepting our invitation and for coming to talk to us. Your testimony is very valuable.

I'm sorry, I need to respect the time.

[*Translation*]

If all members of the committee are in agreement, could we perhaps continue the meeting for a couple of minutes?

The meeting is adjourned.

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