House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 025 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, March 24, 2005

Chair

Ms. Nancy Karetak-Lindell

Standing Committee on Aboriginal Affairs and Northern Development

Thursday, March 24, 2005

● (1110)

[*English*]

The Vice-Chair (Mr. Jeremy Harrison (Desnethé—Missinippi—Churchill River, CPC)): We have a notice of motion from Mr. Prentice, which was received, I believe, March 23 at 10:55 a.m.

Mr. Prentice.

Mr. Jim Prentice (Calgary Centre-North, CPC): If I might, I'll step right into this, Mr. Chairman.

There is a document that I believe is in possession of all the members of the committee. It's entitled "Motion of Jim Prentice—Notice given on Wednesday, March 23, 2005 at 10:55 a.m.—That the Committee report to the House...." Then there are four pages that follow. I hope all of the committee members have this document.

I know there was discussion at our last meeting about a report of this committee. What I attempted to do with this document is encapsulate a consensus I think exists, I hope exists, among the committee members about how we would close off the deliberations of this committee with respect to residential schools.

We of course had three days of hearings relating to the residential school issue. We heard testimony that was quite scathing about the current conduct of the residential school dispute resolution program.

Mr. Roger Valley (Kenora, Lib.): I have a point of order, Mr. Chair. I have the orders of the day, where it says "Matrimonial Real Property". Can you tell me why we're off the agenda? Was there discussion on going off the agenda?

Mr. Jim Prentice: I think I've been directed that I have the floor.

The Vice-Chair (Mr. Jeremy Harrison): I've been advised by the clerk that by my recognizing Mr. Prentice, he can move his motion.

Mr. Jim Prentice: I think I have the floor, pursuant to the rules of the committee.

If I might carry on, Mr. Chairman, in order to expedite this so we can get on with some of the other issues that concern the committee, I'll take you to page 4. I will just take a moment to summarize, in effect, what the motion presents.

First, I would point out the preamble: "The committee regrets the manner in which the government has administered the Indian residential schools program and recommends the government giveconsideration to the advisability of the government taking the following steps". That form of motion is in accordance with our requirements in presenting this matter to the House.

Eight points then follow. The first point is that "the government take all actions recommended below on an urgent basis". There is reference there to the frailty and the short life expectancy of the former students.

Second is that "the government terminate the Indian Residential Schools Resolutions Canada Alternative Dispute Resolutions Process". Virtually all of the testimony this committee heard, with the exception of that of the Deputy Prime Minister, said this program has been a complete disaster. The second aspect, therefore, is that it would be terminated.

Third, and very important, is that "the government engage in court-supervised negotiations with former students to achieve a court-approved, court-enforced settlement for compensation that relieves the government of its liability for those former students who are able to establish a cause of action and a lawful entitlement to compensation".

Fourth is that "the government ensure that the courts shall have full and final discretion with respect to limitation on legal fees".

Fifth is that "the government expedite the settlement of those claims involving aggravated circumstances, including those involving sexual and severe physical abuse, in aseparate restorative justice process".

Sixth is that the Government of Canada undertake an initiative to ensure that the former students have the opportunity to tell Canadians of their stories in a process based ondignity and respect, which results in a national truth and reconciliation process to take place in a forum that honours the memory of children who attended the schools.

Seventh is that the government asks the Auditor General to conduct an audit of the Indian residential school process from its creation to the time of its winding down. That is, I think, consistent with what this committee heard. This program has been at work for, I believe, close to four years at this point, since it was set up, resulting in the expenditure of some $150 million. Yet it has settled, as I understand the numbers, 0.0005% of the known pool of cases. It reflects incompetence in administration that is unprecedented in scale, and we are asking the Auditor General to conduct an audit.

Eighth is that the government respond publicly, in writing, to the reports of the Assembly of First Nations' report, *Canada's Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools*, and to the *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors*, the Canadian Bar Association report. Item 8 is that the government table a public response in writing to that.

Those are, essentially, the recommendations. This document is prepared in such a way that it would, in effect, be the report of the committee. The first three pages, which I have not worked through, really summarize the evidence the committee has heard and some of the conclusions available from that evidence. That is the form of the report, culminating in the form of the specific recommendations.

I understand there may be one suggested amendment to the final paragraph on page 4 of the document. Leaving that aside for the moment, this is a motion before the committee that we would like to proceed with.

● (1115)

The Vice-Chair (Mr. Jeremy Harrison): We have a motion moved by Mr. Prentice. Do we have speakers to the motion?

Mr. Cullen was first on the list.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

I find this whole process quite unbelievable. First of all, Mr. Prentice indicated all the witnesses said this program was a disaster. I don't know where he gets that kind of language.

Second, there hasn't been a very good balance of witnesses at this committee. For example, Mr. Ted Hughes came and was able to speak for seven minutes, I think. At the time I think the committee indicated they probably wanted to have him back. Other witnesses who have presented briefs and have indicated an interest to present to the committee have been denied. To my understanding the churches, an integral part of this whole process, have not been asked to appear, or they haven't appeared. We heard very convincingly that the approach to residential schools and any kind of compensation program have to be very clearly linked to the healing process. I think there's been a dearth of information about the Aboriginal Healing Foundation and the work it does. The Royal Bank of Canada, for example, is very much involved with that program. There are people who could speak to the effectiveness of that program.

To say the program is a disaster is totally inappropriate when you consider over 1,300 former students have opted for the alternative dispute resolution process as a method to resolve their abuse claim. In fact, people are coming into this process on a daily basis. The alternative dispute resolution process is estimated to resolve the majority of claims within seven years, while litigation will take more than fifty years.

Mr. Pat Martin (Winnipeg Centre, NDP): I have a point of order.

The Vice-Chair (Mr. Jeremy Harrison): Mr. Martin.

Mr. Pat Martin: I'm sorry to interrupt you, Mr. Cullen, but I don't think the motion was seconded, so we're not properly in debate yet.

Do we need a seconder, or am I imagining things?

The Vice-Chair (Mr. Jeremy Harrison): We don't need a seconder, Mr. Martin.

Mr. Pat Martin: Sorry to interrupt.

Hon. Roy Cullen: Thank you, Mr. Chair.

The point is the government encouraged the Assembly of First Nations to prepare a report, because the government realized there were some issues, some bottlenecks, some problems. So the government encouraged the Assembly of First Nations to review it. The government is currently seized with that report. Some items the government could respond to immediately; other items need to be reviewed by the cabinet.

There are some suggestions about just by virtue of being at a residential school, there'd be a payout. But we have very clear evidence that many people who have gone through the residential school system have benefited from it; they speak very highly of it. They may well be in the minority, but that is a fact. We have people who have made those statements very clearly. I'm not sure they have been at this committee, but—

● (1120)

Mr. Lloyd St. Amand (Brant, Lib.): Mr. Chair, who has the floor, actually? We're hearing unsolicited comments from the other side, and I think he should be reined in.

The Vice-Chair (Mr. Jeremy Harrison): We'll try to keep it civil here.

Mr. Cullen, you have floor.

Hon. Roy Cullen: I think, Mr. Chairman, that Mr. Martin took the floor for this committee for some time. I think people allowed him to make his statements, so I think he could have the same courtesy and allow others to say something on this particular topic.

My remarks are dealing specifically with the motion, because the motion is flawed. The process has been flawed, and for the Conservative Party in particular to say there should be no due diligence, just a blanket payout without any kind of analysis and testing of the propositions in this report—many of which, as I say, the government is prepared to look at and act upon—to just make a blanket assessment based on the fact someone was at a residential school, and not do the proper due diligence on that proposal, would be irresponsible by the government. I'm amazed the Conservative Party, who talk about fiscal responsibility, would...

And we know, of course, they are playing politics with this, and trying to play into a new partisan approach to their dealings with aboriginal Canadians and first nations people, which I think is most unfortunate.

Mr. Chairman, regrettably there is other business of this committee to deal with, and this filibustering has already delayed that business. If it were up to me, I would speak on this topic right through to the conclusion of this committee, and maybe beyond, but I think that would frustrate the good work of the committee; unfortunately, others have chosen different paths.

I think the motion is totally inappropriate, and if that motion is going to be considered, we owe it to these other people who would like the opportunity to appear and present their case to have a balanced perspective on this particular issue, which is very important. We haven't had that to date, so on that basis I will definitely be voting against this motion.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Cullen.

We have quite a long list of speakers here, so I would ask that we move as quickly as we can in making our comments. We do have witnesses here today, so if we could move as quickly as possible, it would be great.

The next speaker on the list is Ms. Skelton.

Mrs. Carol Skelton (Saskatoon—Rosetown—Biggar, CPC): Mr. Chair, I take offence to Mr. Cullen's saying we aren't interested in our first nations people. Coming from a riding much like Mr. Martin's, I see the results of this whole process every day, and I have many people in my riding who have not come forward because they feel...they're very scared to come forward. They are worried about the process; they've said it's just another blow to their dignity and what they have suffered over the years.

And if he looks at number 3 in this whole proposal, that "The government engage in a court-supervised negotiation with former students to achieve a court-approved, court-enforced settlement for compensation that relieves the government of its liability for those former students who are able to establish a cause of action and a lawful entitlement to compensation", I think that answers your question very clearly.

I would also like to propose a small amendment to this whole thing. In the bottom, where it says "that the committee requests", I would say "that the committee chair presents this report to the House".

Thank you, Mr. Chair.

● (1125)

The Vice-Chair (Mr. Jeremy Harrison): Do we have debate on the amendment? No debate on the amendment?

Madam Barnes.

Hon. Sue Barnes (London West, Lib.): Thank you very much, Mr. Chair.

I think it's important to inform those new members who are around this table for the first time that the order of business on the last meeting was the study of on-reserve matrimonial real property, and that notices of motions made it to the floor. One speaker from the opposition spoke on one notice of motion—not this one—for the duration of our first scheduled meeting; obviously, we didn't get an opportunity to have the witnesses.

I bring that up because to do a proper study, what you do is hear from balanced witnesses. The balance comes from across the country. The balance comes from other sides—both sides of any argument—and there is always—

Mr. Jim Prentice: On a point of order, Madam Barnes, I'm not trying to be disrespectful in any way, but the current debate concerns the amendment, and you're not speaking to the amendment.

The Vice-Chair (Mr. Jeremy Harrison): Madam Barnes, could we keep the debate on the amendment? It's a very specific amendment.

Hon. Sue Barnes: But I was trying to explain to the other side, who has brought this motion, that this has not been a study. Mr. Prentice, as he introduced his motion, talked about being a consensus of the committee.

When you do a proper study, you don't do a motion and then present it as a consensus document when you have not received any input from the other parties. There has been no input into this motion as done. There has been no study in which our researcher puts together a report, as is the normal course in a parliamentary study. You hear evidence; then the researcher goes away, takes the evidence, puts a preliminary report at the direction of the chair, brings it back to the chair, and this is to say—I'm speaking directly to the motion—

The Vice-Chair (Mr. Jeremy Harrison): Madam Barnes, please—we're not debating the motion. We're debating the amendment to the motion. You are on the list for speaking to the main motion.

Hon. Sue Barnes: The amendment to the original motion is still part.... Okay, fine, go ahead. I'm sorry that listening to me for less than five minutes is not as material as listening to Mr. Martin for two hours.

The Vice-Chair (Mr. Jeremy Harrison): We're debating the amendment. Is there any debate?

Mr. Valley, on the amendment.

Mr. Roger Valley: Can you please read that again, because when I read the last line—

Mrs. Carol Skelton: "That the committee"—and then we delete "requests a comprehensive response pursuant to standing order 109"—"that the committee chair presents this report to the House".

So we're deleting "requests a comprehensive response pursuant to standing order 109" and "that the"—

The Vice-Chair (Mr. Jeremy Harrison): Okay. Are we clear on the...? I'll call the question on the amendment.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Vice-Chair (Mr. Jeremy Harrison): The next speaker on the main motion as amended will be Mr. St. Amand.

Mr. Lloyd St. Amand: Mr. Chair, we had allotted a certain number of days to deal with a very pressing issue that affects those who have fewer remedies if they live on reserve compared to those who live off reserve. This is an extremely serious current issue that has nothing to do with the pursuit of money.

The claims of residential school survivors are absolutely valid. The claims are justified, and, yes, we have heard evidence that is compelling. Unhappily, a fair opportunity has not been given to the other side, in my view. We've heard Mr. Hughes speak for only several minutes. Yes, we had the deputy minister, but by no means have we heard a balanced view.

It's regrettable that certain committee members have seen fit to realign the agreed upon schedule so that we can deal with matters that are, with respect, somewhat historical in nature, claims that are being dealt with in an orderly, responsible fashion.

We've heard evidence with respect to another issue, the issue initiated by Mr. Cleary, dealing with the alleged slaughter of dogs some 40 years ago or 45 years ago. As I understand it, the genesis of that is the pursuit of monetary compensation. Again, I'm not casting aspersions on whether or not the claims are valid. That is, I presume, yet to be determined.

But it's so regrettable that as we speak, as we deal with money, aboriginal women on reserve have fewer remedies than aboriginal women who live off reserve. That's what we as a committee decided would take priority. That's why this committee saw fit to summon certain witnesses to appear before us, witnesses who were here on Tuesday and prepared to testify, but whose presence was obviated by Mr. Martin's filibustering.

Here we are again today with witnesses at the ready, and we're presented, barely in time, with a motion by Mr. Prentice that is not the result of consensus. It's a motion that contains, as he well knows, inflammatory language, disrespectful language, barely parliamentary language. I suggest that those are the terms on page 2 of the preamble. To suggest that the minister is not listening is completely erroneous. To suggest that her evidence was unapologetic and self-congratulatory is demeaning and, as importantly, completely baseless.

So this is not the result of some consensus, as Mr. Prentice has termed it. I cannot support the motion, Mr. Chair, and I would ask two questions of Mr. Prentice.

● (1130)

Firstly, what does step 3 actually mean? It says “The government engage in a court supervised negotiation with former students”—and I presume there's a typographical error there. What assurances do the survivors of residential school abuse have that this process will in any way be quicker than the process that was undertaken some months ago? There's no timeframe. I can't imagine that a court is automatically going to be bound by a timeframe imposed by the government, so that's a real concern. I'd ask Mr. Prentice to address that.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. St. Amand.

Next on the list is Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair. I'll be brief, I assure you.

I just want to point out to Mr. Cullen, who didn't have the benefit of either the testimony on the residential schools study that we did or the conversation we had yesterday—

Hon. Roy Cullen: On a point of order, I'm not sure it's appropriate for a member to be commenting on who was or wasn't at a meeting, but I was at a couple of the hearings.

The Vice-Chair (Mr. Jeremy Harrison): I don't think the rules of the House apply in committee, but Mr. Martin has the floor.

Mr. Pat Martin: Thank you. I'll speak to the motion, Mr. Chair.

Hon. Roy Cullen: On a point of order, I've had a ruling as far as the committee is concerned that a member can comment about who was or wasn't at a meeting. Is that the ruling of the clerk as well?

The Vice-Chair (Mr. Jeremy Harrison): The clerk advises me that you can make those comments, but I would request that individuals don't. There's a reason why we do have those rules in the House, but they aren't applicable directly.

Hon. Roy Cullen: Just continuing on that, if that's the ruling of the chairman, I just want to make it clear that I have been at a number of the hearings.

● (1135)

The Vice-Chair (Mr. Jeremy Harrison): It's debate, Mr. Cullen.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

In the context of debating Mr. Prentice's motion, first of all I would like to point out that I appreciate the work he has done in the interim period between when we first raised this issue on Tuesday and today, and the opportunity that we've had to view it when it was put forward within the time limits of the committee. We have a 24-hour time limit in the committee, so it was circulated to us in adequate time. At least, our party had it with time to review it and look at its merits.

In my reading of this motion, in most ways it accurately reflects the intent of the motion I put forward for debate on Tuesday. I would point out that by referencing the report of the Assembly of First Nations in the first three pages—you could call it a preamble or the “whereases” if this were a resolution—and to the Canadian Bar Association's report, which was also presented in testimony, this motion by Mr. Prentice actually encompasses the hard work and broad testimony of hundreds of people across the country, of the leading authorities on the subject of the residential school crisis. Those include people like Kathleen Mahoney, professor of law at the University of Calgary; Justice Earl Johnson, of the Nunavut Court of Justice; and the former Chief Justice of the Yukon, Mr. Justice Barry Stuart, who actually drafted the report of the Assembly of First Nations.

This subject has had comprehensive analysis and review from leading authorities right across the country for years. I understand Mr. Cullen's point, but I don't agree with him that it would be necessary to revisit the testimony of all those people who participated in the drafting of the reports that formed the context of Mr. Prentice's motion.

My only reservation about Mr. Prentice's motion—and I would like to move it as a friendly amendment or as an amendment, period, and I ask that it be voted on—is that in the eight points that you find on page 4, as part of step 3 I would like to add the following language after the word “compensation”:

> , using as a framework the Assembly of First Nations report: "Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools" and the Canadian Bar Association report "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors".

I do so simply so that we understand that the court-supervised negotiations that we contemplate recommending in step 3 are guided by or developed within the framework of the recommendations of those two comprehensive reports. And I can table this in writing if the clerk wishes.

The Vice-Chair (Mr. Jeremy Harrison): I think the clerk would be appreciative of having that put forward in writing.

We have an amendment on the floor, so we will have debate on the amendment.

Mr. Martin, would you like to speak on your amendment?

Mr. Pat Martin: No, that won't be necessary.

The Vice-Chair (Mr. Jeremy Harrison): Any speakers on the amendment?

Hon. Sue Barnes: We don't even understand it yet.

You guys have printed it and translated it, talked among yourselves. We haven't.

The Vice-Chair (Mr. Jeremy Harrison): The amendment will be to change recommendation 3 to:

> The Government engage in court-supervised negotiations with former students to achieve a court-approved, court-enforced settlement for compensation that relieves the Government of its liability for those former students who are able to establish a cause of action and a lawful entitlement to compensation,

—this is new—

> using as a framework the*Assembly of First Nations Report on Canada's Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools* and the Canadian Bar Association report *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors*.

I believe Mr. Cullen wanted to speak to the amendment.

● (1140)

Hon. Roy Cullen: Yes, maybe I'll have to work on a subamendment at this point.

I'm wondering, Mr. Martin, with respect to the recommendations of the Assembly of First Nations, if we could introduce a clause and maybe a subamendment to your amendment. Because the Assembly of First Nations proposal deals with lump sum payments based on residency as a criterion, I'm wondering if we could make a subamendment to indicate that there might be those individuals who went through the residential school process and who didn't have any difficulty with it and they could decline compensation.

In other words, a person wouldn't be forced to take compensation just by virtue of residency. I think from the point of view of the taxpayers and the citizens of Canada, why would we compensate someone if they in fact had a very positive experience at a residential school?

The Vice-Chair (Mr. Jeremy Harrison): Mr. Cullen, you're moving a subamendment?

Hon. Roy Cullen: Yes. I just saw this a moment ago, Mr. Chairman, so I don't know how the wording exactly would go, and I'm not sure how precisely it fits this particular amendment, but if you would just give me a moment I can think on that point.

This is item 3, isn't it?

The Vice-Chair (Mr. Jeremy Harrison): Mr. Cullen, you'll have to, for the purposes of the subamendment, actually amend the words that Mr. Martin has changed in the original motion; otherwise it will be a new amendment. So I'll give you a second to work on that.

In the meantime, Mr. Prentice.

Mr. Jim Prentice: Mr. Chairman, I think Mr. Cullen is perhaps getting at a slightly different point from this amendment. We can certainly consider an amendment that Mr. Cullen might wish to make. I would suggest, however, we vote on Mr. Martin's proposed amendment and get it dealt with and then move on to debate Mr. Cullen's proposition as a separate issue, just in the interests of moving things forward.

The Vice-Chair (Mr. Jeremy Harrison): Mr. Cullen, would you be amenable to that?

Hon. Roy Cullen: Well, Mr. Martin's amendment is talking about the framework, the Assembly of First Nations report, and in this framework they talk about a blanket compensation based exclusively on residency. So I don't know how we can pass that with the caveat that I've just put on the table, unless we have a separate... I would propose that maybe we add a clause with a comma, saying "except in those cases where a student who attended a residential school is not willing to accept compensation for an experience that he or she didn't have any difficulty with", or something like that. That's not very good English, but we can hone that, I suppose.

The Vice-Chair (Mr. Jeremy Harrison): Okay, the subamendment to the amendment would then read: "except in those cases where a student who attended residential schools is not willing to accept compensation, based on a positive experience in those schools".

Do we have any speakers to the subamendment?

Ms. Barnes.

Hon. Sue Barnes: I'm just going to make the point that part of the reason why the government went into its ultimate dispute resolution was because of the length of time a court process takes. If anybody thinks a court-supervised process is going to be a fast process, they should think very seriously about the reality of that situation.

There were huge humanitarian concerns because of the age of many of the victims of this residential situation, that the whole process of the alternate dispute resolution process...that's part of the reason. Some of us have been here and have seen that the current process was there. We heard testimony at the hearings that were held for three days that all of the parties had established for this information to be placed, knowing full well that three days wouldn't have been sufficient to have the most balanced testimony.

I also caution the members around this table that whatever you put here, the reality is there are class actions, and no one at this—

● (1145)

[*Translation*]

Mr. André Bellavance (Richmond—Arthabaska, BQ): On a point of order, Mr. Chairman.

[*English*]

Hon. Sue Barnes: Point of order?

[*Translation*]

Mr. André Bellavance: Yes, "rappel au règlement" is the correct term in French.

[*English*]

Hon. Sue Barnes: Okay.

[*Translation*]

Mr. André Bellavance: We need to debate Mr. Cullen's subamendment, not revisit everything we've covered over the past several days. Ms. Barnes should be speaking to Mr. Cullen's subamendment.

[*English*]

The Vice-Chair (Mr. Jeremy Harrison): I thank Mr. Bellavance for that, and I would ask Ms. Barnes to speak to the subamendment, which is "except in cases where a student is not willing to accept compensation, based on a positive experience at a residential school".

Hon. Sue Barnes: My point is that no one can stop someone who has used the courts in a civil action from giving that up. That speaks directly to this. So if anybody thinks this process that you've put together is going to cover off everybody, you're mistaken. That's the reality. I think you have to be very concerned about this, because you have also, through doing these amendments and subamendments, perverted the process of a committee when there is disagreement. When the committee does a report, Mr. Chair—

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): I've raised a point of order, Mr. Chairman.

[*English*]

Hon. Sue Barnes: I've listened for two hours, and I do understand process—

The Vice-Chair (Mr. Jeremy Harrison): Point of order.

[*Translation*]

Mr. Bernard Cleary: We're starting the discussion all over again.

[*English*]

Hon. Sue Barnes: No.

[*Translation*]

Mr. Bernard Cleary: We understood all of that. Even if she were to repeat it 25 times...

[*English*]

Hon. Sue Barnes: I haven't even made my point yet.

[*Translation*]

Mr. Bernard Cleary: Let's focus on speaking to the subamendment. That's what we should be doing.

[*English*]

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Cleary.

Madam Barnes, please speak to the subamendment. You're next on the speakers list for the main motion, so you can make all the points you want at that time, but right now the debate is on the subamendment, which is, "except in cases where a student is not willing to accept compensation, based on a positive experience at a residential school". I would like to move to a vote as quickly as possible on this.

Mr. Roger Valley: Are we going for closure?

The Vice-Chair (Mr. Jeremy Harrison): There is no closure, as Mr. Valley knows.

Madam Barnes, you have the floor.

Hon. Sue Barnes: Thank you.

I would like to make the point, which is a legitimate point, whether it's a subamendment or an amendment, that this process that will take this directly to the floor if it passes does not allow for a minority position. That is not the situation in a study in a committee.

A study in a committee allows for minority reports. On the way you have done this motion, if it passes it is reported to the floor without any ability for an alternate voice. So whether one party on their motion says that there's a consensus or not, the reality is you have not allowed for another voice to be heard. That is my point, and I will make my remarks on the main motion when we get there.

The Vice-Chair (Mr. Jeremy Harrison): Are there any more speakers to the subamendment? If not, we shall take it to the vote.

Hon. Roy Cullen: Can we re-read it?

The Vice-Chair (Mr. Jeremy Harrison): Yes. The entire number three would now read:

> The Government engage in court supervised negotiations with former students to achieve a court approved, court enforced, settlement for compensation that relieves the Government of its liability for those students who are able to establish a cause of action and a lawful entitlement to compensation, using as a framework the Assembly of First Nations report "Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools" and the Canadian Bar Association report "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors", except in those cases where a student who attended residential schools is not willing to accept compensation, based on a positive experience in those schools.

(Subamendment negatived)

The Vice-Chair (Mr. Jeremy Harrison): We will now move to debate on the amendment. I believe Ms. Barnes is on the speaking list next for that.

Hon. Sue Barnes: Thank you, Mr. Chair.

On this main motion, I have no idea who among the public would be supportive of putting all of these things together. I'm not sure if the AFN would be supportive of this motion as it now sits. I am not sure whether those lawyers who have class actions—

● (1150)

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): On a point of order, Mr. Chair, are we not on the amendment rather than the main motion?

The Vice-Chair (Mr. Jeremy Harrison): We are debating the amendment, which reads, "...using as a framework the Assembly of First Nations report...and the Canadian Bar Association report...".

Could we please keep the debate on the amendment? As I said before, if individuals want to speak to the motion, they can put their name down if they haven't spoken to it already.

Madam Barnes.

Hon. Sue Barnes: I just made my point. I have no information on whether the AFN is supportive of what's been put together here. There has been no time for us today...without any prior notice, without any consultation in the drafting of this, without any opportunity to study this in a meaningful way. We know that we are all within the rules of this committee, but we also know that in a minority Parliament the rules do change from what they used to be, when there was more notice for everything and people could do considerable work and thought and have some consultation with those most affected.

I have no idea, and that's the point I want to make. I have no idea who would support this as it is, because it certainly leaves out some of the positions of the parties who were at the table, including the Government of Canada, as confirmed by the testimony or evidence of representatives of the AFN here at our hearings, who said they were working and consulting and having ongoing meetings in the process. That is the evidence, but I can't support this as it is presented today, as I have had no opportunity to know who is supportive of this in this very fast switch that lifted out one motion...

Mr. Harrison, as chair, I'd like to know whether that motion of Mr. Martin's is still on the floor too. Just because you've gone to one, does that mean that the other motion of Mr. Martin's is withdrawn? That would have some impact also on our of understanding of exactly what this committee is trying to do.

I know there is agreement among the opposition parties, but over here we're not exactly in the loop when they do these things and surprise us.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Madam Barnes.

To address your one point, Mr. Martin didn't have to withdraw his motion to move on to this.

Hon. Sue Barnes: So that motion is still out there?

The Vice-Chair (Mr. Jeremy Harrison): That motion will be on the order paper, as it was before. Mr. Martin can bring it back if he would like to—with the consent of the committee, of course.

Hon. Sue Barnes: On a point of order, Mr. Harrison, the chair informed me this morning or last night that Mr. Martin had apparently given notification that he was going to go ahead with his motion again today. So I would like to know that—

The Vice-Chair (Mr. Jeremy Harrison): I don't see how that was—

Hon. Sue Barnes: I'd like to know whether or not we're going to get to witnesses today.

The Vice-Chair (Mr. Jeremy Harrison): I would hope that we do get to witnesses today, and that's why we should move this along. If we could move to a vote on the amendment, I think that would be a positive thing.

I shall read out the amendment:

> The Government engage in court supervised negotiations with former students to achieve a court approved, court enforced settlement for compensation that relieves the Government...

—and I would dispense with the rest.

If we could move to a vote...

Mr. Prentice.

Mr. Jim Prentice: I'd like a clarification. Are we simply voting on the amendment proposed by Mr. Martin at this point?

The Vice-Chair (Mr. Jeremy Harrison): That's right, Mr. Prentice, we're voting on the amendment.

Mr. Cullen, you've spoken on the amendment already, but I will indulge you, so please be quick.

Hon. Roy Cullen: Thank you.

I just have a point of clarification. I have another proposed amendment that hinges on recommendation 3, but maybe it could follow our dealing with this motion.

The Vice-Chair (Mr. Jeremy Harrison): I think if we could move to the vote on this amendment, it would be a positive thing.

(Amendment negatived)

The Vice-Chair (Mr. Jeremy Harrison): We now return to debate on the main motion.

Madam Barnes, you are the next speaker on the list.

Hon. Sue Barnes: Thank you very much.

The main motion is on residential schools. The evidence was heard and the budget speech also served notice to us that there are ongoing negotiations surrounding residential schools through the alternate dispute resolution process.

I see language in this motion that I think is very unfair to the ministers who have been working on these files. All of us at this table and I think all Canadians want the Indian residential schools resolution process to come to a conclusion for the benefit of those most affected. We know there is a plethora of different approaches ongoing currently. There is independent court action and there are those seeking class actions. Even though we didn't have a lot of time to hear from Justice Hughes, we heard that there are those currently in a dispute resolution process, although we could have had more information on that.

My point is that I don't think this committee is in a position to have properly completed a full study on this issue, let alone to do a snap motion on the issue that does not take into account some of the legal reality that is existing surrounding this file. I have faith in those most affected, including those who have worked very hard on preparing the Assembly of First Nations report. There are ongoing discussions inside the government at the highest levels. We heard that from the minister. I think that process should be allowed to continue before we embark on yet another process.

I really do feel that a true study needs to be done in the way a study traditionally works in Parliament. The researchers take the balanced evidence from a number of hearings and then put a report, and the members at this table then work on the report clause by clause and submit it. It's not done through some motion that subverts the process, like the amendment that was done by Ms. Skelton and says it's a direct report to Parliament, with no allowance for any other person's or any other party's opinion. That's the reality. I'm sure most of us have been involved in the preparation of reports in a study, and that preparation is done in this manner.

I will be voting against this, and unfortunately I believe the voices on this side won't be heard because there are the numbers at this table to have a majority. I just want to make that point, and I'm not going to unduly delay discussion.

● (1155)

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Madam Barnes.

We have no further speakers on the list.

Mr. Cullen, you've spoken on the main motion once already, so please be quick.

Hon. Roy Cullen: What are we speaking on now?

The Vice-Chair (Mr. Jeremy Harrison): We're speaking on the main motion. The main motion is the debate on the board now.

Hon. Roy Cullen: That's Mr. Prentice's motion.

The Vice-Chair (Mr. Jeremy Harrison): That's right.

Hon. Roy Cullen: Okay.

I have an amendment that I would like to propose. Can I do so at this point?

The Vice-Chair (Mr. Jeremy Harrison): You can propose an amendment, yes, but I'd ask that we move along quickly to the vote after this.

Hon. Roy Cullen: In terms of Mr. Prentice's motion, is that basically summarized in steps 1 through 8, is it this whole report, or what? What would be reported? Have we decided? The committee has decided to report.... In terms of the amendment by Mr. Martin that we adopted earlier, could we re-read that amendment?

A voice: I thought that was defeated.

Hon. Roy Cullen: Oh, that was defeated. Okay.

So is it a comprehensive response to this whole report, the four pages, or to the key recommendations?

The Vice-Chair (Mr. Jeremy Harrison): Mr. Cullen, there was an amendment that was carried successfully. It was put forward by Ms. Skelton, and it replaced “comprehensive response” with “that the committee chair presents the report to the House” .

Hon. Roy Cullen: With “the report” meaning this?

The Vice-Chair (Mr. Jeremy Harrison): The report is everything included in the four pages.

Hon. Roy Cullen: It's everything in the four pages, okay.

I have a proposed amendment then. It would come after number 5 on page 4. I don't know if you'd want to call it 5(a) or whether you'd renumber. It depends on what kind of support it gets.

I also had a question, through you, Mr. Chair, to which Mr. Prentice and Mr. Martin or any other members on the other side may respond. Why has the committee chosen not to invite the churches, who are very much a part of this transaction, to appear as witnesses? I'll just throw that on the table, and maybe they could comment on it.

I would like to propose an amendment, which could be number 5 (a) or a new number 6. My amendment would read as follows:

> Based on the recommendations of numbers 1 through 5, that the government prepare a full costing of this proposal, an assessment of whether these recommendations meet the requirements of the Financial Administration Act, and an assessment of the fiscal capacity of the Government of Canada to implement these recommendations.

● (1200)

The Vice-Chair (Mr. Jeremy Harrison): Could I have you repeat that one more time, Mr. Cullen? Thank you.

Hon. Roy Cullen: Sure.

> Based on the recommendations outlined in numbers 1 through 5 above, that the government prepare a full costing of these proposals, an assessment of whether or not they meet the requirements of the Financial Administration Act, and an assessment of the fiscal capacity of the federal government to implement these proposals.

The Vice-Chair (Mr. Jeremy Harrison): Do we have debate on the amendment, or will we go directly to the question? Seeing no debate, I'll go directly to the question.

(Amendment negatived)

The Vice-Chair (Mr. Jeremy Harrison): Mr. Amand, I believe you have spoken to the main motion, so I'd ask you to be brief in returning to it.

Mr. Lloyd St. Amand: It's Mr. St. Amand, Mr. Harrison, but I know the mispronunciation was not intended.

I'd earlier asked Mr. Prentice to speak to this matter with respect to timing. I'd like Mr. Prentice, and anybody who's potentially going to vote in favour of this motion, to guarantee to survivors of residential school abuse that this motion, if adopted, will definitely result in their claims being advanced more quickly and more fairly than the process that has already been undertaken. I'd like Mr. Prentice to issue a guarantee because he's the mover of this motion.

As I understand it, the government is to engage in a court-supervised negotiation. I yet don't know what that means, nor has any timeframe been given. There's no level of court being talked about. Are we talking about a single court? Are we talking about courts in each province and three territories? We don't know.

So I'd like Mr. Prentice, who's moving this, to provide some assurances to survivors that this will be a better process, because of course item 2 of the motion is terminating the ADR process that at least 1,300 people have already bought into.

The Vice-Chair (Mr. Jeremy Harrison): Mr. Valley is next on the list. We'll go to Mr. Prentice following that. Then, having seen almost everybody speak on this, I would like to move to the question on the main motion.

Mr. Valley.

Mr. Roger Valley: Thank you.

We spent some time on meetings looking at the ADR process. We heard some very good testimony from a lot of witnesses. We did not spend a lot of time talking about the ADR. We had people here to speak about the ADR, but because of the length of some of the testimony we did not get to it.

I heard some very good comments from the other side of the room, especially the day that Mr. Hughes was here, on how valuable it was and how much they wanted to hear about it. I especially heard that from my Bloc colleagues. So I'm wondering if they have any comments on that or if their desire is to have Mr. Hughes back and to have him speak to some of the positive aspects of the ADR. We haven't heard about that.

I throw that question out to see if their passion is still there to get all the information from all the stakeholders.

The Vice-Chair (Mr. Jeremy Harrison): Mr. Prentice.

Mr. Jim Prentice: I might try to respond in a respectful way to a couple of the comments of Mr. Cullen as well.

Let's just be clear about what we're trying to do here. We are simply trying to make sure that this committee, in an effective way, closes off the very valuable work it has done on the residential school issue.

We heard testimony. Mr. Valley, you heard it. Mr. St. Amand, you heard it. Mr. Lunn, who was a member of this committee, a respected parliamentarian, said it was the most moving testimony he has heard in his many years as a parliamentarian. So we are simply trying to finish off this committee's work in some constructive way so we can move matters forward beyond the committee to the House.

This report and the wording of the preamble on page 4—if you might look at it—is very clear. The committee is expressing its regret at the way in which the government has administered this program, and is recommending that the government give consideration to the advisability of the government taking the following steps.

That wording is important parliamentary wording. It takes this matter back to the House. It does not bind the hands of the government in any way. It does not tie the hands of the government in terms of the Financial Administration Act or anything else. It is simply an attempt on our part to summarize what we heard in our testimony, distill it down to recommendations upon which I think there is agreement, or consensus at least, and move it forward.

If what you see in this document does not reflect what you think we heard or what you think the consensus was, you're certainly at liberty to propose amendments and they'll be fairly considered by everyone here. But it's important that we move forward and deal with this.

Mr. St. Amand, it's up to the executive branch of government, at the end of the day, to administer this program. They're the ones you'll have to speak to about how it's going to be handled in the future.

So I suggest we move forward with the motion.

● (1205)

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Prentice.

Madam Barnes, you are next on the list. I think everybody has had an opportunity to speak who wanted to speak on this—some now two or three times. I will ask you to be very brief, and we will go to the question immediately afterwards. We're going around in circles on this.

Hon. Sue Barnes: Yes, Mr. Harrison, you can ask me to be very brief, but if I have the floor I'll be able to talk and I will try to give...

This came to my office last night. I wasn't sitting in my office studying this last night, so we're being asked to vote on something that this government has been working on for 13 years, and quite frankly in less than 24 hours. We all know that; let's not pretend otherwise.

There are ramifications to these actions today and I think there are many points that have not been answered as you go through these eight points that have been put together since yesterday, I presume. I don't know how much involvement the three parties have had together doing this. I know the fourth party, the government party, was not consulted at all on this.

It's amazing what's in here, that we are going to immediately terminate the Indian Residential Schools Resolution Canada alternative dispute resolutions process. Again I state that there are 1,300 people who are actively involved in that. Some of these people are relying on this process. We have heard testimony before this committee that over 1,000 will probably be adjudicated this year. I guess they go back to the beginning of another process, yet undetermined.

You're asking, in number 3, for the government to engage in "court supervised negotiations...to achieve a court approved, court enforced settlement for compensation...". I can only state that if somebody wants things done fast, you must be the only people who believe that the fastest method is to go to a court-enforced process. Everybody, all the parties, ended up deciding on an alternate dispute resolution because they acknowledged that this wasn't the fastest.

The reality is that many people, and perhaps thousands more, will become engaged in a court process if more class actions get tabled, and there are individuals currently before the courts who have every right to continue. There is nothing that this resolution can do to stop them from pursuing their civil rights before the court, where they already are.

You've asked in this that the government ensure that the courts have full and final discretion with respect to limitation on legal fees. Well, when you put things before the courts, the courts decide. The government doesn't ensure anything; the courts decide. So I have a little problem just in the wording of that.

The next one is "The Government expedite the settlement of those claims involving aggravated circumstances...". I can tell you the government is already doing that. That's why we have testimony being taken even from hospital beds on a humanitarian basis.

You're going on here saying you want it to go to a court-supervised process, and then in the same breath, in number 5, you're contradicting yourself by saying that the government is supposed to do the expediting. You can't have it both ways. I just can't believe that you don't understand that these are contradictory points.

Number 6 is “The Government of Canada, in an initiative to ensure that the former students have the opportunity to tell their stories to all Canadians in a process based on dignity and respect, shall cause a national truth and reconciliation process...”. This is one item that's already come before in one of the reports that we've already been told is being considered by the government. It's part of the document that was worked on properly. So this recommendation is not a reinvention of something new. This is something, in actual fact, that is already ongoing, that's under consideration.

In fact, if we had been allowed to do our friendly amendment to Mr. Martin's motion the other day, we would have voted for making sure that this report is considered, because we know it is being considered. That's the reality.

Here you're asking the Auditor General to conduct an audit of the Indian Residential Schools Resolution Canada process. The Auditor General can choose whatever she wishes to do, and she will make that determination whether or not we ask her. She will do whatever she wishes to do.

● (1210)

The government responded publicly, in writing, to the Assembly of First Nations report. We know that report is currently being distributed to other interested organizations throughout the country for their response back to the minister, so all the voices who are affected here can be heard. This isn't just about being fast, it's about being right, and that we do it in a manner that is acceptable to those most affected.

I don't believe this resolution, as hastily as it's put before us, and without the parameters of a full study, which in its wisdom this committee—mainly the proposal from the Conservative Party—was to do in just three days... And they chose the witnesses and we heard from those witnesses. It wasn't, in reality, balanced. I think that was acknowledged by the Bloc members themselves.

I will just state that I cannot support this motion as it now stands. Now, that's not to say that the government is not in full support of getting a more comprehensive and quicker way of doing the right thing. I just don't think that it's reasonable to expect support from us. And it's unreasonable—and I will say this again—to do this in a manner that does not allow an opposition opinion to be voiced to the Parliament, which would be the normal way a report is presented, and to have hijacked the normal process of Parliament in this way.

Thank you.

The Vice-Chair (Mr. Jeremy Harrison): I thank you very much, Madam Barnes, for that intervention.

I think we're going to go to the question here. We've had people speak three or four times. We're making points redundantly.

Yes, Mr. Cullen.

Hon. Roy Cullen: Mr. Chairman, excuse me.

I had put a question, through you, to the opposition side about the failure to invite the churches to present at this committee, and I wondered if they're maybe reluctant to respond.

The Vice-Chair (Mr. Jeremy Harrison): Mr. Cullen, I think we're going to go to the question on this. There's no provision for the answering of questions.

Hon. Roy Cullen: There's someone who wants to...

The Vice-Chair (Mr. Jeremy Harrison): Mr. Bellavance, would you like to make a statement?

[*Translation*]

Mr. André Bellavance: I'm really tired of hearing government party members tell us that. Each time a subject comes under consideration in committee, each party has an opportunity to invite various witnesses. They could have done that, but all we've been hearing lately is that they haven't taken that step.

You had the chance to invite your churches and all of the witnesses you wanted. I want that reflected in the record, because I don't want people thinking that the committee is shirking its responsibilities. There may be some who aren't doing their job, but they need to stop blaming others. That's all I wanted to say. We can now continue with the business at hand.

● (1215)

[*English*]

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Bellavance.

We are going to the question now.

(Motion agreed to)

The Vice-Chair (Mr. Jeremy Harrison): There are some minor typographical errors, and I know Mr. Cullen pointed out one of them, and I would ask right now whether we could authorize the clerk to have those corrected before we submit this to the House.

Some hon. members: Agreed.

● (1220)

The Vice-Chair (Mr. Jeremy Harrison): Hearing agreement, that shall be done.

I think we'll take a five-minute break, at which point we will have our witnesses come forward and start our study on matrimonial property.

If everybody could take their seats, we'll start the meeting as quickly as possible. We don't have much time left, so could we have everybody take their seats?

The way we're going to proceed is we had scheduled two one-hour presentations but we are only going to have an opportunity to have one of those two presentations. The presentation we will have coming forward is from the Department of Indian Affairs and Northern Development.

Madam Barnes.

Hon. Sue Barnes: Mr. Harrison, just so I'm clear, are we going for an hour? We're scheduled to stop at one o'clock. We were supposed to have two hours. Are we going to 1:30, or...?

The Vice-Chair (Mr. Jeremy Harrison): If the committee would like to go for an extra 20 minutes, we can do that. I ask for the will of the committee to go to 1:20.

Mr. Jim Prentice: I'd be delighted. Absolutely.

The Vice-Chair (Mr. Jeremy Harrison): Okay, we have agreement.

Hon. Sue Barnes: I just want to make it very clear that the study the minister has asked us to undertake is a consultation with a broad range. It will take some time, and the idea is to come up with a written report at the end of it. That is the normal way you do a study—with input, with the researchers putting some effort into the evidence, and us working on a report in camera together that we can present to the House. I want to be clear on that.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Madam Barnes.

Mr. Martin.

Mr. Pat Martin: I have only one question. To be brief, I know that the Senate has just finished a comprehensive study on this subject. Will we be coming from that starting point, or will the parliamentary secretary, on behalf of the minister here, invite us or give us direction to begin a brand-new study, interviewing all the exact same witnesses the Senate committee just finished interviewing? Is that her intention?

The Vice-Chair (Mr. Jeremy Harrison): My understanding is that this committee will be putting forward our own report. We may tread on the same ground the Senate committee did, but I guess that's the way things go.

Hon. Sue Barnes: I can assist on that. The Senate committee report has been provided for you in your binders so you can read it. The minister and I attended at the Senate committee. It wasn't their aboriginal affairs committee; it was their human rights committee. On the whole point of this, they were approaching this as a human rights issue for women on reserve. We have been asked by the minister... Mr. Martin can refer to the letter from the minister that he had when we agreed to do this study.

Thank you.

The Vice-Chair (Mr. Jeremy Harrison): We'll move on now to the witnesses. From the Department of Indian Affairs and Northern Development we have Sandra Ginnish, the director general of the Treaties, Research, International and Gender Equality Branch; and Wendy Cornet, special adviser.

I thank our witnesses for waiting patiently for a day and a half.

Please feel free to start your presentation.

Ms. Sandra Ginnish (Director General, Treaties, Research, International and Gender Equality Branch, Department of Indian Affairs and Northern Development): Good morning, Mr. Chair and committee members.

Thank you for agreeing to examine through public consultation the very complex issues of on-reserve matrimonial real property. We are hopeful that your efforts will provide a clear direction as to the best way to resolve this issue.

I am here today with Ms. Wendy Cornet, who is our special adviser on the issue of on-reserve matrimonial real property. Also with me is Ms. Margaret Buist, legal counsel from the Department of Justice.

We will provide you today with an overview of the issue of on-reserve matrimonial real property, and outline some of the considerations as you begin your examination of this issue. Ms. Cornet will provide a broad overview. I will speak to some technical matters related to the Indian Act land management regime. We will both highlight some of the complex issues that the committee may wish to focus on. Ms. Buist will provide clarification on any legal points that are raised during the question stage.

I'll now ask Ms. Cornet to begin her presentation.

Ms. Wendy Cornet (Special Advisor, Department of Indian Affairs and Northern Development): Every province and territory in Canada has enacted legislation to govern the rights of spouses during marriage and on marriage breakdown. This law is commonly referred to as matrimonial property law. While there are important differences among these provincial and territorial matrimonial property laws, they all recognize in one form or another the general principle of the equality of spouses in relation to matrimonial property.

The common functions of provincial and territorial matrimonial property law are, firstly, defining what personal and real property of spouses is considered matrimonial property within a given jurisdiction; providing a system of rights and protections in relation to matrimonial property on a mandatory basis to married couples; and thirdly, establishing—as all jurisdictions do—a legal presumption of equal division of matrimonial property on marriage breakdown, regardless of which spouse owns the matrimonial property. This last function usually means that a compensation order can be issued by the court, requiring one spouse to pay the other an amount of money to achieve an equal division of matrimonial property—and the couple's assets and liabilities that constitute matrimonial property are taken into account in determining this.

In addition to determining the formula for the division of matrimonial property, provincial and territorial laws provide various other protections to spouses in regard to matrimonial property. For example, the consent of both spouses is generally required for the sale or mortgage of the family home, regardless of whose name is listed on the ownership title. As well, a court can issue an interim order for exclusive possession of the family home on application by a spouse.

However, in some important policy areas, provincial and territorial laws vary significantly from one jurisdiction to another, in particular regarding the treatment of the following subjects: common-law relationships; same-sex relationships; matters relating to rights upon death of a spouse; and family violence. Some jurisdictions have passed family violence legislation that provides a package of remedies, including interim orders respecting matrimonial real property. Other jurisdictions do not have specific legislation addressing family violence. And finally, another matter in which you find some variance is the treatment of matters relating to support and the matrimonial home.

I'm now going to discuss the application of these provincial and territorial laws to first nations people on reserves. Provincial laws fully apply to first nation spouses in regard to property located off reserve lands. However, provincial laws have limited application to spouses living on reserve lands, particularly in regard to matrimonial real property.

The Indian Act provides for a land management regime that includes a system for making individual allotments of reserve lands to members of the band for whom the reserve has been set aside. However, the Indian Act is silent on the question of matrimonial property interests during marriage and on marriage breakdown. The Indian Act does not provide for, or recognize, a law-making power on the part of first nations in regard to matrimonial property, real or personal.

The 1986 Supreme Court of Canada decisions in Derrickson v. Derrickson and Paul v. Paul have established the principle that because reserve lands fall under federal jurisdiction, as a result of section 91(24) of the Constitution Act, 1867, provincial laws cannot apply to modify any individual interest in reserve lands. However, compensation orders that take into account the value of matrimonial real property on reserves and the provincial formulas used for division can be used and can be granted.

● (1225)

For most first nation reserve communities, the limited application of provincial and territorial laws, combined with the silence of the Indian Act on the issue of matrimonial property, means that many important protections and remedies are not available on reserves. For example, courts cannot use provincial or territorial laws to grant orders for possession of a family home, grant orders for partition and sale of a family home to enforce a compensation order, or apply prohibitions against the sale or encumbrance of a family home. This lack of basic rights and remedies regarding matrimonial real property located on reserve lands has raised gender equality concerns from various domestic and international organizations, including first nations women's organizations, the Standing Senate Committee on Human Rights, and some United Nations human rights bodies.

Some studies have concluded that first nations women are too often at risk of having to leave their home, located on reserve, upon marriage breakdown and are in need of legal remedies and protections similar to those available off-reserve under provincial and territorial laws.

In addition to the lack of key remedies and protections regarding the on-reserve family home, there are other issues affecting the rights of spouses that need to be considered when the issue of matrimonial real property on reserves is addressed. First of all, many first nations do not use the Indian Act system of individual allotments of reserve lands, for example, by issuing certificates of possession, and instead use systems of custom allotment.

Second, an individual's status as an Indian as defined under the Indian Act or legal status as a band member can affect property interest in and on reserve lands. For example, individuals who are not band members cannot hold certificates of possession under the Indian Act.

Further, subsection 89(1) of the Indian Act exempts personal or real property of a band member located on-reserve from seizure or attachment by a non-Indian or a non-band member. The provisions of the Indian Act on the rights of surviving spouses to property may be affected by approaches taken to address the issue of on-reserve matrimonial real property, and this would need to be considered.

Fourth, how any proposed initiative regarding the issue of matrimonial real property would affect the rights of opposite-sex and same-sex couples on reserves, whether married or living common law, is another consideration. Of course, there are issues relating to the self-government rights and objectives of first nations.

I'm not going to discuss how matrimonial property has been addressed on some reserve lands because there are some different legal regimes that apply to first nations other than the Indian Act. A growing number of first nations are no longer subject to the Indian Act land management regime, for example, the first nations that have chosen to operate under the First Nations Land Management Act and those first nations that have negotiated self-government or comprehensive claims agreements that address the management of first nations lands.

Under the First Nations Land Management Act, participating first nations are required, upon enactment of a land code, to enact rules and procedures applicable on marriage breakdown regarding the use, occupation, and possession of first nation land and the division of interest in first nation land.

With regard to first nations that have self-government agreements, we can see that all self-government agreements to date dealing with land jurisdiction have in one form or another addressed the issue of jurisdiction in regard to matrimonial property. There are three separate approaches that are identifiable in agreements to date. The first type of approach you can identify is where the aboriginal party or signatory to the agreement is recognized as having jurisdiction over matrimonial property, both real and personal. In the second approach, jurisdiction over matrimonial property issues is shared between the aboriginal party—which eventually, obviously, includes an aboriginal government—and the provincial government. Under the third approach, the agreement provides that provincial laws of general application will apply to all matrimonial property located on aboriginal lands, whether personal or real.

Finally, some first nations have addressed aspects of matrimonial real property in their housing policies. This includes first nations that operate under the land management regime under the Indian Act. Some have adopted housing policies with aspects that address matrimonial property issues.

● (1230)

In addition, there are a few first nations still subject to the Indian Act and its land management regime that have passed their own laws respecting matrimonial property even though the act does not recognize band council powers in this area.

Ms. Sandra Ginnish: Now that Ms. Cornet has provided an overview of the issue, I will briefly expand on a couple of the more technical matters related to the Indian Act land management regime and will discuss some of the related policy issues.

The Indian Act land management regime is based on the principle that reserve lands are to be held for the collective use and benefit of the bands for which they were set apart, in accordance with subsection 18(1) of the Indian Act.

Under the Indian Act and in keeping with subsection 18(1), only members of the band are eligible for a land allotment by the band council. The department approves the allotments and issues certificates of possession. The department also keeps a record of land allotments in the reserve land register.

According to the Indian Act, only the minister has the authority to correct or cancel a certificate of possession, and only when that certificate of possession has been issued in fraud or in error. The land management regime, as it is, thus raises a couple of important policy issues foryour consideration. The first one is the issue of enforcement on reserve.

Subsection 89(1) of the Indian Act exempts the real and the personal property of an Indian or a band member situated on a reserve from seizure or attachment in favour of a non-Indian or someone who is not a band member. What this means is that a non-Indian or a non-band-member spouse cannot have acourt order for compensation enforced on the reserve, even if the court has made that order.

Secondly, the fact that only band members can hold certificates of possession means that those who are not band members have limited rights with regard toon-reserve matrimonial property.

These two issues have serious implications for both non-Indian and non-band-member spouses and their children, and they also raise this question: How can the matrimonial real property rights of non-Indian and non-band-member spouses and their children be protected, while at the same time respecting the principle that reserve lands must be held for the collective use and benefit of bands?

Your direction on these matters would be very helpful.

As evidenced by our own research and by witnesses who appeared beforethe Senate Standing Committee on Human Rights, and as you will nodoubt hear from later witnesses, there is a range of options on how to address the matrimonial real property issue. Some believe that the federal government has the responsibility to address this issue by adopting federal legislation that would incorporate provincial matrimonial real property laws on reserves. At the other end of the spectrum, some argue that the only solution would be the recognition of a first nation's inherent right to deal with matters related to family law, including this issue of matrimonial real property.

Clear recommendations from this committee on how best to address theissue of on-reserve matrimonial real property, taking into consideration the policy issues that we have outlined, will be invaluable. We appreciate that this is a challenge you've undertaken, and we look forward to your findings.

Thank you.

● (1235)

The Vice-Chair (Mr. Jeremy Harrison): Thank you very much for the presentations from our witnesses.

We will move to questions now. I intend to enforce the time limits fairly stringently.

The first round goes to Mr. Prentice, for nine minutes.

Mr. Jim Prentice: Thank you very much, ladies, for your presentation on this important subject.

Ms. Cornet, you're a special adviser to the department on this. I'm looking at page 8 of your brief. As we begin our deliberations on this, I'm just trying to appreciate the complexity of all this. Correct me if I'm wrong, but it would seem to me that it should be a reasonably straightforward matter to draft legislation that provides that the laws of general application for a particular province apply to first nation situations in that province, in a sense to reverse Derrickson, and that this would continue to be the situation unless and until a first nation negotiates a self-government agreement with the federal government that provides otherwise. So in that manner, at least on an interim basis, all women, both aboriginal and non-aboriginal, would have the protection of the provincial laws of general application.

It would seem to me that's a reasonably straightforward way to proceed to deal with this, and then over time self-government agreements would unfold in an orderly way that might have somewhat different arrangements. And the same laws could apply vis-à-vis enforcement. Just assume that with me for the moment.

I gather the only fundamental problem with that is that we would have to make a decision on this issue of what has primacy. Is it the collective nature of aboriginal on-reserve property or is it the rights of women and children that are to be accorded primacy?

Am I understanding this correctly?

● (1240)

Ms. Wendy Cornet: Well, you're correct in that there is likely a way to incorporate provincial law, or so I've been told. It's not my business to give legal opinions on that, but theoretically that is possible.

I don't think there is an example—an historical precedent—where any aspect of provincial law has applied to Indian reserve lands. Since Confederation it's never happened, in part because of this central principle that the federal government is responsible for protecting first nations reserve lands, and they have been protected from the application of provincial laws.

To make a shift of that kind would be a significant policy shift, and in addition to that it would raise a number of other complications, which are referenced in my presentation. For example, if you did that, then you would not have a uniform situation in the treatment of each first nation because provincial laws themselves vary. Some include common-law relationships in their matrimonial property law; some do not.

So I think you have other policy questions there that you may want to discuss with some of your witnesses in terms of who should be making those kinds of policy decisions. Who should decide for first nations couples on reserve whether common-law relationships are included, whether same-sex relationships are included, and so on—all the variations that I identified?

So there are those kinds of policy questions that are sitting there in the midst of the question you posed.

Mr. Jim Prentice: Right, but we have 631 first nations in this country. I forget exactly how many self-government tables are at work. I think it's 73, as I recall. Clearly the whole self-government framework is going to take many, many years—longer than my lifetime—to unfold for all aboriginal women and children.

In the meantime, I guess what I'm suggesting is would it not make sense for federal legislation to simply adopt the laws of provincial application on this subject, pending self-government agreements? Otherwise, some aboriginal women and children and non-aboriginal women and children will be in a position, presumably for the next 50 to 100 years, where they have no rights, which is surely an unacceptable outcome.

Ms. Wendy Cornet: The option you have identified is clearly one, and I'm sure you will hear of others. We have referenced in our presentation the fact that there are some first nations that have nevertheless, independent of the fact that the Indian Act within the four corners of it says there's no bylaw power in relation to this subject matter, taken it upon themselves to enact such laws, and I'm sure they know what's in the Indian Act.

So clearly there are some first nations that may have a different idea of how to go about it. It's really your conversations with first nations and other witnesses on what might be the appropriate course. The option you have identified is one. Presumably there are others.

Mr. Jim Prentice: I know it's not your intent here to give legal opinions, as much as I would appreciate that, but could you or another panellist discuss for us the conflict between section 35 of the Constitution and collective aboriginal rights, and the interplay between that and section 15 of the Constitution, which relates to equality rights, coupled with section 25 of the Constitution?

Ms. Margaret Buist (Counsel, Legislative Initiatives, Department of Justice): Thank you. My entire presentation is on that very topic—how to balance sections 15 and 35 using section 25 of the charter. When I'm asked to come back I can give you the full presentation on that and answer any questions you have on it.

You have identified the key legal dilemma in dealing with matrimonial real property, which is that in any initiative that's taken by the federal government, that balancing act must occur, and it's not easily done.

First Nations allege an aboriginal right to manage their own lands, to have their own family laws. And the individuals, both men and women, who are affected by the legislative gap on matrimonial real property have asked to have their equality rights recognized. They want the same treatment as people who live off reserve. That is the key legal dilemma in drafting any response.

● (1245)

Mr. Jim Prentice: It would strike me that it becomes even more complex when you consider that you could have a situation of two aboriginal Canadians choosing to become married—or common law, whichever—making a conscious decision to live on reserve and be subject to limited matrimonial property remedies. But it becomes even more complicated when you consider that you also have the possibility of non-aboriginal Canadians having an aboriginal spouse and moving to the reserve, and when they come to the reserve they have the normal section 15 situation but somehow those rights are truncated once they're on reserve.

So it strikes me that it becomes, at that level, extraordinarily complicated.

Ms. Margaret Buist: That's correct. As Ms. Cornet pointed out, the non-band-member, non-Indian spouses who live on reserve have even fewer remedies. They cannot hold a certificate of possession in their own name, so they can never have a joint certificate with their spouse.

The Vice-Chair (Mr. Jeremy Harrison): We're going to have to leave it there, Mr. Prentice.

Mr. Cleary.

[*Translation*]

Mr. Bernard Cleary: Thank you, Mr. Chairman.

I own a home on a reserve. Therefore, I'm very interested in this matter. However, this issue is so broad in scope that if we fail to narrow our focus, we run the risk of not coming up with the most relevant solutions.

Have you had an opportunity to identify the most pressing issues that need to be addressed in order to come up with an acceptable regime, or at least one that people feel is moving in the right direction? I don't think we can succeed in one go at it.

I'm curious as to whether you have given this any thought. Ms. Cornet, in your opinion, what issues need to be addressed in order for women to achieve some form of equality with their white neighbours?

Admittedly, things can't be the same on each reserves. It will be possible to implement some changes quickly, but the danger is that some of the people could suffer because some reserves will not have progressed at the same rate.

I put the question to you, because this seems to be a major issue. However, one shouldn't bite off more than one can chew. It's all well and good to want to revolutionize the world, but from a strategic standpoint, it might be preferable to change at the people's pace. Not everyone has progressed to this stage. One need only visit reserves to see where things really stand.

I want us to put forward a major proposal, because we're dealing with an important issue and we want to be certain that we're heading in the right direction.

[*English*]

Ms. Wendy Cornet: I think part of your question involved what first nation women would expect from a response to this issue. In the past, historically, first nations women's organizations—I'm sure you'll hear from some of them—have suggested that some application of provincial law was what they were looking for. But I'm sure they can speak for themselves when they get here.

At the end of the day, I think there's little disagreement that if you have the not uncommon situation of a marital breakdown and a spouse responsible for children who needs to get back into the house in order to live, or who needs a place to stay, and there's a dispute over who should be in the house, assistance is often needed. Court assistance is often needed to decide which spouse should have the house on an interim basis.

I think it's those emergency remedies that many first nation women have been looking for. And they include other situations such as family violence, for example. There are several provinces that have passed family violence legislation that provides a whole range of remedies, including orders for interim possession of the house. There is some question of whether the principles we refer to in the two leading court cases might prevent that provincial legislation from being used when it's needed in that way.

The fundamental issue here is to provide real remedies to real people who need them, often on a very urgent basis. That's the issue. At the moment, provincial law cannot be used for that purpose. Federal law does not provide it. We don't know enough, perhaps, about what's happening in first nation reserve communities in terms of how their own traditional systems are addressing these questions. We haven't heard a lot about that. We've heard some, but not a lot.

In terms of what the key issues are, we've identified them here. For example, I think the issue Mr. Prentice raised is obviously a key one: should provincial law be used, incorporated, let's say, through federal law or through some other mechanism, for example? To give you an example, under the First Nations Land Management Act, several of the first nations that have adopted matrimonial real property codes have provided that upon a period of compulsory mediation, provincial law would apply. So some first nations have chosen to incorporate provincial law by reference, on their own, where they have that agreement in terms of their powers.

The other key issue is who should make these kinds of policy decisions. If there are policy decisions to be made about common-law couples, same-sex couples, and so on and so forth, who should be making them? Does that rightly rest with the provincial government or a first nations government?

The other key area, referred to by Sandra Ginnish, is the question of enforcement and how you balance the interests of non-member spouses. If someone is not a member of the band, how do you place them in the position of having their equality rights as a spouse recognized, given the very unique framework of the Indian Act?

Those are really the key challenges in front of you.

● (1250)

The Vice-Chair (Mr. Jeremy Harrison): Thank you very much.

We now move on to Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

Thank you, witnesses, for your patience in the last few days while you've been waiting to give this important briefing to us.

It's not to dwell on things we may have already touched on, but I find that the interim report published in November 2003 by the Senate Standing Committee on Human Rights, entitled *A Hard Bed to Lie In: Matrimonial Real Property on Reserve*, can certainly give us guidance. I see that they had 46 presentations from around the country, original research notes from the Library of Parliament, and supplementary documents. There is an enormous amount of information here that we could start from.

I'd like to jump right to some of their recommendations and perhaps ask for your views on them. They've essentially put forward two choices. One is some avenue of recourse or satisfaction by amendments to the Indian Act. Number two is passing a separate act in order to give relief to some of the identified problems.

Under the category of amendments to the Indian Act, I notice that when they made their presentation, Sherry Lewis, of the Native Women's Association of Canada, and another woman representing the British Columbia Native Women's Society clearly said that the Indian Act should be amended so that provincial and territorial laws with respect tothe division of both personal and real matrimonial property could apply. I suppose that's the point Mr. Prentice has made, and your opinion of it is interesting to me, because the standing committee of the Senate does suggest and recommend that this take place without delay.

Can you think of any reason why we haven't stepped in that direction already to amend the Indian Act? If the recommendation in November 2003, after this kind of comprehensive detailed analysis, was to do just that, what are the barriers to us? Why do you think we haven't seen amendments to the Indian Act come forward?

● (1255)

Ms. Sandra Ginnish: I can speak to that.

As you said, Mr. Martin, this is a very complicated issue. As we've said, this issue significantly affects the management of reserve lands. In keeping with the Government of Canada's commitment at the Canada and aboriginal peoplesround table last April, we would like to work collaboratively with aboriginal groups to accomplish any changes to the act. As a result, it's crucial that stakeholders be consulted on any proposals to amend the Indian Act.

Mr. Pat Martin: But those very stakeholders came to the Senate committee asking for the government to do just that. And I won't stop at the Native Women's Association of Canada. That same recommendation was made by many of the groups representing aboriginal women.

I know what the script probably says, but it also says that the Indian Act should be amended so that property acquired during a marriage ora common-law relationship would be considered the joint property of bothspouses and that the spouse with custody of the children would be allowed tocontinue living in the family home. That was brought forward by Michèle Audette, of the Femmes autochtones du Québec, and JoAnne Ahenakew, of the Alberta Aboriginal Women's Society.

That makes eminently good sense, and the committee recommended that it be implemented. In fact, the committee gave direction to the Government of Canada to do it at least as an interim step to address the injustice associated with matrimonial real property today.

Is there some reason that you know of for why the Government of Canada would not simply do what it was directed to do or what was recommended to it?

Ms. Margaret Buist: Perhaps I can address that very briefly from a legal perspective.

As I mentioned earlier, the key dilemma in dealing with this issue is to balance the section 15 equality rights claims that are made. You've mentioned two groups in particular that are very strong advocates for that position. It's a very important position, but we have to balance section 15 with section 35 of the Constitution, which protects aboriginal rights.

Mr. Pat Martin: But nobody has ever given definition to section 35, so it could really mean whatever you say it means, can't it?

Ms. Margaret Buist: I would anticipate that you will hear from some of the presenters today—as the standing Senate committee did as well—that there are first nations who claim an aboriginal right to manage their own lands and to make their own family laws and who are quite opposed to just simply amending the Indian Act. That would be the easiest thing for the lawyers to do. We could do that quite quickly, but—

Mr. Pat Martin: That was exactly my question.

Ms. Margaret Buist: It would potentially offend aboriginal rights that are alleged—not yet proven, but alleged.

Mr. Pat Martin: I agree that it does make it complex, and I know that there would be those who would say that you're just tinkering with the Indian Act instead of acting under section 35.

The Indigenous Bar Association, with Larry Chartrand, said that adjudicators could be appointed by band councils to solve some of the problems with the help of elders, etc. That's one of the recommendations. Do you know if any steps have been taken in that regard, in any formal way, other than just ad hoc adjudication councils being put in place? Is there any structured adjudication relief being put in place?

● (1300)

Ms. Sandra Ginnish: At this point, no, Mr. Martin. There is no structured adjudication process on reserve to deal with these issues.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Martin.

Mr. St. Amand.

Mr. Lloyd St. Amand: Thank you, Mr. Chair, and thank you, witnesses, for your cogent presentations.

Am I correct that in a case of spousal abuse—and regrettably it exists everywhere—the provisions of the Criminal Code clearly apply to on-reserve spouses, so that hypothetically, if male spouse is displaying violence toward female spouse, male spouse can be charged and terms of release or bail imposed upon him, which really through another route, so to speak, provide exclusive possession—at least on an interim basis—to the female spouse? I'm correct on that?

Ms. Margaret Buist: Yes.

Mr. Lloyd St. Amand: But that's hardly a remedy as I see it, in every case, because I presume it's true—and this is anecdotal, rather than scientifically documented—that on-reserve aboriginal spouses are often reluctant to have the police intervene in a case of abuse or violence. Is that fair to say, or can you even comment on that?

Ms. Sandra Ginnish: It would be very difficult to generalize that kind of statement, but we do know that there is a very high incidence of abuse on reserve. The criminal law remedies are available, but what's not available are the civil remedies that are available off reserve.

Mr. Lloyd St. Amand: Right. But even though criminal law remedies are available, I presume the data exists that clearly suggests there are many, many cases of abuse or violence that do not come into a criminal court room. Can you comment on that?

Ms. Sandra Ginnish: I can speak to one study that we did in British Columbia. That study involved 29 aboriginal women who were willing to share their experiences with us. Of those women, 72% left their reserve communities immediately on separation, and a majority of them left because of domestic violence. So it's fair to say that, yes, issues of domestic violence are of considerable concern on reserve.

Mr. Lloyd St. Amand: My point is that notwithstanding the remedy, hypothetically, as it exists via the criminal court system, it's a remedy that's infrequently used. I feel for those women with children who, because the civil remedy of interim exclusive possession is not available to them, continue, presumably, to lead lives of quiet desperation—as Thoreau said—particularly when they have school-age children who have never lived anywhere but on reserve, who have friends and associations on reserve, who probably participate in recreational pursuits on reserve.

I presume part of your presentation is to say we must, sooner rather than later, provide these women with a remedy so that they don't have to choose between putting up with the situation or leaving the reserve, perhaps without their children.

Ms. Wendy Cornet: Yes, I think you've put it very well. Under some of the provincial family violence legislation, for example, a relative can bring attention to a situation of family violence and bring an application on behalf of a relative in need in order to generate the legal proceedings to help protect that person. As you point out, the gap that is facing us here is that the full package of remedies is not available in order to get a spouse in need back into their home with their children if they so need.

● (1305)

The Vice-Chair (Mr. Jeremy Harrison): We do have time for a second round.

Before we begin that, though, I'd like to deal with one issue, and that is the April 5 meeting, which is our next meeting. I would recommend that we go for three hours on April 5 to make up for some of the time so some of the witnesses will have the opportunity to testify. We have a situation where a number of witnesses testifying have already purchased their plane tickets, booked their hotels, and done things of that nature, so if it's the will of the committee, I would recommend that on April 5 we do three hours and have Ms. Buist come in that day to give her presentation in addition to the regularly scheduled witnesses.

Hon. Sue Barnes: And then we'll just continue in the same order we have. That's perfectly acceptable and logical.

Some hon. members: Agreed.

The Vice-Chair (Mr. Jeremy Harrison): Thank you very much.

We have about ten minutes or so left for a second round, so we will give everybody two and a half minutes to go forward on that.

Mr. Prentice.

Mr. Jim Prentice: I'll ask the panellists to come back to this question of the constitution, if I may. I have a copy of the constitution I carry with me in my briefcase every single day, but the only days I don't have it are the days I need it, including today, and I apologize that I don't have it in front of me.

Could we just talk about the conflict between section 35 and section 15, Ms. Buist in particular? How do you see the reconciliation or the balancing of that conflict between equality rights of women and collective rights of a first nation community; how do you see those two as being balanceable or reconcilable as opposed to having it either one way or the other?

Ms. Margaret Buist: You're asking me to answer the question that's really the pertinent one for the committee, and I can tell you I don't have all the answers to that. I can tell you the balancing is crucial and one has to take into account the individual equality rights that are claimed. Those are usually on the basis of sex equality.

We have several pieces of litigation against Canada that make those very claims, that women are really much more affected with respect to this issue than are men. We have other equality rights claims as well, using other portions of section 15 on the basis of race and on the basis of jurisdiction.

Those claims have to be balanced with the first nations' claims that say fine, we recognize there is different treatment; there's a different situation on reserves, but there's a very good reason there's a different situation on reserves, and we want to have the right to manage our own lands. We don't want the federal government imposing laws on reserve lands. We'd like to manage our own lands, and we'd like to do this in a way that is respectful of equality rights.

I'm not saying those first nations in any way want to not respect equality rights.

We can look at some of the situations that currently exist, such as the First Nations Land Management Act. First nations can opt into the First Nations Land Management Act. When they do so, they're required to—

Mr. Jeremy Harrison: I'm sorry, Ms. Buist, we're going to have to cut you off on that and move on to make sure everybody can have their questions asked.

Mr. Bellavance.

[*Translation*]

Mr. André Bellavance: Thank you, Mr. Chairman.

Ms. Cornet, the Senate committee has produced a report and I would not want us to go over the same ground again. Is the department currently examining some of the recommendations put forward by the Senate committee, including some which were highly relevant? How far along are you in your study of the Senate committee report?

[*English*]

Ms. Sandra Ginnish: I can speak to the fact that we have addressed a number of the recommendations that were made by the Senate standing committee. One of the recommendations they referred to was the need to address the negotiation of this issue in self-government agreements. We are quite far along in terms of developing guidelines for self-government negotiators; they've been through a process of examination by our legal counsel, as well as legal counsel in other departments. So we're quite close to finalizing those negotiation guidelines.

One of the other recommendations they made was the necessity of having a much plainer-language version of the document on matrimonial property that we had made available to women. They wanted a document that was much simpler to read but that clearly set out the issue and problems related to it. We expect to have that document finalized and translated in the very near future.

So those are two of the recommendations they made that we've taken some immediate action on.

● (1310)

The Vice-Chair (Mr. Jeremy Harrison): Thank you.

We shall move on now to the government, and Ms. Barnes.

Hon. Sue Barnes: Thank you very much.

In the interest of time, I know there is an issue of the Canadian Human Rights Act and section 67 of that act, which has application to band council resolutions when they affect land. I know that, depending on who you talk to, it's seen as a hindrance and maybe as something that should be repealed, but that other people want it to stay.

I need, in this short amount of time, one of you to give an explanation of why section 67 of the Canadian Human Rights Act is relevant to this discussion.

Ms. Sandra Ginnish: The Canadian Human Rights Act prohibits discrimination on several grounds, including sex, sexual orientation, marital status, and family status. Decisions taken by band councils under the authority of the Indian Act are exempted from review under the Canadian Human Rights Act by virtue of section 67 of the Canadian Human Rights Act. This means, for example, that the decisions of band councils that relate to the allocation of land to a band member cannot be reviewed under the Canadian Human Rights Act. Section 67 of the Canadian Human Rights Act is especially important in the context of the on-reserve matrimonial real property issue, because this issue will likely involve band council decisions regarding who is allocated land and housing. Repealing section 67 of the Canadian Human Rights Act would provide band members with an important avenue of redress for discriminatory decisions relating to the allocation of land, and/or housing, made by their band councils.

Hon. Sue Barnes: So in short...?

Ms. Sandra Ginnish: In short, it is something that the government would—

Hon. Sue Barnes: So in short, in a sense there's an allowance, by virtue of an existing section of the act, that allows for discriminatory practices not to be reviewed?

Ms. Sandra Ginnish: That's correct.

Hon. Sue Barnes: All right, so we've got that established.

It's very easy to say let's go in with the provincial-territorial—and in fact that may occur at some point, or may be used voluntarily by some of those people already in self-government agreements. But I just want someone to address the fact that a seizure can't be made on a reserve.

What are the practical restraints showing that it's just not the same as saying that the provincial laws applying off reserve would be the same as those...? Just give some practical examples where there'd be a differentiation.

The Vice-Chair (Mr. Jeremy Harrison): A very short answer, please.

Ms. Margaret Buist: On reserve, you can't get exclusive possession of the matrimonial home, which is an issue in domestic violence situations in particular. On reserve, a court can order the transfer of a matrimonial home between spouses to resolve division of matrimonial assets. On reserve, it can't be registered as a matrimonial home to prevent transfer without the knowledge of one spouse.

Those are three main issues that are available in provinces and territories and that are not available on reserve.

The Vice-Chair (Mr. Jeremy Harrison): Thank you very much.

I would like very much to thank our witnesses for being here, and thank you very much for waiting as patiently as you have over the past few days. I know that all members of the committee very much appreciate it.

We do have three minutes left, but rather than starting another round, I think it's probably prudent to introduce a motion to adjourn.

Okay, the meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
