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Ms. Nancy Karetak-Lindell

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• (1105)

[English]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning. I'd like to call the meeting to order and do some videoconferencing with Saskatchewan. Pursuant to Standing Order 108(2), a study of on-reserve matrimonial real property, we have with us Professor Patricia Monture of the Department of Sociology at the University of Saskatchewan.

We're very pleased that you could join us today via videoconferencing and assist us with our study.

If you're ready, we'll go straight into your presentation, and afterwards we'll have some questions from the committee members. So I welcome you to our committee this morning.

Ms. Patricia Monture (Professor, Department of Sociology, University of Saskatchewan): Thank you. It's a wonderful opportunity to be here today to share my thoughts on the topic of matrimonial property on Indian reserves.

As you are aware, I'm Professor Patricia Monture. I'm a member of the Mohawk community at Grand River. My Indian name is Aye-wah-han-deh. It means "speaking first" or "carrying a message".

I was trained both in law and sociology. I'm presently employed as a full professor in the Department of Sociology at the University of Saskatchewan.

Today I wish to focus my comments on solutions. That requires first examining what I believe to be the nature of the problem. The source of the problem is the lack of a matrimonial property law regime that applies on reserve lands. It is the imposition of Canadian laws over first nations laws, in my view, that's the heart of that problem.

For example, as a member of the Haudenosaunee, who you may understand to be the Iroquois, the traditions of my people acknowledged women as lawmakers and politicians. We had voice and we had power. Land, particularly the fields—as we were an agricultural people—were women's property. Children followed their mother's line, and upon marriage, residency was in the longhouse of the wife's family. Who stayed where on marriage breakdown was therefore never an issue.

In my view, further legislative imposition is absolutely not the solution. Focusing on the legislative void and calling that the problem regarding matrimonial property takes us only to a place of political gridlock, where the value of respecting the self-governing powers of first nations is pitted against the goal of equality and the

federal duty to Indian women. Both of those are values that we want to acknowledge and respect.

Casting the problem in this way is the cause of inaction on the part of the federal Crown, as politicians don't want to be seen as disrespecting the constitutional right—and note that it's not a special right, but a constitutional right—to self-determination or as abusing the rights of women. It explains why there has been no solution since the 1986 decisions in *Derrickson* and *Paul*, and I'd like to note that there are earlier Ontario court decisions on this matter as well.

So I've identified the source of the problem as belonging to that of the inaction of the federal Crown to correct the mistake of imposition. It might be a little odd to think about it that way because we're actually talking about a gap. So it's inaction on top of inaction. It is incorrect to characterize the problem as one of historic events or historic misfortune.

First, the harm is immediate, and it continues today. I would argue that if we're looking for solutions, it is the harm that we need to focus our attention on. The Indian Act is in fact a series of legislative choices, and we must see it as such. Overall, it's a choice to disrespect first nations forms of social organization, governance, and law. If we look back historically, we see that it was in 1850 that the precedent was first established that non-Indians would define who Indians were. That first provision actually recognized if you were Indian by blood—and I'm using the historically correct and legally correct term here—or if you were married into the nation, with no gender specificity there in 1850 at all, if one parent was Indian, or if you were adopted in infancy.

The first enfranchisement provisions were in 1857, and that is indeed where male bias was introduced into the legislation, because the woman followed her husband. If he chose to disenfranchise, so were the wife and the children.

It wasn't until 1869 that there was the first marrying-out provision. This is where most people start with the history, and I think that's an error. That first marrying-out provision is a post-Confederation provision, so it is indeed Canada's responsibility. The source is Canadian legislation, not British colonial policy or statute.

●(1110)

When you trace the early membership provisions and notice how they've varied over time, blood, adoption, marriage—at one time if you lived like an Indian, you were an Indian in the eyes of the law—you will see clearly that there are indeed choices being exercised.

But I want to go off on a bit of an aside—because I'm very good at asides—about how the Indian Act sections are silent, as we all know, on matrimonial property. We need to note that this impacts on men, on women, and on children as long as the matrimonial property is on reserve. This isn't just about Indian women; in fact, it's about all women if their domicile is in a matrimonial home that's on reserve. My view is that when looking at solutions, the focus should be on what's happening to the children, and actually that's my tradition, because the homes belong to the kids. They didn't belong to the parents; it was the children who had the primary right to safety and protection.

When you note what I've said about the lack of a matrimonial property law regime impacting on men, women, and children, you then understand that the gender discrimination in this gap is not express. You have to join some other historical facts to understand how history and practice have gendered that gap.

First, homes are more likely to be listed in men's names. That's the imposed patriarchy. This has been noted by both the Royal Commission on Aboriginal People and the Aboriginal Justice Inquiry of Manitoba. It includes the forced transfer of women to their husband's band on marriage until 1985. Even though that law was changed in 1985, I believe pressure still exists on women to move to their husbands' bands.

In fact, some of the membership codes in first nations communities add to that pressure. For example, some bands have codes where band membership is automatic if both parents belong to the band. It has to be granted by the band if only one parent belongs to the band.

So although the legislation has changed, it doesn't necessarily always trickle down to the practice in the community. And I want to be clear that there is, absolutely, an overlap between the 1985 amendments to the Indian Act and the nature of the problem we face today regarding the situation of women when marriages break down.

Second, there's power in relationships, both in the communities and in families, as I assume we're all aware. Men tend to have greater social, political, and economic power, and this is true in first nations communities as well. So often, women, when they need help, don't get help; they're in isolation.

I'd like to say that we don't need to use this fact to necessarily beat up on Indian Act governments and administrations, because the percentage of women chiefs in Canada is quite similar to the percentage of female parliamentarians in Canada too. So the problem just doesn't belong to chiefs and first nations communities.

That's all by way of preamble because my concern is with the harm this situation creates for women. It's been 19 years since the *Derrickson v. Derrickson* and *Paul v. Paul* decisions, and we haven't found a creative way around the gridlock. I'd argue, although I haven't studied it as fully as I'd like to, that the land management acts

are not providing that solution. I've reviewed some of the provisions in those acts, and I see none yet that actually articulate a process. They just acknowledge the principle that there should be division of matrimonial property.

For me it's very clear that the problem is in the federal legislation, and it's the silence regarding matrimonial property. For me, then, the question about solutions rests on how the federal Crown can discharge its responsibility for the situation of gender discrimination it has created.

●(1115)

This is a struggle that probably has its roots in the 1960s. It has its roots in the Canadian women's movement that struggled and was successful by the 1970s to have amendments made to matrimonial property laws, which originally denied women all rights.

There are two issues of discrimination that need to be corrected, in my view. First of all, there's the discrimination against those who live on reserve—and I've already noted that those aren't necessarily always Indians—and those who live off reserve, and between men and women living on reserve. So there are indeed two sites of discrimination.

I want to talk a little bit about the harm, and this is a community-based view of that harm. I see it on a regular basis. I see it in my female first nations students at the university. I saw it in the nearly 10 years I spent living in the Thunderchild First Nation. This is my ex-husband's community, which tells you that I am one of the victims of the lack of matrimonial property laws. I've seen clearly that solutions fall on individuals.

I understand that I've had an incredible amount of privilege in being able to easily relocate my children to the city, to provide a home for them, and that's a solution and opportunity that the majority of first nations women don't have.

If you look at the Aboriginal Justice Inquiry of Manitoba and their studies, they noted that aboriginal men left reserves for employment. Aboriginal women gave us their number one reason for leaving the reserve. It was to flee violence. Many of these women don't have resources, they don't have an education, they don't have opportunities when they leave for the city. They leave one site of specific violence and head into a city and end up facing a more generalized exclusion, which I would argue amounts to a form of racial violence.

There's no doubt in my mind that the situation of women on reserve leads to the very alarming and disturbing statistics that Amnesty International pointed out recently in their report, *Stolen Sisters*, on the situation of missing Indian women in this country. In my view, this is a matter of extreme urgency.

Women have no assistance most often when trapped in situations that range from unhappy to violent. I would note that many women are very creative and they actually use education to leave. Many of my female first nations students have come to the university as part of that strategy to flee it. I think it's wonderful they're at university, but they've exercised basically the only choice they have. It's indeed one of the reasons that we see more women than men attending university.

The harm you see at the community level is compounded by concurrent problems of poverty and lack of sufficient housing on reserve. When we're talking about harm we don't just need to count the lack of financial resources, or the black eyes and broken bones. This harm takes an emotional toll on women and children as well.

Women and children who are trying to restart often restart with nothing and in isolation. Please imagine yourselves having to make that choice. Erase your home, erase the connection to the community in your mind, and truly imagine yourself in the circumstance of a first nation's woman.

This harm also has an intergenerational impact on women. When women leave they return to their mothers or their aunts. Granted, this is following tradition and therefore I think it is as it should be. This is all done on women's limited resources, without a social framework that supports or rewards women looking after women.

What's the solution I see? The solution should address the harm that I've outlined. I don't believe it requires legislative change. Actually I think legislative change will create just another problem, as we've seen with the so-called Bill C-31 situation.

I would advocate creating a housing program that is meant to address women's needs to run "cooperatively" alongside the present system of reserve housing.

• (1120)

This program would need to include both an on-reserve and an off-reserve component—an on-reserve component for women who want to stay in the communities. Because of the forced transfer of a woman's membership from her community to her husband's, often the relationship with the husband's community is fractured on the dissolution of marriage; it's been a long time since she's been home, and she may not have maintained connections there. To solve this, we have to look very broadly at where women go: they stay on the reserve, and they go to urban areas.

It must create options for women in the short term as well as longer-term support. Women need a place to flee to. The idea of creating a system of safe homes on reserves doesn't exist, because a safe home requires anonymity. We need to think creatively about that. As well, to move beyond discrimination, women need a system that creates longer-term support for owning their own homes.

I want to add a little more on what I see about this solution. As I've said, neither creating a matrimonial property law section in the

Indian Act that applies to reserves nor stand-alone legislation addresses some of the concurrent problems. It does not address the difference in ownership on reserve, as first nations people own only the equity in their own homes, quite often, versus actually owning the home outright. If you are in the situation where you do own a home on first nations land, you own the house, not the land.

Legislative revision does not address poverty, and it concerns me that if you were to create a situation where courts could order compensation—well, they can now—many families don't have the resources, or many communities don't have the resources to compensate the wife for the loss of equity in the house. So a court order to divide isn't necessarily effective.

I'd like to caution that I don't think this is a full solution, but I see it as a manageable step, and doable with the right amount of political will to address discrimination. I'd say there are some other essential components of a plan.

The solution must include the immediacy of situations of violence; a way to order possession of children, acknowledging that it's usually their mothers they're with; an acknowledgment that keeping women safe in small communities is a challenge. We can have laws to protect women, but they won't have a practical result, given the nature of some of our communities.

I believe the solution must acknowledge cultural harm that has been done by suppressing our ways and imposing patriarchy on our communities. Women need to be supported in reclaiming their traditional knowledge. We need to raise awareness of leadership, and this is where we have to look to history, again; we have to be creative.

I do a lot of work with prisoners. One of the prisoners I worked with was serving time for a sexual assault. He said, "There's a problem in our communities, and we blame the leadership. But when I was a little boy in residential school and the men came in late at night, when they went to somebody else's bed, I was happy. I was sad for that little boy, but I was happy for me. I was happy because I was safe and I rolled over in my bed and pulled the blankets over my head so I didn't have to listen, and I felt safe."

Residential schools taught our men to turn their backs. We count the abuses that happened—abuses that were crimes, actually—in residential schools, but we haven't looked at it; we don't understand the totality of the impact that has had on our communities. The silence of male leadership is often directly tied to some of those other experiences. So raising awareness of our leadership is not a simple matter, because you're sometimes dealing with their own histories of abuses and trauma.

We need to recognize that the lack of federal action on this matter is sending a clear message to first nations women, and that message is that we don't matter.

• (1125)

We found creative ways and resources to respond to alcohol abuse, when it was labelled an epidemic in our communities, with a system of native workers in those communities. Why isn't the problem of violence against women and children as important? Why isn't the lack of a matrimonial property regime as important?

Niawen Ko:wa. That means “thank you” in Mohawk.

The Chair: Thank you very much for your presentation.

We'll go through a round of questions, starting with the Conservative Party, then to the Bloc, and then to the government side.

We'll start with Mr. Lunn for the Conservatives.

Mr. Gary Lunn (Saanich—Gulf Islands, CPC): Thank you very much.

Welcome to our committee.

I found your testimony to be something that we've been hearing a lot about. Prior to being elected as a member of Parliament, I practised law. I did some family law and witnessed much of what you're describing. I think there's no question that there's an urgency for us to act and to find a solution to what you've described.

You've focused on the word “harm”. I want to come back to this. Clearly, it's there. You mention that men leave the reserve for employment, while women leave the reserve because of violence. Again, it's tragic and it's real. The children seem to be forgotten. The problem has been so clearly identified by you and by so many witnesses. We need to focus on solutions, and that's where I want to go.

You've put forward a number of things, such as needing a place to flee to, an on-reserve safe house, and support systems. I think that's crucial, but you touched on one thing. I want you to expand on this from your own experience.

Obviously, on first nations land, there is no clear land title. It's a certificate of possession, a CP. How do they own the equity in their homes? How is that transferred?

If there's a breakdown in a relationship, both people are entitled to half the equity in the family home on the reserve. How is that possible when there's only a certificate of possession? If you could expand on that, it would be helpful to me.

Thank you.

Ms. Patricia Monture: It's not always a certificate of possession.

Actually, in the Prairies, I think the relationship between people and homes is more often governed by a customary practice of the band. That is in fact an interesting phenomenon. It doesn't tend to be written down. When you ask questions about it, you quite often hear that this is the way they've always done it.

In my experience, there's definitely a male bias. Part of that male bias is because it's the women who were forced to transfer, so they're the outsiders. It's not only absolute male bias. It has some history to it.

For example, at Thunderchild, there is a clause in their land statute on the equity in the home when you make improvements to the land. Then if you leave the home, the band is indebted to you. It's kind of an empty provision because the band doesn't have the resources to compensate people who are living as couples to go to the city or to live somewhere else, or to compensate a woman who is leaving a relationship.

Quite often, families therefore use the equity to keep the band out. If you don't compensate them for the equity in the house, you don't get to make the decision on who moves into the house when they leave. They get to make the decision on who moves into the house when they leave, because they have the equity. That's the actual practice in one of the communities I'm familiar with.

• (1130)

Mr. Gary Lunn: Okay. That's helpful.

There's another situation. Again, at least in my experience, the vast, overwhelming majority of the time, both aboriginal and non-aboriginal women are put in abusive situations and in situations of violence, on reserves and off reserves. However, I don't believe there's a support system available on reserves for them to get out of those violent or abusive situations. They have no place to go.

I want you to expand on that. Do you believe they stay in those situations because there's no place to turn? I think there are probably more opportunities off the reserve to get out of those situations because there are support systems and places to move to. Is the lack of support systems for these people to turn to a huge problem on the reserve?

Ms. Patricia Monture: I think that's part of the problem, but it becomes much more complex than that. In many first nations communities I'm going to describe the mode of life as from crisis to crisis. That dictates your view; that dictates how you look at solutions. Quite often a lot of long-term planning doesn't exist. It exists just in the here and now—let's keep a safe today, let's get this food today, and let's get everybody fed today. I think that compounds the situation women are in. Sometimes it's about the lack of resources and structures, but it's also about the structure of life in the community because of the poverty, because of the dislocation.

Solutions have to be way more creative. We need to acknowledge what we're trying to do. We're trying to ask the communities in the country that have the fewest resources, the larger social problems, if you want to call them that, and the most personal pressures to come up with the most creative solutions. You can't build a safe house. Thunderchild is a large community for Saskatchewan. It's probably, I don't know, 150 houses. But let me tell you, any new house in a community that size is a big deal. If you tried to build a safe house in that community, that's going to be the gossip for the week. The whole community is going to know exactly where it is. When you rely on anonymity to create a safe house, you don't have that structure in aboriginal communities.

So what then do you do? I wish it were as simple as saying, "We're building a safe house", but I don't know, short of putting a tank in the front yard, I'm not sure how you guarantee—and I'm certainly not advocating that. That's a joke, by the way.

Mr. Gary Lunn: We took it that way.

Ms. Patricia Monture: It's probably my twisted.... When I talk, I can't hear you, so I can't tell if you're laughing.

You can't guarantee safety, so it's going to require a lot of creativity to come to some solution.

I think we have some examples. Everybody knows about Hollow Water in Manitoba, and what they've done. They've actually relied on tradition, and the tradition was not to abuse women. There wasn't this history of violence. You have to look at how that happened. That happened through the extended family and those networks. They kept family and children safe. Staying on the line of not breaking the law, by resorting to violence yourself, how do you reinstitute those cultural practices that kept women safe historically?

If we're looking for a national solution, we're not going to find it, because the circumstances, the cultural practices, are so different in communities.

One of the issues we can address here is housing. Give women safe places to go. Create a series of options that are specifically for women. I think that will create a trickle-down effect in some of the other social patterns and changes in communities so you can access tradition.

• (1135)

Mr. Gary Lunn: Thank you very much.

The Chair: Thank you.

Could you just give us an example of what happens in Hollow Water, Manitoba, because we're not familiar with that one? I'm not. If

you could just give a short summary, then I'll go on to Mr. Bernard Cleary, for the Bloc.

Ms. Patricia Monture: My academic career, and I guess my interest, has been in aboriginal justice more than anything else, though I get dragged around all over the place. It's because of this that I'm familiar with Hollow Water.

Hollow Water is one of the communities. If you look at the aboriginal justice initiatives in this country, it's really interesting that the majority started in one way: the mothers got fed up and hated seeing what was happening to their kids. In one community, where the chief and council, or the majority of them, were coming back from fishing, the women blockaded them at the dock and said, "You're going to stay here until you listen to us, as we're worried about our kids, and we're going to do something". An aboriginal justice program grew out of that.

In Hollow Water, there was recognition of a serious problem with sexual abuse or sexual violations in the community. The community took the bull by the horns and worked through the Canadian criminal justice system to create a system of circles, a system of future-looking prevention and healing. If you're interested in more information, you can look at Rupert Ross' book, *Returning to the Teachings*, where he talks a lot about this.

Essentially, the program in Hollow Water says we're recognizing that sexual violence in the community affects everybody in the community.

That is one of the ways things are different in first nations communities. When we're in the city or a major urban centre and hear of somebody being raped, or we hear of a woman being hurt, and then somebody is arrested, we have somebody to be angry at; we have that rapist to vent our own emotions at. That doesn't happen in a first nations community. As soon as you vent your anger at a rapist there, who probably is related to you.... If he's not related to you, he's somebody you know; he may be somebody you've helped raise. So you don't get a safety valve, and that emotion around the issue just continues to swirl in the community. That's one of the ways the harm spreads out.

What happens in Hollow Water is they acknowledge that. They have a community resource team and attach a worker to the victim, to the abuser, and to anybody else who has a particular interest and relationship to those two people. They then work through the issues for the victim, the abuser, and the people who are attached to them. The process is very long, probably taking about seven years, and culminating with a healing circle that brings people back together. Because the violence is outed and everybody knows who the abuser is, there is something like a community watch that keeps victims safe, because you know you don't want to leave X alone with women or alone with children.

•(1140)

The Chair: Thank you very much.

I will now go to Mr. Bernard Cleary for his questions.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Thank you, Madam Chair.

First, what you told us was very interesting. I believe you gave us a description that very much resembles other descriptions that have been presented to us by other witnesses. Everyone always arrives at somewhat the same solutions. As far as you're concerned, I think you clearly can't feel that legislation is imposed. However, you emphasize that there is an obvious lack of a system. As long as there is that lack, we won't be able to find a solution.

You also denounce the lack of action by the government, as a result of which women and children suffer injury. In your view, this is caused by the patriarchy, as a result of which women today are completely isolated. I agree with that analysis. In my opinion, the problem in this regard is that we can't find solutions in a relatively short period of time so that this doesn't turn into another study, another royal commission and so on. A lot of things have been said on that subject.

As an aboriginal man, I've personally experienced a lot of issues of this kind. I believe the Royal Commission was eloquent on those issues. The subject matter is there. However, we can't manage to address it. We can't say that we're going to do such and such a thing, which may not be perfect, but which will at least make it possible to advance the cause.

The only actual project that I've heard thus far is that of the aboriginal women, who have requested funding in order to try to introduce a bill after conducting the necessary consultations. It could also be something other than a bill. In any case, as a result of that, we'll probably manage to find solutions that already exist.

Have you had an opportunity to study the aboriginal women's proposal to draw up a bill? Do you find it promising, or would you propose other solutions?

[*English*]

Ms. Patricia Monture: I don't think the solution is in further legislation, particularly if it's shaped in the style of Indian Act legislation, or if it's a matrimonial property law statute that applies on reserve. I think it would still leave women in the gap.

If you look at the work of the Aboriginal Justice Inquiry of Manitoba, they note absolutely clearly that first nations people don't engage the Canadian legal system. When they do engage the system—and aboriginal rights is now a bit of an exemption, in treaty rights—first nations case law shows that it's fundamentally about criminal charges, conservation charges, and child welfare action. If we're in court about kids, it's not parents suing for custody; it's indigenous families and the state in some kind of child welfare matter.

So I'm skeptical about the practical reality that if you legislated a matrimonial property law regime, women would have access; it would overcome the isolation; they'd have access to legal counsel;

and the outcome, of actually filling the statutory gap, would actually have a meaningful outcome for women in first nations communities. It's not that I'm just practically opposed, as a Haudenosaunee person who believes in our traditions and believes we're sovereign. It's not that I'm opposed in principle to a statute. It's just that I actually don't see how, as a practical reality, it would fix the problem.

I see it as quite similar to the restraining order. If I'm in a violent situation in a community that's isolated and that doesn't have police handy—and that may not be different from downtown Saskatoon—and I have a restraining order, am I supposed to stand at the door, hold the paper in my hand like a magic shield, and say, "You can't attack me, you can't be here"? That's not effective when you're talking to somebody who believes he has a right to violence. That paper doesn't act as a magic shield.

So I'm not sure that an actual section in the Indian Act or stand-alone legislation is actually going to implement the kind of change we want. I think we have to be more creative and resourceful and fiscally giving to see that we make some kind of progress on this situation.

About legislation, the one thing that jumps into my head right now—I haven't thought this through fully—would be some kind of legislation that acknowledges the discrimination Indian women have faced as a result of the Indian Act and that sets out remedies to that discrimination. It's an interesting idea. I don't think it would be embraced because of the liability issues, but something like that may have a more interesting outcome.

•(1145)

The Chair: Mr. Cleary, that's the end of your time, unfortunately.

Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): A very interesting presentation, Professor.

Mr. Lunn and Mr. Cleary both alluded to the presentations our committee has heard from various individuals. We most recently heard from Mary Eberts, with whom you're undoubtedly familiar, and Beverley Jacobs, who hails from the same area as you and I, Professor; I represent Brant.

Ms. Patricia Monture: I didn't know that.

Mr. Lloyd St. Amand: We also heard from Bonnie Leonard, who practises law Vancouver way. I can't recall if it's Vancouver, but certainly it's British Columbia.

The substance of their presentations was that legislation is needed, legislation is needed on an urgent basis, and without legislation, the harm that you've so eloquently described will continue. You have an opposite view, clearly.

Let's look at a concrete but hypothetical example. A young mom who has one or two children and who is subject to systemic abuse has to look at her options: stay, hope the abuser will change—good luck on that score—or leave the situation. How is that young mom going to be helped immediately by what you're proposing?

Ms. Patricia Monture: That young mom desperately needs resources at her disposal. That's part of the reason she's so trapped and continues to stay.

Again, if you look at the aboriginal justice inquiry on violence, women in those circumstances are beaten and abused about 35 times before they'll go for some form of outside help. My view is that women will help themselves if there is a system that creates opportunities for them to help themselves. I don't believe that exists now.

I guess I would go so far as to say that I disagree with Ms. Eberts and my dear friend, Bev Jacobs. NWAC advocated that the charter most apply to aboriginal women. At the time I said "No way, no how, it's not going to help".

I've actually just finished a paper on section 35. We have subsection 35(4) that says gender equality applies to aboriginal people. Find me one case that argues the right for Indian women under subsection 35(4). It doesn't get mentioned in the academic literature. I think it's exactly the same parallel as when NWAC looked to the charter to protect Indian women.

I understand wanting and needing to have faith in something as simple as legislation to create change. I don't actually believe that changes in law make immediate changes in social policy or social realities. It doesn't happen. We need to get on the ground on this one, and what I've seen more than anything else as the source of the problem is that women, and particularly young first nations women on reserve, don't have resources.

Likely if that young woman is going to have any hope, it's going to be her mom, it's going to her auntie, who deals with this situation. Let's just hope she's got an auntie, like me, who is going to go in there and do something about it. That's where the solution is coming from now.

• (1150)

Mr. Lloyd St. Amand: Okay. Premised on that, what do you see then, in concrete terms, for that young mom? I see it as her and her children being required to leave the home to which they're accustomed—and you're right, it is the home of the children as much as it is mom's and dad's—to go to another home, which sort of concedes to the abusive partner the possession of the home.

Do you see a peculiar dichotomy in that or not?

Ms. Patricia Monture: That's problematic, absolutely. Maybe you need to create apartment complexes for men to go live in on the reserve, where they're away from the families they've abused.

My bottom-line concern is.... To heck with the principles about what's right and wrong. What seems to be logical is that the women and kids should be able to stay. The fact of the matter is that quite often they can't. So let's create solutions that give women opportunities, that give women choice, that give women and children safety. That's what I'm concerned about.

Mr. Lloyd St. Amand: But ideally, forgetting the problems inherent in enforcement—and I appreciate that those are abundant, but leaving that aside for a moment—is it not preferable to basically confront the bully, to stop the pattern, and disrupt the children as little as possible by allowing them and mom to stay at home? Is that not the preferable solution?

Ms. Patricia Monture: I'm going to draw on Dakota tradition and say that the solution is much broader than that. When you're in a situation of violence in your own home from someone you're intimately involved with, you are as much in trouble as he is.

When you confront a bully, his immediate response is denial. It's like confronting an alcoholic and saying, "Don't drink". It never gets you very far. The same with confronting somebody who has learned that violence and intimidation are solutions to problems.

He's got a complex set of problems. Having been exposed to his problems, she has a complex set of her own. She doesn't stand up for herself. She thinks she deserves it. From the outside, when you look in, you see the fist, the black eyes. That isn't the experience of a woman who has survived it. It starts way sooner than the first punch, with emotional abuse, emotional belittling, and a psychological tie to him that tells her, "You're so useless that, if it weren't for me, you wouldn't survive". Women are so disempowered.

In the Dakota tradition, both the mum and the dad had to leave. It was the women's sisters who had the responsibility of moving into the house to look after the children. That was the tradition. When I say the house belonged to the kids, I mean it. Neither parent had a right to be there if they weren't meeting their responsibilities.

If you wanted to go more towards traditional solutions, that's the kind of intense resourcing you'd be providing. I don't see where we're going to get the financial resources to support those kinds of systems, so I haven't asked for the whole pie. All I'm saying is that we should find a way to get resources right to women so they have homes to live in, so they can be physically safe, whether they want to stay on the reserve, return to it, or go to some other off-reserve setting.

• (1155)

The Chair: Thank you very much for your answers and your report. I appreciate your coming in to do this by teleconference and adding to the wonderful information we've been receiving from our witnesses.

We will now go to our next witness from the Quebec Native Women Inc., Ellen Gabriel.

I welcome you to the committee. Go ahead.

Miss Ellen Gabriel (President, Quebec Native Women Inc.): *Wa'kwanonweratens sewakweken.*

Greetings, everyone.

My Mohawk name is Katsi'tsákwas. I'm from the Kahníakehake people, the People of the Flint, who you know as Mohawk, and I'm from the community of Kanésatake. I'm here to represent the Quebec native women's association this morning.

I just wanted to let the translators know that while I'll be doing the bulk of my presentation in English, my recommendations I will read in French.

I don't know what more can be said. I imagine many of the presenters have talked about the history, have talked about the assimilation process from over a hundred years ago and about how aboriginal people, even to this present day, are considered wards of the state. I know that the goal was to have the extinction of an indigenous culture, an indigenous people.

So we have to understand that the small communities we've been forced to live in have done nothing to allow us to grow. We have been kept at arm's length by society, and we have been expected to keep up with the times, to keep up with what society has to offer, at the expense of our identity, our culture, our languages.

I didn't have enough time to write anything, but just note that I will be giving the clerk our paper, which came out in April of last year, on matrimonial property from Quebec Native Women Inc.

If you listen to women who are affected by this and you put a face to the people who are affected by this, it's not just women but their children, their children who are boys and girls and who later become men and women in society. It has been devastating—not just the issue of matrimonial property but the issue of status. It has been detrimental to the positive growth of aboriginal communities and societies.

We ask in our paper on matrimonial property if the law is a source of social development. I would have to say no. The law has not been a source of social development; it has been a hindrance. It has been a struggle for aboriginal people to adapt and to resist assimilation because that's what we have been doing.

We have been talking about a new relationship with the Government of Canada. The first ministers meeting, which, barring an election, is to take place in the fall, the preliminary meetings on steering committees regarding education—all aspects of our lives—is still being controlled by the government, and I don't see a new relationship developing. On this whole issue of equal partnership, I have not yet seen any positive examples of it.

The measures that we would like to see must deal with the social issues. If there is violence in the community, then how can we combat it? The Quebec native women's association has a coordinator for the promotion of non-violence and native women's shelters. She talks a lot about the inadequacies of government funding that we have experienced.

How do we get the promotion of non-violence out there? We have proposed that it start at the elementary school level. It's taught in the secondary level. It's taught in the communities. It's taught to the chiefs, the chiefs who have adopted a foreign concept, foreign kinds of values in the system that has brought and perpetuated the discriminatory legislation in the Indian Act. So we have our own

people who are perpetuating the discrimination that was originally created by the Canadian government.

When I was listening to Patricia, I heard her say that legislation is not the answer. I think it is, for the moment, because the impact that colonialism has had on aboriginal people's communities has caused us to become alienated from our cultures. True, there are aboriginal cultures—and many of them—where the people still know their traditional values, still speak their language, but there are many who do not.

● (1200)

There are many who have adopted the band council system, which is based on a hierarchy and not a true democracy. As I said before, it is a hierarchy that has perpetuated the discrimination against aboriginal women, who, if you look in the communities, form the bulk of the community services provided there: they are in education, they are in health care, and they are in social services. You will see that the majority of community workers—I would say 95%—are women. Yet they are paid less, so they have no voice.

Everything the Government of Canada has done to change legislation and all kinds of negotiations has been done by a male-dominated group of people. We have been trying to get aboriginal women to become more participatory and to have more of a voice. In the AFNQL, Quebec Native Women does have a seat at the chiefs' assemblies, which is encouraging—but we are the only women's group in all of the country accorded that privilege.

So while legislation might be the answer, it is not the sole answer. Our tripartite committee, Women and Justice, which released a report last year, talked about adequate training for police in our communities. It seemed like a good idea, but what has been a detriment to aboriginal communities has been the rush for capacity-building, the rush to get our own teachers, the rush to get our own police forces. These police forces do not have adequate training. Adequate training would mean two years and would involve knowledge of domestic violence and knowledge of how to be fair and equitable when dealing with these issues. At the moment, they receive eight months of training.

Why do aboriginal communities have to deal with the poor quality, the fewer expectations, and less training of professionals? It is ridiculous. People who attain teaching certificates cannot teach anywhere. What does that say? It says they are not qualified; it says that we are getting poor quality services from the universities, who are supposedly teaching us capacity-building.

While I see the fact that the police are not trained and that we have recommended they be trained, I don't see any movement yet by any government to provide this.

As for women's shelters, yes, we need more.

We need to be able to find ways to incorporate cultural values into police training and into new legislation for matrimonial property. We have the sources of poverty, the lack of education, the lack of financial resources, all of which are linked to housing shortages and the assimilation policies that have upset our very social fabric and our very identity as aboriginal people. So the cultural vision, or the new legislation that we see, should not only incorporate laws that are based on gender equity, but also be based on or incorporate consultation with aboriginal people. If the Government of Canada is sincere in its new vision of extending a hand in a new relationship with aboriginal people, this has to be done in every aspect of our lives.

We have to look at what's been done in the past and what has not been working. We have to be able to look at the history of the Indian Act, as Patricia said.

I myself come from the Haudenosaunee people. My family has become a victim of the Indian Act, because women on the Gabriel side of my family were not allowed to own land and were excluded from my father's will because they were women. I have two other sisters and one brother. My brother got all of the land, because in the Indian Act—though it is not stated very clearly—women are not allowed to own land. Even as aboriginal people, we only get a certificate of possession.

• (1205)

What does it say about self-government or self-determination negotiations when we can't even own the land we are sitting on, we can't even get back our traditional territories, and we don't have a right to the resources on the lands we have? What does this say about a new relationship? This means it's just the assimilation process being perpetuated and originated from the white paper policy. So it's really a time for reflection, a time to say enough is enough. If Canada is a leader in human rights, then why is it that aboriginal women are the most marginalized and the most discriminated against in this society? It's time to change that.

When a relationship ruptures, what happens? In the majority of times the husband will get the house. And why is that? It's because maybe he's an iron worker or maybe he has a trade where he's earning a lot more money than she will, so he not only automatically gets the house, but he gets the children. That goes against our traditional values; it goes against our traditional customs of the mother passing on the language, passing on the moral values, and everything about identity. And that's not to say the father doesn't. But what the Indian Act has done is usurp the role and the importance of women in our society, and it's time to change that.

I hope if you are going to make recommendations to Parliament, a solution can be found soon, because aboriginal women can no longer afford to wait. Their lives are at stake.

I want to ask how much time I have so I can read my recommendations.

• (1210)

The Chair: I'll let you go through your recommendations.

Miss Ellen Gabriel: Yes. I'll read them in French.

[*Translation*]

The Indian Act should be amended to eliminate all forms of discrimination against aboriginal women;

The Indian Act should be amended to establish a matrimonial regime providing that all property acquired during the marriage is the common property of both spouses;

The Indian Act should be amended to ensure equality between men and women with respect to matrimonial property and to guarantee a fair division of property in case of marital breakdown;

The Indian Act should be amended to provide for the division of property between common law spouses in the event of marital breakdown;

The Indian Act should be amended to enable a parent who has custody in the event of marital breakdown to be able to continue living in the family home;

That the Canadian government ensure that, under subsection 15(1) of the Constitution Act, 1982, aboriginal women living on reserves may enjoy the same protection and have access to the same legal remedies as those living off reserves with respect to the division of property in the event of marital breakdown;

That the Government of Canada cease violating the International Covenant on Civil and Political Rights, to which it is a signatory, and that it ensure that a matrimonial regime providing for the same rights and obligations be put in place for aboriginal peoples;

Ensure that equality between spouses is respected in the event of marital breakdown;

That the Government of Canada recognize the direct authority of the First Nations to pass laws and legal provisions adapted to their culture in family law, among other things, under one interpretation of section 35 of the Constitution Act, 1982.

[*English*]

Those are our recommendations. I hope we can continue the dialogue in your questions, but I want to stress that time is of the essence to make changes in the issue of matrimonial property.

I appreciate the opportunity to address this committee, and I hope you will see this in a compassionate light, in a light that will provide equity and justice to aboriginal women living in Canada.

Niawen Ko:wa. Thank you.

The Chair: Thank you very much for your presentation and also for agreeing to come on relatively short notice. It was a very good presentation, given the little time we gave you.

We will go now to the Conservative Party, to Mr. Jeremy Harrison.

Mr. Jeremy Harrison (Desnethé—Mississippi—Churchill River, CPC): Thank you very much.

I'd echo your comments, Madam Chair. That was a very good presentation. I very much appreciated it, and I'm sure all the rest of the members of the committee did as well.

I found it very interesting when you were going through your recommendations and talking about the amendments to the Indian Act you think should be made. We've heard a number of different ideas as to what needs to be done. The Native Women's Association, I believe, advocated a stand-alone legislative framework; I could be wrong, but I think that's what they were advocating and working on.

What do you think the benefits are from directly amending the Indian Act as opposed to a separate legislative framework for matrimonial property?

• (1215)

Miss Ellen Gabriel: I think given the fact that the Canadian charter of human rights does not apply to reserves, that the benefits right now would have to stem directly...given the "time is of the essence" concept within the Indian Act, until such time as the Canadian charter can apply to reserves and to crown land as well.

Mr. Jeremy Harrison: As I said earlier, we've heard many different ideas as to how to deal with this, and the aboriginal community does seem fairly split within itself regarding a legislative solution. I know many groups have talked about quitting the AFN... not in support of a legislative solution. How would you account for the difference of opinion? Why is there such a difference of opinion?

Miss Ellen Gabriel: At the risk of perhaps not being politically correct within the aboriginal community, I'll say the majority of members in the Assembly of First Nations are men and they don't see the effects directly as the women do. I think because of what colonialism has done, it's going to take many years, if not generations, to decolonize the way aboriginal communities conduct themselves.

While the ideal situation for us as aboriginal people would be to come out with these solutions, it is difficult when the Government of Canada only recognizes the political authority of band councils. To provide structure to those band councils, it's necessary to give them guidance and structure, and that's why I think the legislation has to come within that context.

Mr. Jeremy Harrison: I thank you for your candour.

The other thing I found very interesting is something we hadn't heard before, the need for.... The example used was training police on reserves better. I know in my riding we don't. I represent northern Saskatchewan and I represent many aboriginal people. Of the first nations that are in my riding, I don't think there's one that actually does have its own police force; I think there are in other parts of the country. I found that example you used very interesting. There's thinking outside the box, so to speak.

Are there any other examples? Maybe you could first elaborate on that example of the police training, but any other examples of that sort of thinking you could bring forward would be very helpful to us.

Miss Ellen Gabriel: I think it's not just unique to aboriginal police. Better training should be provided, say, for the Sûreté du Québec, or the provincial police forces, and perhaps even the RCMP, in how to deal with domestic situations.

The thing that's very problematic in aboriginal communities is that usually the police officer knows the family. It can be his brother, it can be his cousin, it can be his uncle. So how impartial will he be when his duty is to protect the victim, when probably in the majority

of cases it's the abuser who's being protected and not the victim? She's forced to go out in the middle of the night, or whatever time of the day, with her children, who have been traumatized by a violent situation—or not, because it's not always violent situations where marriages break up.

But instill in the police the cultural values of their own individual communities, because we don't have a pan-American Indian culture here. We have very unique pockets of cultural values and customs. So they should be aware of that. They should be taught those.

They should also be guided by elders. When I say "elders," I don't mean people who are old; I mean people who really understand fairness and justice and can provide the guidance needed for police forces, to be able to have the support they need if they have to make a difficult decision.

As I said, matrimonial property is linked to so many parts of the social fabric of aboriginal communities, or society in general, so we can't just touch on the legislation. Legislation has to be linked to programs, training, and sensitivity within the communities and within society, and I think within the government as well, to really understand how to help us overcome this very difficult situation.

• (1220)

The Chair: There is a little bit of time. I think Carol Skelton will take over here.

Mrs. Carol Skelton (Saskatoon—Rosetown—Biggar, CPC): Thank you so much for an excellent presentation. I very much appreciate it.

I represent a city riding. There are a lot of women who come to our area, and there are a lot of slum landlords and a lot of very poor housing. What would you suggest for these women? What can we do in the cities to protect these women and give them the start they need and a hand up when they so desperately need it?

Miss Ellen Gabriel: There should be links within the community. But within the city itself...I know in Montreal there is the Native Women's Shelter of Montreal, but there are also other women's shelters that various different aboriginal women's groups use.

What's needed is for them to at least be given the time to overcome the trauma they've experienced, so that it's not passed on to the children, because the children pick up the fear. The children pick up the feelings of the mother. So the mother needs to be helped emotionally.

I think whether it's a native women's shelter or whether it's a non-native women's shelter, there should be links to them for either traditional methods of healing, in collaboration, in conjunction, or as an option to seeing a psychologist, a social worker, someone who can help them through this time, and once they've overcome this, to be given the opportunity to have training if they are not skilled, to have the support groups and support network they need, but also that they still maintain ties and links to the community, because we're very much a family oriented culture. It doesn't matter where we come from, when we leave the community, whether we live in the urban area for 15 years or 20 years, our heart is still connected to our communities.

So there have to be programs that are supportive and the resources to maintain those programs that will help women overcome that. Perhaps this will provide change for the future, that their sons or daughters will not repeat the dysfunction that we see now in violent homes.

The Chair: You have about 30 seconds. You can exercise it or not.

I just want to make a little clarification. I think Jeremy said the AFN did not support legislation. I think it was more that they wanted to be involved in making or consulting to make that legislation.

Miss Ellen Gabriel: If there is legislation, if they are to be consulted, I think women's groups, not just NWAC but provincial groups—

The Chair: No, I was just clarifying something he said, where AFN did not support legislation. They said they wanted to be very much involved in forming the legislation if that was the route we, as a committee, recommended.

Mr. Bernard Cleary for the Bloc, go ahead, please.

[*Translation*]

Mr. Bernard Cleary: Thank you, Madam Chair.

I'm overwhelmed by the quality of your remarks. You described a situation with which I was familiar. It's refreshing to discuss this question with someone like you.

Before asking my questions, I'd like to tell you that, when someone like you defends the aboriginal cause, you shouldn't let yourself be stopped by what's politically correct. These are trivialities that confuse us and prevent us from conducting debates as objectively as possible. Keep doing what you're doing; that's the right way.

You clearly explained that your objective was the betterment of aboriginal women. If that requires statutory measures, too bad, but let's do it right, so that aboriginal women, and especially children, are well protected. I like that logic. Perhaps you didn't know, but I'm aboriginal too; I come from Mashteuiatsh. Look at my beard, and you'll believe me when I tell you I've been involved in this debate for about 40 years. As you already said, we mustn't fall back on preconceived ideas that delay solutions. I believe that your recommendations, which are consistent with other comments heard, will help us propose solutions. It's up to us to work to that end.

You may be more frank than others, but your recommendations nevertheless overlap what has already been said. All the women,

without exception, have told us it's urgent that this problem be solved. Of course, they'd all like this act, if there was one, to be aboriginal. They unanimously felt that, in the meantime, whether the act is aboriginal or not, something must be done quickly. That, I think, is how the committee will address the question. We're definitely going to try to find a solution that is readily applicable and contains statements of principle.

It's always possible to make improvements to an act, a rule, a program or a regime. First, you can implement a regime that, although incomplete, is nevertheless an instrument you can use when you want to defend yourself. I think it's wise on your part to say that we must take a step forward and adopt this regime, as incomplete as it may be. Then we'll see about improving it. In my opinion, aboriginal women have shown over the past 10 or 15 years that that was the path to follow.

I know the reaction you've caused in the communities, since I've observed it. It was hard at first. However, you're right in saying that today it's women who manage everything in the communities. The men still belong to the band councils, but all the work is done by women. In this context, I encourage you to continue your work. Get involved in achieving your objectives so that what we achieve is really up to what we want.

What we're doing would be completely futile and ridiculous if the government didn't look for solutions. So I think we'll be able to suggest some to it.

• (1225)

Let's take it for granted that the government wants to do something right. On that basis, take advantage of us, take advantage of this committee, which can help you. It's true that your remarks will be recorded and so on. I suggest that you complete them and file them. You have the outline of something really promising. Make that effort and give us the result of your thinking.

That's the comment I wanted to make.

Miss Ellen Gabriel: Thank you, Mr. Cleary, for your support and your statement.

[*English*]

The Chair: We now go on to Sue Barnes for the government side.

Hon. Sue Barnes (London West, Lib.): Thank you. I read the 2004 Quebec Native Women's report. It was honest and it affected me. It made me want to work to bring it forward to the committee. I'd hoped we'd start in January, but we've had a delay.

In the 2004 report, Quebec Native Women stated that the legislative gap should have some temporary measure. Today you've given us recommendations that talk about principles. We know the principles; we know the balancing act. Many people have articulated the principles and some have addressed the legislation.

With respect to the legislation, the Indian Act contains many barriers, like the sections on seizure of property and band membership. I need to clarify whether your comment about land inheritance was about membership.

It would also be helpful to abolish section 67 of the Canadian Human Rights Act. It precludes the equality rights section from operating on reserve. I need to hear whether you agree with this principle.

• (1230)

Miss Ellen Gabriel: Abolish section 67?

Hon. Sue Barnes: Yes.

Miss Ellen Gabriel: The Canadian Human Rights Act declares that aboriginal rights and treaty rights are protected. There are many good things in it, but it doesn't go far enough in protecting gender equality or human rights. It doesn't address the issue of status and how the Indian Act has treated us. That's part of the problem. Our recommendations are to the point, and I hope they'll be considered. Maybe that section should be abolished; maybe a revision of it would be more appropriate.

Hon. Sue Barnes: We should put it in a positive way as opposed to just deleting it?

Miss Ellen Gabriel: Yes.

Hon. Sue Barnes: I understand you. Part of the problem is that the Royal Commission on Aboriginal Peoples concluded that family law is an inherent jurisdiction of first nations. The Senate told us to immediately incorporate real property laws by reference to provincial statutes.

Within first nations communities, there is an issue of acceptance on this point. There is also the concern that this might be seen as a section 35 inherent jurisdiction infringement for all first nations. Would you agree?

Miss Ellen Gabriel: Yes. Aboriginal people agree that while we want to have a relationship with the province, we want it to be nation to nation. It would have to be something that came from Canada, not the province. Within the Indian Act, anything to do with land reserve is a federal jurisdiction. This excludes common law, matrimonial law. So we have to address this more at the federal level than the provincial level. Quebec, unlike the rest of Canada, is under civil law. It would be too complicated to do it province by province.

Hon. Sue Barnes: Obviously, and that is one of the problems with just immediately incorporating provincial and territorial laws.

One of the ways of potentially doing this is some sort of recognition of a first nations jurisdiction with regard to matrimonial real property law. But some sort of sunsetted piece of legislation that would, for a temporary time period, until the various systems—whether it's through a first nations land system or whether it's self-government agreements.... Giving a timeline, putting something in temporarily that moves fast, that will automatically sunset, that gives first nations an ability to put something else in their place....

This committee is tasked with making some decisions here. We are urged to act quickly. Parliament doesn't act quickly at the best of times—try to get something quickly through here right now—so there is a time lag. Can you see a potential for having a number of systems operating in different places, based on whether there's a self-government agreement in place, or whether somebody is in the First Nations Land Management Act? Can you see us looking at whether bylaws, if we recognize that there is a matrimonial real property right for first nations...? Could you see us potentially being able to give

some legitimacy to places or first nations that wish to do their own matrimonial property regime?

One of the witnesses we've tried to get here is Sucker Creek, but for whatever reason we can't seem to get them before us. I feel that's a huge gap in our knowledge, because a number of different parties have pointed to them as doing something in their community that we don't have the evidence for at this committee. If you have any knowledge of what's going on there, I'd appreciate hearing about it.

• (1235)

Miss Ellen Gabriel: No, I'm sorry, I don't.

Hon. Sue Barnes: No? Okay.

It's very difficult, when there's no legitimate, legal way because of an antiquated law, to have information that you need to make good policy decisions.

Miss Ellen Gabriel: I think I'll refer back to what I stated before about what the effect of colonialization has done to us. Yes, it's important that aboriginal people have control over land and over this very important issue. But I caution, given that there's a lot of nepotism and corruption within band councils, I would like to see a structure where there's a tribunal perhaps. There are many communities within one nation. You could have people from different communities of a nation come in and help form some kind of matrimonial property law that is gender-equitable. We need to have a mechanism that ensures that any kind of land or self-government negotiations include gender equity with respect to this very important issue.

If aboriginal people are going to—I hesitate to use the words “be allowed”—have the opportunity to create their own, there should be transparency in this, and it should go along in accordance with the rights of an individual, say, according to international law. There are some very good covenants in international laws that provide equity.

I'm just very cautious. I'm for empowerment of aboriginal people, but because of the devastation against our identity, I want to see us, as aboriginal people, form that kind of tribunal or committee to ensure that everyone has an equal right, in all our communities, when it comes to the issue of matrimonial property—or even citizenship, as the codes are now being developed.

Hon. Sue Barnes: One of the things I'm torn between—

The Chair: I'm sorry, we're a little over time, but we have time for a second round. I'm thinking the Conservatives are going to pass on this opportunity. Is that right?

We have the Conservatives, then we go to the government, then the Bloc, and then go back to the government side. I'm not sure whether Sue wants to share her time with Roger, but we have Roger Valley down.

Mr. Roger Valley (Kenora, Lib.): More than likely, I'll share my time with Sue. I know better than to....

Thank you for your presentation. I think everyone said it very well. We're very impressed with your presentation this morning. You spoke from the heart, which is something we like to hear.

I'm going to ask you a couple of tough questions. We've heard from many people. We've heard from one end of the spectrum to the other on what we're supposed to do, what we could do, what we shouldn't do. You've probably seen the list. Have you seen the list of people who have spoken to us? You've heard some of the names my colleague mentioned.

• (1240)

Miss Ellen Gabriel: Yes, I've heard some of the names, but I don't know....

Mr. Roger Valley: If we took everybody and put them in a room and said, this is a problem we have to solve, with or without government involvement, what would we get out of that room if you had to come to an agreement in that room on what the best course of action is to deal with this very complex issue? The next question is going to get tougher. Don't tell me what you'd hope for. Tell me what we could realistically expect out of that room.

While you're thinking of that, I think everyone in this committee—and I don't ever mean to speak for everyone, but everybody wants to somehow improve the situation. We know we haven't done it in the last 20 or 21 years, or whatever it has been since that case. We haven't moved the bar forward. We haven't accomplished what we should have accomplished as a country. We don't want to face each other a year, two years, or six months from now, or whatever time it is again when we discuss this issue and try to resolve it. We don't want to face each other when nothing has moved forward.

So tell us, if we brought everybody together, everyone you can think of who has a strong opinion on this matter, and we were all in a room and we had to make a decision, what would we get?

Miss Ellen Gabriel: I didn't bring my crystal ball with me—

Mr. Roger Valley: I have one on my desk, but it doesn't work very well.

Voices: Oh, oh!

Miss Ellen Gabriel: I think what we would see is people trying to incorporate their own ancestral teachings and values concerning the rights of an individual, regardless of who they are and regardless of status. I think the issue of status will definitely be a bone of contention for some groups, but we'll probably discuss history, colonialism, where we want to go in the future. I think you might get some suggestions, perhaps some of the recommendations I have presented at this time. We could have a list of short-term goals and then long-term goals. The short-term would refer more to how we can resolve this now, how we can alleviate some of the hardship that women and their children are going through now, so that in the long

term the ultimate goal will be a fair and equitable method of justice when marriages break up.

I think what you would see, because I've heard this a lot, is that when a person comes to a community, say in the Iroquois Confederacy...we used to adopt people. Those people, whether they were Europeans or natives, had to learn our language. They had to learn our customs and traditions, and they had to know the ceremonies. They had to participate in our community to strengthen that identity.

I think that's what would come from it. That's why I tell you it can't be just legislation on its own. It has to be programs that are associated with that legislation so that it supports it; it reinforces those values. I think that's what would come out. I think by the time we left that room, I'd have a head of white hair. That's how long I think it would take, or I might not even be around. I think it would be a long process, and that's why we need to look at short-term and long-term goals concerning this issue.

Mr. Roger Valley: You mentioned what I feel is one of the weaknesses in Canada: we don't have enough participation by a lot of our citizens to start with, all across Canada. We strive for that constantly.

You did touch on my final question. It's in three parts. First of all, I just want to go back to the room that you're all in, and we're not going to let you out until.... Would we get agreement or would we come out totally fractured?

Miss Ellen Gabriel: No, I'm an optimist, so I'd like to think we'd come out with some sort of an agreement, and we maybe would agree to disagree on certain points. The ultimate goal I think is to rectify the situation. No matter whether you're a man or a woman, this affects us all, so I think we would try to come up with a solution, whether or not it would be by consensus...but at least we would agree to disagree.

Mr. Roger Valley: And that's our ultimate goal, to rectify the situation, I think your words were. Our fear, as you and many other witnesses have so eloquently said, is about the pain that's involved while we wait to get to that point.

My last question is, what would you see happening in this first year? Say we had this room and it was already done. What would happen first that's close to your short- and long-term goals? Tell me what you see happening in this first year. Where would we be in the third year and the fifth year? Are we expected to be finished, or is this a much longer process, until your hair is white?

• (1245)

Miss Ellen Gabriel: Well, that's from when I said if we have to agree on everything; my hair will all be white by then.

But I think we can speed up the process in the sense that we have to look at what kinds of cultural values we all share and what kinds of goals we have. The ultimate goal is for equality and justice for everyone, men and women. I think the short-term goals should be to look at what the problem is and to ask how we fix it. How do we fix it so it's fair for everyone? How do we fix it so we eradicate the nepotism and corruption we've seen?

I think it's possible to create a tribunal, a mechanism, or some kind of structure within each community that can help people decide on how things are to be split when the marriage is dissolved.

The Chair: Thank you very much.

We'll go to Mr. Bellavance.

[*Translation*]

Mr. André Bellavance (Richmond—Arthabaska, BQ): Thank you, Ms. Gabriel, for being here today and thank you especially for everything you're doing to advance the aboriginal cause. You're working, first of all, for the advancement of the cause of aboriginal women, but I believe you're also doing an exceptional job to advance the aboriginal cause in general.

I won't repeat everything my colleagues have said, but this was a highly relevant testimony. Moreover, all the testimony was very interesting, very relevant. The testimony of the women, more than that of certain other witnesses whom we've heard, showed us there was an urgent need to act.

Earlier you said that the aboriginal nations could ideally create their own regime for matrimonial property. Unfortunately, we're not writing a film script in Hollywood; we're in the real world. I believe this real world requires that we act very quickly. You've clearly shown us that.

A number of witnesses have told us that an amendment to the Indian Act would be pointless because the act is so obsolete, so bad that amending it would not be a solution. The Chair may correct me on the subject, but the Assembly of First Nations doesn't appear to be at all interested in amending the Indian Act.

We're talking instead about a major consultation. I'd like to have your opinion on the subject. If a major consultation is conducted, as I said a few seconds ago, that won't correct the situation on an urgent basis; however, the situation is urgent. What do you think about that solution, that request to conduct a major consultation on the subject, whereas the problems are being tangibly experienced in the field?

[*English*]

Miss Ellen Gabriel: Perhaps we should take it out of the hands of the chiefs and put it in the hands of the women, because it is the women who are directly affected by this.

I agree with you that a large consultation will definitely take up time, which is of the essence at this moment.

As one of the aboriginal groups in Canada, we have our own recommendations. We have had consultations with our members, and I think those should be taken into consideration. I think if it's possible or if it's agreeable to this committee or to Parliament for them to actually look at what has been done....

Yes, we need an agreement amongst all aboriginal people and we need agreement with the chiefs, and we would like to work with the chiefs. We don't want to be the enemy. I don't want to give a misconception here. I definitely want to work with the chiefs, but I think a large consultation could be good for the long-term goals.

Perhaps it could be the women's groups in affiliation or in partial collaboration with the Assembly of First Nations chiefs—not just at the national level but at the regional levels as well—who come up

with the short-term goals. We understand the realities; we understand who is affected. It's the women who are raising the children, and they know how that's affected them. We know what kind of future is involved in this.

Half of our population is our youth. As women of our nations, we should have a hand and be given that privilege to be able to know how to rectify a situation that is affecting our families, our families who are raised and loved and are given nurturing of identity by women.

I hope that answers your question.

● (1250)

[*Translation*]

Mr. André Bellavance: As you're no doubt aware, a Senate committee considered the same subject a short time ago. One of its findings, one of its recommendations, was that the Indian Act should be amended.

Would you recommend that the Standing Committee on Aboriginal and Northern Affairs of the House of Commons head in that direction?

[*English*]

Miss Ellen Gabriel: Only because it would probably be the most efficient way at this time, not because I agree or because I am a supporter of the Indian Act.... In fact, it's the opposite. Given the tools we have to work with at this time, there are not a lot of options open to us, as I've mentioned before.

The hourglass has finished a long time ago on the effects on our communities, and in particular on aboriginal women and their families. I hate to say it, but yes, I think the Indian Act revisions are the place to start, unless you can come up tomorrow with a replacement to the Indian Act. I don't think that's going to happen, but we have to use the tools we have for the moment and, again, as I said, the short-term and long-term goals.

The Chair: Thank you.

We will now go back to the government side, and I think we have time for one more question.

Sue Barnes.

Hon. Sue Barnes: Thank you very much. I'm going to preface my question too, because I was one of those people who set their alarm at midnight to come in to try to get through a bill that the government had put together and that we thought was good. It only takes one party in any committee to filibuster anything. So we can come up with immediate legislation. I think that's absolutely doable—I really do. And I think it could be done either way, with amendments or with a substantive piece, a stand-alone piece, and I think we have enough bright minds to enable us to figure out all of the necessary pieces to that.

At the end of the day, if somebody decides to filibuster that bill, because of a feeling across the country that could develop about inherent self-government rights, it will go nowhere, and it will consume a vast effort.

So I'm going to go back to my question to you. Even though it may appeal to people to do immediate legislation and to do one thing, the provincial piece—and that looks easy, it looks like it will fix it—would another option be to take that time period where you could be in here filibustering that piece of legislation, good or bad, to do the development with, as you say, a group or a number of groups to get a piece of legislation put into effect? Or could you combine that somehow with an interim piece of legislation or application that will immediately sunset upon applicable first nations, affected first nations moving forward in some direction, whether it's with their self-government agreement with the matrimonial real property part of it or whether it's with first nations land government acts? The whole question of custom allotment is incredibly difficult, and let's be realistic here, 50% of first nations in this country use custom allotment, and we have very little knowledge about it, as there is no registration necessary. Even if you had the wherewithal, how do you apply it?

And you are aware of these issues. I know first nations women are aware of the issues, and we haven't even touched upon the super-sensitive issue of what happens to non-band members' spouses and children on reserve. I've been in reserves where the on-reserve women are saying, there's no way people are getting our land. It's a reverse situation; it's more than you would anticipate.

If you needed a process to get there the fastest, is speed the only thing, or is efficacy what you need to end up with? One of my first-year law classes taught me that if you put in a law that nobody accepts, what good is the law? And it's not even putting in the law here. It's having the ability to get through the process without being filibustered.

Quite frankly, if it was me and I wasn't concerned about that, I'd be putting in a law tomorrow, because to me, one piece of legislation for first nations that should not be optional is equality rights of women in this country.

I think you've hit the nail on the head. Even though it is a Canadian value, this is an international value that Canada has ascribed to. First nations are at CEDAW; they're at all the other civil political rights...and I've been there, and I know that. That is an acceptable forum to look to for our international obligations that is acceptable to first nations people in this country.

Having said that, how do you weave yourself in? If you want success, how do you get there?

• (1255)

Miss Ellen Gabriel: You know probably more than I do how the system works, but I think you need both efficacy and speed, and I hope it would be in consultation with or at least looking at the recommendations that have been presented to you by the women's groups and other presenters who have been here.

I can't stress enough the importance of the need to provide equity and to make a solution for women who are left. All you have to do is refer to the Amnesty International report that came out last year on the problem aboriginal women are facing.

If people have a problem with equity for aboriginal women, then maybe there are some problems within those people's values. I know I'm making a moral judgment here. We come here as aboriginal people to present to you because you understand how your system works more than we do, if you are sympathetic and compassionate and willing to help us on this issue. We are also here not just for this time, but you can reach us any time to ask us, "What do you think of this?" It doesn't have to end after today.

Quebec Native Women has been in existence for 30 years, and so has the Native Women's Association of Canada, for 31 years now.

Hon. Sue Barnes: One of the things I was hopeful of at the beginning of doing this study was that, because of the minority Parliament, people would put aside the politics around this issue to work together to come to a solution. I'm still hopeful of that.

Thank you.

Miss Ellen Gabriel: Thank you very much.

The Chair: Mr. Cleary.

[*Translation*]

Mr. Bernard Cleary: I simply wondered whether we'd be able to speak at one point. Ms. Barnes is very interesting, but she's monopolized the floor four or five times now.

[*English*]

The Chair: No, she hasn't.

Hon. Sue Barnes: Twice, because nobody else was on the list.

The Chair: We have a very clear list as far as speaking order here is concerned, and because the Conservatives passed on their...

Anyway, we have been sticking to the speaking list, and we can show it to you if you want, but the second round is opposition and government, opposition and government. That's what we agreed to in the beginning, and we've stuck to that.

Thank you very much to Ms. Ellen Gabriel for her intervention this morning.

We've certainly been taking notes and we hope to incorporate the work you have into this. So again, I thank you for coming.

Miss Ellen Gabriel: Thank you. It's my pleasure.

The Chair: The meeting is adjourned.

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