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—
Chair

The Honourable Judy Sgro

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• (0905)

[English]

The Chair (Hon. Judy Sgro (York West, Lib.)): I will call this meeting to order.

I'll just quickly review the order of business for this morning. We have several people as witnesses this morning. Our meeting will go from 9 to 10:30, as normal. At 10:30 we will review the draft report in the camera session. Given that we have several witnesses, we will only have time for one round of questioning between now and 10:30, if everyone takes all of their time, just so that we stay on track.

You should have in front of you a copy of our briefing notes from our researcher, a copy of the draft report that we will consider in camera afterwards, and the revised committee calendar.

Welcome to the witnesses. We have representatives from the Native Women's Association of Canada, Beverley Jacobs and Lisa Abbott.

Beverley and Lisa, thank you very much for joining us, and I will turn it over to you.

Ms. Beverley Jacobs (President, Native Women's Association of Canada): *Ske:noh swagwagoh. Geowso Gowehtyuseh.* "Greetings of peace", in my Mohawk language. I also introduced myself with my real name, Gowehtyuseh, meaning "She's Visiting". I've stolen this from a Mohawk elder. My GST name is Beverley Jacobs.

Some hon. members: Oh, oh!

Ms. Beverley Jacobs: I'd like to thank you for the opportunity to come here today to present on this critical issue of matrimonial real property on reserve. It is critical to aboriginal women in this country, who, as a result of colonization and assimilation policies carried out under the Indian Act, suffer from inequalities related to their social, economic, cultural, political, and civil rights. These breed violence, post-colonial and structural inequalities, racialized and sexualized violence, poverty, lack of access to justice, low education and employment rates, low health status, and little or no political participation.

The high rates of poverty and violence have had the greatest impacts on aboriginal women and their children. One effect that we have found in the work we've done with our "Sisters in Spirit" initiative is that gendered racism leads to the devaluation of aboriginal women, allowing violence to be tolerated both within and outside our communities, leading to an alarmingly high rate of aboriginal women who are murdered or go missing.

An understanding of the severe marginalization of aboriginal women is critical to finding solutions to this issue of matrimonial property rights on reserve lands. I have presented on this issue twice now, once to the Senate Standing Committee on Human Rights, as well as to the Standing Committee on Aboriginal Affairs and Northern Development, so this isn't a new issue for us. It is an issue that needs to be addressed immediately.

With the report that was submitted by the standing committee, called "Walking Arm-in-Arm to Resolve the Issue of On-Reserve Matrimonial Real Property", we do acknowledge that these committees were able to address this issue in the last two years. But I also believe it's because of the work that we've been doing at the international level at the UN in addressing this issue as a human rights violation, not only through the United Nations economic, social, and cultural reports, but also the United Nations habitat report, which has also acknowledged that this is a human rights violation against aboriginal women.

The situation of inequality has existed for 20 years, since 1986, when the Supreme Court of Canada rendered its decision in *Derrickson and Paul*. We note that this situation has now existed for over two decades without redress. In our review of the reports of the Standing Committee on Aboriginal Affairs and Northern Development and the Senate Standing Committee on Human Rights, we are pleased to see that the Native Women's Association of Canada has been given respect, because we have brought it forward for the last eleven years.

We are the only national aboriginal organization to actively pursue these issues on behalf of women and children—and the men in our communities, because it does affect everyone. We do concur with the general findings that something has to be done to correct this inequality, while also respecting the inherent right of self-determination of our peoples. It has to be addressed in that context.

Both reports acknowledged the impact on children, including the denial of their rights to be raised in their own communities and within their own cultures. We acknowledge that there has been a connection made between the lack of matrimonial property law regimes applying on reserve lands and the exacerbation of the situation of violence against aboriginal women and children.

● (0910)

We have long recognized that the lack of a matrimonial property law regime is a denial of women's equality. As noted, since 1995 we have actively lobbied the Department of Indian Affairs to secure funds to study and consult on the solutions, because we already know what the issues are. We already know the problems that exist. We're looking for the solutions, and we know that our women in the communities know what those solutions are.

Recently the Department of Indian Affairs appointed a special rapporteur. We are still being refused funding or any equitable funding to participate in these government-led endeavours. This has, on occasion, resulted in NWAC's being blamed for delays, or being forced to withdraw because of a lack of financial resources. We hope that the political will is shifting, and we can see that it is, and we do applaud those who have assisted us and have assisted our involvement in this so far.

Since last summer, we have been working with the Department of Indian Affairs and the Assembly of First Nations toward achieving a resolution of this issue, which could be equitably managed by all parties. We formally submitted a matrimonial property consultation proposal on July 25, 2005. We have been working with AFN and INAC and participating in a working group to draft joint consultation materials. However, we have had no clear response from the government on the status of the proposals that we have submitted.

We are still unsure how meaningfully engaged aboriginal women will be in this consultation process, if there is one. We did put forward our proposal because we believe that it's essential to hear the solutions from aboriginal women and youth who have been affected by this. We are talking about 20 years. Those youth are 20 years old now. They would have those solutions as well and would have the answers that are needed because they have survived the conditions of losing their home and having to be forced away from their home.

In order to develop this comprehensive solution, we do believe that legislative and non-legislative policies are required to alleviate the underlying issues of poverty and violence against women and children. Because we have developed this comprehensive plan, we do concur with the report that further study is needed, study not on inequalities but on solutions.

We have learned from our experiences in lobbying for changes to address the sexual inequalities under the Indian Act. The amendments in that process did not assist us in any way; in fact, they hindered that process and created further inequalities for aboriginal women.

We have learned that process. We have learned from that experience, and we don't want the same thing to happen again. We want to ensure that this does not happen to those aboriginal women who are being specifically impacted by this issue. They need to be listened to, and the solutions need to be acted upon. We're talking about 20 years of inaction. We have these reports; we have these studies; we have these standing committees; we have these Senate committees that continue, and there's no action. We're looking for action.

Recently, we do know that there was a private member's bill, Bill C-289, regarding an act to amend the Indian Act. This was

introduced and went through its first reading on May 17, 2006. The proposed amendment "to provide that provincial law apply to the division and possession of matrimonial real property and immovables that are situated on reserve" would add section 90.1

It also provides for one exception, regarding first nations, as defined under the First Nations Land Management Act, who have developed rules and procedures regarding marriage breakdowns, in their land codes.

However, although we acknowledge that the legislation has been passed, we don't agree that it should be provincial legislation applying on reserves. This will set a standard for further provincial laws applying, and that cannot happen. Federal laws have to be developed.

● (0915)

We also feel that this will not address the unique needs and circumstances of aboriginal women. For example, from a survey of the key issues and outstanding challenges, we know that the First Nations Land Management Act was enacted in 1999, and since then, 40 first nations have signed on to the framework agreement. However, only seven have adopted matrimonial real property codes within their respective land codes. Only a very limited number of first nations have finalized their self-government agreements; there are only five that have ratified agreements. It takes years under this process.

Under the Indian Act, there is no authority for first nations to develop bylaws and housing policies to address matrimonial property. Bands have no authority under the Indian Act, even though some of them have developed highly effective solutions. For example, the Squamish Band has a very developed housing policy. Sucker Creek had developed a bylaw to address this issue, but because bylaws have to be approved by the Minister of Indian Affairs, and because the bands have no authority to actually pass these, they weren't approved. Not all bands allot land in accordance with the Indian Act; there are many bands that use custom allotments. Further, there is greater potential than imposed amendments to the Indian Act. They also have experienced severe backlash from first nations.

It is already of great difficulty to enforce court orders on reserve. For example, when we're dealing with issues of violence against women, some provinces have enacted provincial legislation. How will this be meaningfully accessible for women in remote communities? There may be issues arising from enforcement of child protection or child support orders. We anticipate that the matrimonial property issue will not be easy to enforce on reserves.

The severe and chronic housing shortage on reserve needs to be addressed as well, as this exacerbates the problem.

Some provincial law does not recognize common-law relationships, and this was constitutionally upheld in Nova Scotia. So the rights of non-members and the fact that there are a high number of first nations who are in common-law relationships does require special attention.

We do know that children are directly affected by this. In our first nations and aboriginal communities, it's mostly the mothers who are looking after their children. When it's the mothers who are forced to move from their home and have to leave their communities, their children are affected. They have to find shelters. They have to find a safe place to live. That's not always an easy thing to do. For those reasons, we feel that the best interests of children and the right to live in their community will not be adequately addressed.

According to the *Walking Arm-in-Arm* standing committee report—a two-pronged approach with a short-term and a long-term strategy—we do know that this is a complex issue and intersects many of the issues plaguing our communities. Any commitment to a resolution of that has to be immediate, and also in the interim.

It is imperative that the government commit to this comprehensive and broad consultation process and meaningfully engage with first nations, aboriginal women in particular, in finding solutions that will equitably resolve these issues at the community level in a way that balances the individual, collective, and human rights of our women and children in the communities they belong to.

The report does recognize the urgency of the situation and recommends the immediate drafting of stand-alone legislation and/or amendments to the Indian Act. This has to be done in consultation and in partnership with the communities. We feel that our organization, the Native Women's Association of Canada, can provide the mechanism in order for women in the communities to be able to present their issues in a safe way. In some of the issues on reserve, it's not safe, and it's not safe for some of those women to come forward to even talk about it. We have to be able to find ways for these women to present their solutions, because they do have solutions.

● (0920)

The longer-term strategy recommends that the government collaborate with those organizations and communities to develop substantive federal legislation. The legislation should cease to apply to first nations that have developed their own matrimonial property regimes that are working in their communities.

We strongly take the position that both collective and individual rights must be upheld as they relate to all indigenous peoples. We, as aboriginal women, belong to those communities, and it is in the best interests of our women that all levels of government commit to both short-term responses and to addressing the longer-term issues, by fully engaging communities and reconciling the individual and collective rights of aboriginal women and children.

As well, as part of the longer-term strategy, the standing committee recommended that the government initiate and review a possible repeal of section 67 of the Canadian Human Rights Act, which has shielded the Indian Act and actions pursuant to any status Indians from human rights purview for almost 30 years now. It was supposed to be an interim solution.

The Chair: Could you wrap it up, so we'll have sufficient time for questions, Ms. Jacobs?

Ms. Beverley Jacobs: With respect to section 67 and its repeal, we did submit a consultation process as well, in developing a national think tank. The think tank is also to come up with a participatory community engagement consultation process. In order to deal with human rights violations as a result of section 67 being repealed, there has to be a process set in place to deal with those human rights violations that we know are going to come forward—and a safe place, again.

We did submit a proposal. We submitted a consultation plan, and we feel it's important this be addressed immediately. We do recommend that the Standing Committee on the Status of Women support the Native Women's Association and call for a resolution of this longstanding issue, by supporting the measures for meaningful engagement and consultation on both the matrimonial real property issue and the repeal of section 67 of the Canadian Human Rights Act.

Thank you.

The Chair: Thank you, Ms. Jacobs.

If you leave us your presentation, we will ensure that it is translated and distributed to all the members as well.

I want to ask the committee, would you like to hear the Assembly of First Nations witnesses prior to questioning, or would you like to question this group first and then the second group? If you'd like to question this one first, that would be fine, thank you.

What's the will of the committee? Would you like to hear the other witnesses and then question all four?

Hon. Maria Minna (Beaches—East York, Lib.): They might overlap, so it might be helpful from my perspective—but I don't care.

The Chair: As a way of being efficient with our time, if we hear first from the Assembly of First Nations, it just might help us with our questioning.

Everybody in favour of that? That's helpful.

Thank you, Ms. Jacobs.

We'll have Mr. Watts, chief of staff of the office of the national chief, and Debra Hanuse, the acting director of law and legislation.

Then we'll have you come back to the table for questioning, Ms. Jacobs.

Thank you very much, Mr. Watts and Ms. Hanuse, for coming this morning. We appreciate your commitment and interest, of course, and we look forward to your presentation.

● (0925)

Mr. Bob Watts (Chief of Staff, Office of the National Chief, Assembly of First Nations): Debra is going to lead off.

Ms. Debra Hanuse (Acting Director - Law and Legislation, Assembly of First Nations): Thank you, Madam Chair and members of the committee. We appreciate the opportunity to provide you with a briefing on matrimonial real property issues today.

My name is Debra Hanuse. As indicated by Madam Chair, I'm the acting director of law and legislation at the Assembly of First Nations, and with me today is Bob Watts, chief of staff. We're here on behalf of the Assembly of First Nations and the national chief.

The Assembly of First Nations is a national organization representing first nations citizens throughout Canada regardless of residence or gender. Today we'll provide you with a brief overview of the current legislative gap that exists in regard to matrimonial real property on reserves and we'll also provide an overview of some of the obstacles that have impeded a search for solutions to this issue. We'll conclude with some of the Assembly of First Nations thoughts on solutions that are required to address this very significant problem.

I'm taking the approach of assuming nothing, and I'm not going to assume that everyone knows the whole legal context that gave rise to this issue. So I'll try to capture it in a nutshell, if possible.

As indicated by the previous speaker, Ms. Jacobs from NWAC, the issue first arose in 1986 with the decisions in Paul and Derrickson. Essentially what those cases established was that provincial matrimonial real property law does not apply to reserve lands because that's a matter that's within the exclusive jurisdiction of the federal government under section 91.24. So that's a very important point to note, because it means that when we're considering solutions there are significant challenges and problems that would flow with any attempt to apply provincial matrimonial law to reserve lands, because that essentially results in interference with the constitutional division of powers, which I'll address later in the presentation.

There are numerous challenges that would flow from trying to apply a system of property law for the disposition of matrimonial real property upon marital breakdown to the kinds of landholdings on reserves, which are not fee simple interests. So that's essentially the main context.

So what is the current gap that exists? There is no gap in regard to the disposition of personal property interests on a reserve, so if we're talking about cash and furniture and all those sorts of personal property interests, provincial law clearly applies in that context. However, in the context of real property and disposing of real property interests on reserve upon marital breakdown, provincial law clearly doesn't apply.

What are the practical consequences of that? That means there are certain remedies and relief available under provincial matrimonial law that are not available to first nations citizens. Those laws include orders for the partition and sale of the matrimonial property and permanent orders for possession of the matrimonial home and orders prohibiting the sale of the matrimonial home.

So those are the types of provisions that aren't available to first nations citizens right now as a result of this legislative gap. I'll now

try to run very quickly through some of the obstacles that have impeded a search for solutions on these questions.

First of all, the constitutional division of powers has obviously been an obstacle to finding solutions, and I would refer you to and will provide you with a copy of our speaking notes, where we provide a bit more of an elaboration of the decisions in Derrickson and Paul and the various doctrines they refer to, the ultra vires doctrine and the paramountcy doctrine, which are all constitutional provisions and rules that really make it difficult to apply provincial laws regarding real property to disposition of matrimonial property on reserves.

● (0930)

A second matter that has impeded the search for a solution is the nature of a lot of the provisions in the Indian Act that are directed towards protecting reserve lands from alienation. There are numerous provisions in the Indian Act, and I'll refer to very few of them. For example, subsection 89(1) of the Indian Act prohibits the giving or taking of mortgaging reserve lands. So under subsection 89(1) of the Indian Act, reserve lands can't be mortgaged. The objective of that provision is obviously to protect lands from alienation.

Section 24 of the Indian Act... Another way of preserving the aboriginal interest in reserve lands is to prohibit the transfer of any interest in reserve lands except to other members of the band or to the band. Again, all these provisions, section 29 and subsection 89 (1), protect reserve lands from seizure under legal process. All these provisions are directed toward protecting reserve lands from alienation.

While there are numerous offensive and paternalistic provisions in the Indian Act, first nations generally support the objective of preserving reserve lands from alienation and see the value in having some of these provisions there, although there's a need for modernizing that particular land regime in the Indian Act.

One of the very difficult challenges is if you try to take the provincial matrimonial law regime and apply it to reserve lands, you run the risk of undermining the very protections in there to protect Indian reserve lands from alienation. As an example, under provincial matrimonial laws, courts can order partition and sale of matrimonial real property. If you take that example and you apply it to reserve lands, there's a risk of alienating that particular land.

How would you reconcile that provincial regime with the nature of reserve landholdings, which are very much governed and prescribed by the Indian Act? There's a huge challenge that has really stood in the way of finding effective solutions to this very serious problem we all face today.

The next area I would like to touch on, which has served as an obstacle to progress, is the nature of reserve land tenures that I alluded to earlier. Namely, you have provincial matrimonial property law that is directed towards fee-simple interests in land, and there are no simple fee-simple interests in land on a reserve. The nature of reserve lands is very different. Legal title to reserve lands is vested in Her Majesty in right of Canada. First nations have what's called a beneficial interest in reserve lands, and individual members of first nations have even lesser interests in reserve lands.

There are limited rights of possession and occupancy that first nations individuals can acquire to reserve lands. One such legal interest is called the certificate of possession. It's an interest in land, which, like a fee-simple interest, is transferable, but as I indicated earlier it's only transferable to the band or another band member, not generally transferable like a fee-simple interest. That's pretty much the point at which any comparisons between a fee-simple interest and a certificate of possession end.

Another type of interest in reserve land is an even less secure form of tenure known as a custom allotment. A custom allotment has no legal significance whatsoever; it's an interest in land or a privilege to occupy land that is sometimes granted by a band council to band members. That right of occupancy is entirely at the pleasure of the band council, and it's certainly not an interest in land that would be transferable.

There's an interesting legal principle, *nemo dat quod non habet*, which means you can't give any interest greater than what you have. If you have a custom allotment, which is not a legal interest in land, it would be interesting to see how a court would then try to order interim or permanent possession of an interest in a custom allotment when the individual band members and spouses who would have an interest in that type of holding would have no interest legally recognized at law. The courts would be very challenged to find a way to address the particular needs of spouses who have custom allotments to reserve lands.

● (0935)

I'd now like to turn to my colleague, who will address some of the additional obstacles to progress in finding solutions to this very serious problem.

Thank you.

Mr. Bob Watts: It's not all obstacles that we have; we have some ideas on solutions too. But it is a difficult situation.

On band membership and citizenship, under the Indian Act, a band member who marries a person from another band can retain membership in his or her own band. Furthermore, after the enactment of Bill C-31, non-Indians can no longer acquire Indian status or band membership upon marrying an Indian. As section 24 of the Indian Act limits the transferability of certificates of possession to members of a band—which Debra spoke to—extending remedies currently available under provincial matrimonial property law to reserve lands may inadvertently result in discrimination against non-Indian spouses and spouses who are members of other bands.

For example, section 24 and the foregoing band membership provisions in the act may preclude a court from making orders for permanent possession of matrimonial homes on reserve to non-members and non-Indian spouses. Thus further consequential amendments to the membership provisions of the Indian Act may be required to fully address the current legislative gap that exists on reserve lands and avoid further discrimination against other classes of individuals. This unquestionably complicates the search for solutions.

Bev Jacobs talked about chronic housing shortages. I'm just going to talk a bit about it because I think she expressed it really well.

While the lack of a legal regime to govern the disposition of matrimonial real property on reserve is a serious human rights issue that must be addressed, this legislative gap merely represents the tip of a much greater iceberg. The legislative gap in matrimonial real property rights on reserve lands is exacerbated by chronic housing shortages that exist on most reserves and difficulties in securing financing to purchase or construct alternative housing on reserve upon marital breakdown, in part due to the restrictions in the Indian Act against mortgaging reserve lands. These factors play an equal if not greater role in imposing hardship on first nation families, and in particular on women and children, who are often forced to relocate to off-reserve locations upon marital breakdown, particularly if domestic violence was a factor contributing to the breakdown in marriage.

Due to the chronic housing shortages on most reserves, the solution will not simply lie in extending remedies available under provincial matrimonial real property law to reserve lands. For example, under provincial matrimonial real property law, partition and sale of the matrimonial home is a remedy that is available to divorcing spouses. If provincial matrimonial laws were extended to reserve lands, this remedy would not have much practical benefit for first nation spouses, due to chronic housing shortages that exist on most reserves and difficulty in securing financing from conventional lenders.

Therefore, due to the chronic housing shortages on most reserves, the solution does not lie solely in filling the legislative void that currently exists. The chronic housing shortages on most reserves, which underscore the gap and poverty between first nations and other Canadians, must also be addressed in order to ameliorate the hardship typically imposed on first nations women and children upon marital breakdown.

What solutions are required to address the legislative void that currently exists in matrimonial property rights on reserve? The solution does not lie in imposing provincial matrimonial real property law on reserves. Apart from questions regarding the constitutional validity of this option, we have highlighted numerous practical problems with this option throughout our presentation.

The solution also does not lie in tinkering with the Indian Act. The act is a source of many of the problems that first nations and the federal government are grappling with today. We will not solve these problems by wallpapering more amendments over a flawed and crumbling piece of colonial legislation like the Indian Act.

● (0940)

Ms. Debra Hanuse: Instead, the solution lies in recognizing and implementing first nations jurisdiction in regard to matrimonial property rights on first nations lands. Any solution adopted to address this issue must support, strengthen, and affirm the jurisdiction and law-making capacity of first nations, rather than perpetuate the colonial legacy of the Indian Act.

We anticipate that first nations will ultimately be the ones to create and enforce laws based on our traditions and customs in a way that acknowledges and accommodates human rights and indigenous rights—in other words, with a balance between collective and individual rights. In this regard, as Bev Jacobs of NWAC indicated, there has been a significant shortage of resources available for first nations to participate in discussions and dialogue on these issues, to draw on existing work and identify best practices, and to advance solutions to this very significant problem.

We'd also like to note that the Assembly of First Nations has been working with government through the implementation of a political accord that provides for the recognition and implementation of first nations governance. This is obviously a vehicle through which these talks could continue and be advanced, as they relate to jurisdictional matters.

As indicated by Bev Jacobs, we've been working with NWAC to find solutions to this problem, so there are other processes that we can continue to participate in to find solutions to these problems. We believe that the best way to achieve this is through cooperation with one another. In this regard, we would welcome an opportunity to work together with NWAC, the Government of Canada, and any other interested parties to find solutions to this very pressing problem.

Thank you.

The Chair: Thank you very much.

I very much appreciate the information and I understand how important this issue is. I would hope that we'll continue to work together to find solutions.

On to the speakers list, and Ms. Minna.

Hon. Maria Minna: Thank you, Madam Chair.

Thank you all for coming today. This is very important to all of us.

I wanted to start off with a couple of things. Firstly, I would just go back to Ms. Hanuse and the last comment she made with respect to working through a political accord. Is there some discussion going on now? What exactly did you mean by political accord? I just want to understand what you meant by that.

Ms. Debra Hanuse: The political accord is an agreement that was concluded between the Assembly of First Nations and the Government of Canada on May 31 of 2005. The accord is directed to achieving a reconciliation of first nations and government jurisdictions in a number of areas. The parties have turned their attention, first and foremost, to addressing governance issues and addressing the reconciliation of policies relating to comprehensive claims, etc.

I'm not sure if my colleague would like to add anything further to that.

There's a joint steering committee that has been established. It consists of representatives of first nations and government. On behalf of first nations, the national chief is a member of the joint steering committee, as well as Regional Chief Shawn Atleo, who is from the British Columbia region. And on behalf of the Government of Canada, Minister Prentice is a member of the joint steering

committee. Initially, I believe, it was intended that the Minister of Justice would also serve as a member of the joint steering committee. I'm not sure at present what role Minister Toews is currently playing in regard to the joint steering committee at this point in time.

Underneath the joint steering committee, there are a number of committees that do the work of the committee in preparing for the meetings and that have discussed a number of issues. Following the election, a number of pressing new issues were added to the agenda of the joint steering committee, including water, accountability, and numerous other issues. So the agenda of the joint steering committee has become very loaded recently.

● (0945)

Hon. Maria Minna: The reason I ask this is that from everything I've heard this morning and from everything I've read so far, it's obvious that no matter how many discussions we have, the provincial solution doesn't work, and I think that's what you've reiterated to us this morning.

The major issue, of course, is the shortage of housing. That needs to be addressed, and I don't think anybody here will disagree with that in terms of the chronic shortage of housing.

The legal regime—one of the comments made was that with this, financial resources are needed to really allow for the kind of work that needs to be done. I think that was mentioned by Mr. Watts. Does this joint group have the proper powers and the proper financial resources, in your view, or is that part of what we need to be working at to increase its financial ability to actually address some of the issues?

I'm going to another question, but this is important, because if we have a mechanism in place that is now looking at these things, is it lacking the resources to do what it needs to do to get to the solutions?

Mr. Bob Watts: There has been an initial allocation for this year to help support the work of that group. The money that's been allocated isn't sufficient. We've started to outline, as Debra has said, an agenda, but there hasn't been a full meeting of the senior steering committee yet.

Minister Prentice has committed, on behalf of the government, that this is an important committee, which he supports and which he is going to ensure works.

I think with new government and shifting priorities, it hasn't had the ability to express itself since the new government has come in, so it's slow in taking off.

Hon. Maria Minna: All right, that's a problem.

Is this joint group also looking at transferring legal authority to aboriginal communities to develop their own laws? Is that part of the equation to see how that can be done?

Mr. Bob Watts: That certainly, in terms of a principle, underscores all the work of that group. That's certainly probably one of the top principles.

Hon. Maria Minna: So finances at this point are the major issue for the group. Is that what you're telling me? I'm trying to get at the crux of moving forward somehow, because I've seen the consultations, I've read consultations, I've read discussions, and I'm trying to get at where the initiatives are that are now happening that might move us forward. That seems to be one, but you're telling me it's underfunded.

Yes?

Ms. Beverley Jacobs: I just want to say that the joint steering committee doesn't involve the Native Women's Association of Canada.

Hon. Maria Minna: It doesn't?

Ms. Beverley Jacobs: No.

Hon. Maria Minna: Okay, that's a problem.

Ms. Beverley Jacobs: So that's an issue for us.

The issues that we are addressing are financial issues. We are a very underfunded national organization. We've continued to say that very consistently over many years.

Because we represent aboriginal women across the country, we have 13 provincial-territorial member associations across the country that have aboriginal women as members, and we've continuously said that finances are an issue.

In my presentation I have discussed that the reasons we're submitting a proposal are to come up with solutions from women in the community. The processes in place right now are not inclusive.

Hon. Maria Minna: Mr. Watts, could you tell us why the structure or the component of this particular group does not include the women's representation?

And do you have a ballpark amount of money—I know the women's group is also underfunded—of what would be needed to finance it properly?

Mr. Bob Watts: No, I don't have a ballpark amount of money. The reason that NWAC isn't part of this is because this was an accord signed between the Assembly of First Nations and the Government of Canada.

It acknowledges that for some issues other parties may need to be invited in and our chiefs and councils, as Debra said in her opening comment, represent all of our members, regardless of gender and regardless of residency.

• (0950)

The Chair: Thank you very much. You've run out of time.

Ms. Mourani.

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you for joining us and for sharing your experiences with the committee. Your three presentations highlight the fact that this is a complex matter. Objectively, the reason for this complexity appears to be that people are divided on a solution. Some would prefer to see legislative measures in keeping with tradition and customs, so that First Nations would be responsible for deciding for themselves what actions to

take. Others appear to favour changes to the Indian Act, or a related bill.

It's my understanding that in the case of the first group, it's important to retain some sense of independence with respect to the Indian Act, which is a colonialist piece of legislation. There is a legitimate desire, quite understandably, for autonomy. However, I fail to understand the reasons for wanting to amend the Indian Act.

Correct me if I'm wrong, but is this position indicative of a lack of confidence in the way in which groups would enact their own legislation? Why would someone favour amendments to the Indian Act or the adoption of another bill over the autonomy of Aboriginal peoples? My question is directed to Ms. Jacobs.

[*English*]

Ms. Beverley Jacobs: With respect to the issues with the Indian Act, we're dealing with a history of patriarchy and colonization. It is one of the most colonial and racist pieces of legislation that exists in the world. Because of how it was enacted and created, with its power and control over indigenous peoples in this country, it's what's causing the problems and divisions in our communities and the inequalities in them between our men and our women and the imbalances that continue. With the impact of the Indian Act system, we're talking of generations of colonialism affecting our communities, resulting directly in the violence that we're dealing with in our communities, where women are not feeling safe. So that's why we feel there is no confidence in the Indian Act system, in the sense of being able to directly resolve some of these issues.

The fact is there are other processes set in place; there are positives out there and best practices occurring in first nations communities. I think that's what we're trying to get at; we're trying to get at those best practices, at what's creating the safety mechanism for aboriginal women to be able to come forward to talk about these things. These are part of the difficulties when we start addressing these very specific issues.

I understand the processes of first nations governments that are under the Indian Act system. We have 650 or so of these communities across the country governed by this system, and women are half of the population of these communities.

When we're having to address very specific issues such as this, a lot of times what happens in the communities is that there's internalized depression, internalized lateral violence, whatever you want to call it. So a lot of times in those communities women are not able to say what needs to be said, and that's the reality of the situation. If we don't have a process that takes us away from that, then we're not going to be able to find those solutions.

I come from one of those communities. That's where I live. So I know that it exists and I know that a lot of the women in our communities are not even able to come forward or even to feel safe to come forward, unless there's something in place for them to deal with it. So that's the reality of the situation.

• (0955)

[Translation]

Mrs. Maria Mourani: In order for us to address this situation, can you tell me if, setting aside possible differing opinions, the majority of non Aboriginal and Aboriginal people favour independence vis-à-vis the Indian Act?

[English]

Ms. Beverley Jacobs: I don't think that's an easy question to answer, unless we're to do a survey of each of our first nations. I know that Bob and Debra can explain that from the AFN perspective and that the chiefs in their communities can address that, but I know what the women are saying.

Ms. Debra Hanuse: I would just like to offer a very brief additional comment. To clarify this, I don't believe independence is necessarily the appropriate word in this circumstance. I think first nations are seeking a reconciliation of first nations law-making authority with Canadian law-making authority. We've got numerous Supreme Court of Canada decisions that direct us towards this reconciliation, and section 35 of the Constitution sets out a constitutional table at which we can have these negotiations to achieve that reconciliation.

Why that reconciliation is so important is that when imposed legislative solutions are put in place, the result is documents like this. This is the Indian Act, a not very thick document on its own, but a thick document like this when it's an annotated version, containing references to numerous cases where there have been disputes about what the provisions of the act mean, or where there are gaps in the act not fully addressing a particular situation, which force the parties to court to find those clarifications. You need to do that in order to run your daily life, so you can't afford not to go to court to seek those clarifications.

The result of this has been enormous legal and social costs to first nations and governments, where we spend our time in courts coming up with thick, annotated Indian Acts that tell us how we should be doing things, whereas a collaborative approach to legislation is preferable.

Thank you.

The Chair: Thank you.

Ms. Smith.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): I would like to thank all parties for your presentations this morning. They were very insightful and good.

I know what you were speaking about, Beverley, when you were saying that you lived in the community and know what's really going on. My son is an RCMP officer and he is married to an Ojibwa girl. She was raised on a reserve, and I have many connections on the different reserves. Her brother is also a chief in Manitoba. What you're saying I thought was extremely compelling and extremely truthful.

Two things came up, as you were talking. You were saying that anything that needs to be done needs to be done in collaboration. You also made the comment that we've been talking about matrimonial rights for a long time, with many Senate reports, and

many of this and that reports. Yet nothing has really been done to this point. So could you elaborate a little more on what kind of collaboration is necessary right now to move this forward?

• (1000)

Ms. Beverley Jacobs: What we have proposed in our meetings is that in order for us to move forward on this, there is a recognition of both organizations and who we represent. What assists in our collaboration is the fact that we're willing to come up with solutions. The Assembly of First Nations represents all the Indian Act chiefs. With them being able to access the first nations communities, that's how our collaboration can work. Some of the women we represent are on reserve and some are off reserve. Some of these women have been directly impacted as a result of this specific issue and Bill C-31.

What I can see is if we're able to assist those women who may not want to speak through their chiefs or council, or who may feel this process is oppressing them and they're not able to come forward.... So if we can acknowledge this, that's a huge obstacle we've dealt with.

I know that because the reality of the situation is that those chiefs and councils use their power and control in their communities, which prevents these women from being able to come forward. So that's how I see our collaboration. If it also works with the processes through government in acknowledging that, we can move forward in this process immediately, because that's what we're dealing with right now, and you have acknowledged that.

We've been doing this for a long time. The way I feel right now, the way things are happening today in our communities, and the way our people are reacting to situations, people are saying that's enough; we need action. We need something to address the reality of the situations in our communities. And our women are saying that's enough. For us to be able to move forward, I think it will be very positive for us to have this collaborative approach.

Ms. Debra Hanuse: Thank you for the opportunity to add a few comments. We've been out there many times talking to people in communities, talking to first nation governments, asking what the problem is. We don't need to go out there again and ask those same questions. We have a good sense that women want some of the remedies available under provincial matrimonial law—maybe not quite so far as partition and sale, but certainly interim possession and temporary possession orders, to have those kinds of remedies available.

Generally, we know the solutions first nations people are looking for with regard to real matrimonial property law on reserve land, so we have to get it right before we go out there and consult further. That's where there's the opportunity for a lot of high-level collaboration at the present time. Before we have those consultations with first nations communities yet again, raise hopes only to have them dashed, let's get it right. Let's engage in high-level discussions to define solutions. We haven't taken that step. We all seem a little afraid to go down the path of committing to solutions that we can go out there and collectively sell to first nations and to Canadians as to how we're going to address this problem and close the gap.

If we could concentrate our efforts over the short term on working very intensively through proposals such as NWAC's proposal to provide the resources to first nations—because frankly we don't have those resources—if we could be provided with those resources, we could then engage in discussions with you to find solutions we can all live with. Then collectively we can go out there and sell those solutions to first nations and to the Canadian public.

What are we looking at in terms of costs? I don't have a ballpark figure on this right now, but just to give you an example, AFN is currently working with the Department of Indian Affairs and Northern Development and with NWAC to review some information packages that have been developed by a consultant working with all three parties on this issue. For us to consult with our representatives, because we are a national organization, we have an AFN women's council that would come together to review these materials and provide its perspective and its input.

To bring all these women together for one meeting only, it costs us in the neighbourhood of \$30,000 for travel, accommodation, and our own internal review of the documents. That's one meeting, one opportunity for a day for first nations women to come together and talk about something like that. You can multiply that by the number of meetings that would be required to come up with some solutions. And it's just a matter of how long it's going to take and how much political will we have, because the longer we drag our feet, the longer it's going to take and the more it's going to cost. Let's get our thinking caps on, define very clearly for ourselves the solutions we want, and let's roll up our sleeves and get to it.

Thank you.

• (1005)

The Chair: Ms. Mathysen.

Mrs. Irene Mathysen (London—Fanshawe, NDP): Thank you, Chair.

Meegwetch.

Many of the questions I had have already been answered.

Ms. Jacobs, you've referred on three occasions to the need for safety mechanisms for first nations women to address this issue. You also made reference that on some reserves it's not safe. I wondered if you could elaborate on that concern.

Ms. Beverley Jacobs: I receive phone calls from women in communities who have been assaulted by chiefs, by councillors. That is huge. We're talking about remote communities, where they have nowhere to go. That's the power and control I was talking about. Safety mechanisms, when we're addressing these issues, are not going to occur in those communities. This is where they are being affected.

On violence in some first nations communities, we have heard from a lot of women that this is part of the reason they've left. The issues that come as a result of dividing matrimonial property is because we are talking about separation and divorce, which a lot of times is about violence. A lot of times the women who are leaving those homes are leaving abusive relationships. If there is no mechanism for them to be able to even come forward to address those issues, then they won't be resolved.

That's a whole other issue of the cycle of violence that's occurring, which is a result of the issues of colonization and assimilation policies. We're talking about generations of families who have been impacted by this. Men and women in our communities are dealing with that. Today we are having to address that. Some don't want to talk about it at all. They don't even want to address it.

The phone calls I get and these stories from women in the community—story after story—are sad. It is sad to hear this and sad that we have to deal with this issue. But it needs to be addressed in order for our communities to move forward. These issues have to be addressed. That's why, on the question earlier about collaboration with government, there also has to be an acknowledgement by government of why we're dealing with this issue the way we're having to deal with it. Because that didn't happen before. In our communities, there was no violence. There wasn't abuse. When we were living in very healthy communities and when we addressed this in our way, we had a social structure.

We have a social structure, which is based on our traditional values and our customs and beliefs. Those traditional customs and beliefs have been impacted as a result of colonization and the Indian Act system. That's what we're addressing today. On every issue that we bring forward—matrimonial property, housing issues, education issues—those are always the underlying or causal factors that we're having to address. Women and our children are being impacted the most. That's what we're talking about.

• (1010)

It's not just in first nations communities. We know it's happening all across the country. It's in Canadian homes where women are being abused. We are taking the brunt of it, and I'm tired of it. As a first nations woman, as a Mohawk woman, I'm tired of hearing this. I feel it's my responsibility to make sure it doesn't occur any more.

My daughter is 23, and she also had to live through that. I have grandchildren, and I don't want them to live through it. I don't want them to see violence. As women in our communities, that's what we're having to go through, that healing process to deal with these issues. That's what we're talking about.

Thank you.

Mrs. Irene Mathysen: We've come full circle in terms of residential schools and the Indian Act. In my community, CAS apprehends a disproportionate number of first nations children. Quite simply, they don't know what to do. They know that they are impacting negatively, breaking down that family unit that's so important in terms of healing and survival, and we're caught in this incredible vise.

Thank you.

The Chair: I'm sorry, your time is up, Ms. Mathysen.

Ms. Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you.

Thank you all for appearing here today. I think your appearances have reiterated how complex this issue is on many levels. We're all hearing around the table the frustration of the inability to move forward on this issue and the fact that it's been so present for the last 20 years. I'm concerned about how we do move it forward.

Ms. Hanuse, you spoke about the need for high-level political discussions to make this happen. We've heard—as I heard it—conflicting views on the consultation process, whether we take it out to the communities, whether we bring women into the communities. The aboriginal affairs committee came up with recommendations, which I know you're familiar with. They talked about interim legislation. The minister responded, saying, “Not interim. When we do it, we do it with full legislation.”

I guess what I'm really interested in is how we move it forward. How do we grab hold of this issue and make it happen for people? Is it the high-level political? Is it the bringing together of groups here in Ottawa? Is it moving out, fanning out for another consultation process with women? We heard the underpinnings of what causes some of the issues, like poor housing, and we all know that might have been addressed in other ways.

How do we move this agenda forward?

• (1015)

Mr. Bob Watts: If I can start, I'm sure everyone will have some other answers. I think what Debra talked about is a need for a high-level group to be able to sit down and sift through the many recommendations that have been made from the many studies and come up with some examples and some ideas of what practically could be done, and use some of the best practices that Bev talked about, use some of the best practices from the First Nations Land Management Act and other places where people are struggling with this and are legislating in their own communities with respect to issues like matrimonial real property.

Then there has to be a consultation, and some of it, for the reasons Bev articulated, may have to be in Ottawa or other major centres. Some of it has to be in our communities. It's a community issue and it also has to be dealt with in our communities, by the leadership there and by the people in the communities. So it has to happen in both ways.

I'm not confident that a legislative solution, for the reasons that we've articulated, is going to be an effective solution, whether it's a stopgap or long term. It's going to require something else in terms of being able to deal with issues that each community has, and some are very different. There are some communities where women were the property owners, period. Is the solution to go back to where women are the property owners? I don't know. It may be in some places. Some people just laughed at the idea that this Indian Act was going to change things, because they said “We know what the real story is: women are the property owners. But over time and through court cases and through divorce battles and everything else, that changed.”

So there are things that need to be examined in that regard, and it can't be done in isolation. We put forward, with other aboriginal leadership last November, some ideas to deal with closing the gap, to deal with the issue of poverty. Some of the issues we're talking about are manifestations of poverty, and the issue of poverty has to be dealt with. And that was done at the first ministers meeting in Kelowna in November of last year. To pretend that we can deal with matrimonial real property issues in isolation of other issues that are real in the community, including violence.... Why are first nation women's shelters funded at a lower level than the provincial women's shelters?

There are a lot of good questions we need to ask ourselves in terms of the system our people are living in.

The Chair: Thank you, Ms. Neville. Your time is up. I think we all get so intensely interested in your answers that I'm not getting your one-minute warning down. My apologies.

Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Madam Chair, and thank you to our representatives here today for taking the time to come and address the committee.

My question follows a similar theme as other questions here today. As I read the material, including the government response to the fifth report of the Standing Committee on Aboriginal Affairs and Northern Development from last year, and through your presentations today, there's an inconsistency in my mind on one point: the urgency in addressing the issue. On the other side of the coin, you've laid out the compelling reasons for more extensive consultation, which we all know can take a long period of time, up to and including the one solution that you gave us today, which was really to go directly to the issues surrounding and advancing native self-government as really being the ultimate long-term solution for this question.

It seems to me that there's a volume of information available that would give policy-makers the ability to find some solutions relatively quickly. I'm puzzled as to why you still believe that rather extensive consultations still need to be in front of us when this issue is so compelling and so urgent.

• (1020)

Ms. Beverley Jacobs: I think if we're talking about interim legislation, it has to be federal. And if there is a process, we don't want the process to occur like the First Nations Governance Act did, where it was implemented on its own, without consultation. That's what we're talking about.

We do want the legislation to be immediate, but we know what the reality of that is when it comes to government and passing legislation, how slow that is. But in the sense of what is needed immediately, it is human rights protection, because every day those violations are occurring.

If we're able to talk about ensuring that voice is heard with a consultation process, it's not going to take that long. When we're talking about consultation, we're talking maybe a year to go through that process—if we have draft legislation and we've already talked about what it might look like. Even if we have something to take back to the communities, to say this is what it might look like or these are the issues we need to address in this legislation, then that's the process. If we're able to go through that process alongside of the legislative process, then that's what's needed.

Ms. Debra Hanuse: Urgency is bit of a relative term, of course. If you're bleeding to death, you want the wound cleaned and sealed so that you're not bleeding.

But in order to do it right, if we just have the policy-makers go out there and impose solutions.... To date, they haven't been able to come up with solutions that have been acceptable. I would be very surprised if tomorrow they could put before us a package that would just address everyone's concerns, given the multiple layers of issues we're dealing with here—the need to address membership provisions in the Indian Act, as well as the nature of reserve lands, legal title to reserve lands, housing shortages—all of these multiple issues. If there was a policy-maker who could come up with a document that addressed all those concerns in a way that was satisfactory to everyone, then that person should probably get a Nobel Peace Prize or something to that effect. I'd rather see us get it right.

Yes, of course it's urgent. We don't want to have this situation perpetuated to the end of time. But we also don't want to get it wrong. We want to ensure we get it right. I think the solution there is that we know the issues; we need to sit down and talk about what solutions we can agree on, and then that's the package we would bring to people to consult on, not a broad general sweeping consultation on "What would you like?" That's far too open-ended. It should be: "Here is a solution that addresses everyone's needs. It addresses your interest, your interest, and your interest. Can it work? What kind of tweaks do you want on it?"

We're not there yet, and we need to work very hard to get there. That could take up to a year. With proper resourcing, I'm sure it's doable. With political will and proper resourcing, in a year to a year and half I could see us coming up with a package we could bring to everyone that would address everyone's concerns. That would address the next steps and what's required.

Thank you.

•(1025)

The Chair: Thank you very much.

We have time for one five-minute round of questioning from Ms. Bourgeois.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Madam Chair.

Ladies and gentlemen, this is more of a comment than an question. Feel free to comment yourself and to let me know if my grasp of the issue is correct.

To my way of thinking, your experiences are related to government autonomy issues and to problems with human rights violations. I'm not trying to shock anyone. I'm simply letting my emotions speak for me. The Government of Canada has never recognized you and has never given you the opportunity to take responsibility for your lives. Some laws are restrictive in nature, a reality that was acknowledged decades ago. If the government were to grant you this autonomy and stopped trying to deny you your rights by claiming that it knows what's best for you, maybe then some of the problems you're experiencing would be alleviated.

We're seeing a kind of power struggle taking place within your groups. How odd is that. When women make certain demands, invariably men are the ones who make the decisions. They claim to know better than anyone how to meet women's needs. My sense is

that you're now experiencing this very situation and that is unfortunate. I've observed that both Aboriginal and non Aboriginal people grapple with the same problems.

In my opinion, immediate action is warranted on this front. You're dealing with serious poverty and violence issues. You've experienced water and housing problems which haven't helped your cause any. If your needs were met, I believe you would be eminently capable, as Aboriginal peoples, to organize and engage in a dialogue amongst yourselves.

Everyone here realizes that your voice is being heard. Lovely reports have been tabled. In fact, I can't believe the number of reports that have been written. Even Senate reports have failed to produce anything of real substance. I hope the Standing Committee on the Status of Women will stand firm and not be content with merely producing a report, and that it will formulate serious recommendations that will be implemented. We must stand together and address the problem that these women have been struggling with for so long. I've been hearing about this since 1974. And over the years, the situation has deteriorated further.

I leave this in your capable hands, Madam Chair. You're familiar with the ins and outs of our system. We mustn't leave here, either today or at the end of June, without a plan of action. All of the women here today must unite in supporting this cause. I'm not talking necessarily about lawyers, but about women in general. They know what they need and they are the ones who want a solution.

Thank you, Madam Chair.

[*English*]

The Chair: Thank you, Ms. Bourgeois.

We have one minute, if someone would like to respond.

Ms. Beverley Jacobs: Thank you for that.

I think one of the issues we have been saying loud and clear is about human rights violations. That's the basis of everything we're having to address in our communities. I do feel it's important that action has to occur now. There are enough reports, discussion, and talk. So I really hope that's what you'll come up with.

Thank you.

The Chair: Let me say to all of our witnesses, thank you very much for coming today. I think you have helped us to understand the frustration again.

I think Ms. Bourgeois put it together in the most effective way: that there's been enough talk and enough reports. An indication from our committee is our determination to try to move this issue forward, consolidate a variety of those recommendations and develop an action plan.

We will be dealing with the matrimonial real property again on June 15, and I hope as a result of that we will come to an agreement as to what our action plan is, and we will move that forward.

So to our witnesses, thank you so very much for coming. I know it's very frustrating going before a lot of committees and wondering when are we going to see some action. Action is slow. But I thank you very much for coming, and we will move forward.

We will suspend for two minutes for the witnesses to leave, then we will move in camera. The appropriate staff may remain, and others please leave.

Thank you.

[Proceedings continue in camera]

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