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• (1200)

[English]

The Vice-Chair (Mrs. Tilly O'Neill Gordon (Miramichi, CPC)): I call the meeting to order and I welcome the guests who are with us: Andrew Beynon, Jo-Ann Greene, and Karl Jacques.

Thank you for coming back to meet with us today to answer questions.

We're going to get started right away, going to Ms. Truppe, first, for seven minutes.

Ms. Susan Truppe (London North Centre, CPC): There has been a lot of consultation done on Bill S-2. Could you state for the record the number of meetings that have been held with first nations on this topic? Of those that were held across the country, could you give me examples of some of the places in which the consultations were held?

Ms. Jo-Ann Greene (Senior Policy Advisor, Lands Modernization Directorate, Department of Indian Affairs and Northern Development): Madam Chair, I'll start with that, and if my colleagues find that I need to be corrected or if they have any additions, they'll make them.

Mrs. Susan Truppe: Thank you.

Ms. Jo-Ann Greene: Just to start a little farther back, studies and focus group sessions and information sessions were held starting in 2000 concerning the issue of matrimonial real property on reserve. The preliminary planning for the consultation process started with the Native Women's Association of Canada and the Assembly of First Nations.

From that, when the national consultation process started in 2006, there were 103 sessions held at 76 locations across Canada. A lot of them were held regionally, with meetings in such different locations as Fredericton, Quebec City, Thunder Bay—there were others in Ontario. Those are just a few names of places in which sessions were held.

As part of the consultation process, the Assembly of First Nations and the Native Women's Association of Canada each received \$2.7 million for their participation. Overall, \$8 million was spent on the process. Aboriginal Affairs spent more than \$2.8 million on the process as part of that \$8 million, part of the consultation process that took place.

Mrs. Susan Truppe: The \$2.8 million was part of the \$8 million. Is that what you said?

Ms. Jo-Ann Greene: Yes, Madam Chair, that was part of that \$8 million.

Mrs. Susan Truppe: I'm sorry. Are you looking up something, or are you finished your answer?

Ms. Jo-Ann Greene: Just to go on, if you want a little more information on this, part of the consultation process included four phases: the planning, the national consultation, the consensus-seeking or consensus-building, and also engagement on draft legislation.

Mrs. Susan Truppe: Can you describe that “consensus-seeking”? What is it?

Ms. Jo-Ann Greene: The consensus-seeking process was one, facilitated by the ministerial representative, trying to seek consensus on what the content of the legislation might contain. During those processes and the engagement process on the draft legislation, the parties all had the opportunity to provide their input into what would appear in the legislation.

For instance, some of the comments received from the Native Women's Association of Canada and the Assembly of First Nations on restructuring the bill were that it should focus the elements on the family home and create new concepts and definitions other than “real property”. They thought that might be an issue.

A change in title also was recommended. It is called the family homes on reserves and matrimonial interests or rights act now, but originally it was going to be called the “matrimonial real property or removables act”. They suggested that such a title might be a bit problematic, given the different kinds of ownership on reserve. So they suggested the current title, as part of the consultation.

Concerning the definition of “family home”, one of the issues they really wanted to stress was the “for greater certainty” issue, which is reflected in the bill in clause 5. It reflects and clearly states that title to the lands does not change the status of reserve lands.

• (1205)

Mrs. Susan Truppe: Great. Thank you. What level of participation did the provinces and territories have during the creation of this bill?

Ms. Jo-Ann Greene: The provinces were engaged in the consultation processes. There were individual sessions held. They could provide comments. There were also group conference calls held where they could provide input and information on—

Mrs. Susan Truppe: With all the provinces?

Ms. Jo-Ann Greene: Yes. All the provinces took part in that.

Mrs. Susan Truppe: How many written submissions were requested and how many did you receive?

Ms. Jo-Ann Greene: We didn't request necessarily any written submissions. However, the three parties, AFN, Aboriginal Affairs, and the Native Women's Association of Canada, had a 1-800 number available during the consultation times. We also had an e-mail address and also an address where they could provide written submissions for comments, should they choose to. Anyone across Canada was able to provide comment to any of the parties through those means.

Mrs. Susan Truppe: I understand what the centre of excellence is, but how will it support first nations who are developing their own legislation on the topic of on-reserve matrimonial rights, property rights?

Ms. Jo-Ann Greene: The centre of excellence is planned—because of course it is pending appropriate funding approvals—to support first nations through providing information, tools and communications, and best practices related to the development of matrimonial real property laws. As well, should they choose not to develop their own first nation law, it is to help bring better understanding of the provisions that are in Bill S-2.

The centre of excellence is planned to be established within an existing organization that is at arm's length from the government and the first nations that it intends to serve.

Mrs. Susan Truppe: At arm's length from government and first nations.

Ms. Jo-Ann Greene: Yes.

Mrs. Susan Truppe: My time is up? Okay.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): I'm going on to Niki.

Ms. Niki Ashton (Churchill, NDP): Thank you very much.

I'm wondering, first off, how many consultations were held on Bill S-2? Not the predecessors but on Bill S-2, which I understand was presented December 1, 2011.

Ms. Jo-Ann Greene: Madam Chair, to address that, we have had ongoing discussions with first nation organizations, first nation groups and representatives, since the introduction of the legislation back in 2008. We heard testimony from witnesses at the Standing Senate Committee on Human Rights.

Ms. Niki Ashton: If we could get the information on what actual public events took place, these consultations you're referencing, since December 1, 2011, in this Parliament, that's really what we're looking for. If you could provide the committee with that information, that would be very helpful.

Going back to the previous round of meetings, we note that in the report of the ministerial representative, it was pointed out that:

The timelines were often viewed as too short, not allowing time to review and properly understand the complexities of the issue. Some participants felt that [Indian Affairs] should have gone directly to individual community members and that information should have been more readily available to everyone and not just disseminated via the internet.

I want to also pause on that piece. As somebody who represents 33 first nations in Manitoba—18 of them are isolated and many of them do not have the kind of Internet service, let alone other services, that we benefit from in urban centres—this poses some real problems. The fact that this was expressed and is in the report is an

indication obviously of how many people felt about this consultation.

Just moving to the recommendations made by the ministerial representative, we hear about the 30 recommendations. What happened to the other three recommendations that were not brought forward?

● (1210)

Mr. Andrew Beynon (Director General, Community Opportunities Branch, Department of Indian Affairs and Northern Development): Perhaps I could just say this while my colleague is looking that up, Madam Chair. On the request for some details on the exact consultations, which the member asked for, we would be prepared to share with the committee a list that provides information on the consultation sessions held before the formulation of Bill S-2 and afterwards.

Ms. Niki Ashton: Thank you for that, and also working to have real timelines on that, on the before and after.... I mean, Bill S-2 is not Bill S-4. It's Bill S-2, right?

Mr. Andrew Beynon: Right.

Ms. Niki Ashton: So we'd like to get that information, but I'm wondering.... Those three recommendations that weren't adhered to were very critical. If you're not able to answer, I'll just move on to my next question.

Ms. Jo-Ann Greene: In response to that, Madam Chair, of the 33 legislative initiatives and the recommendations that aren't directly related in the bill, one was the title, which I spoke to earlier. It was that the title we have now, which was referred to by the AFN recommendation, for the title that it does now have.... The other recommendation, inherent jurisdiction...feels that it wasn't addressed because there are provisions for negotiating a self-government agreement, and....

Sorry.

Mr. Karl Jacques (Senior Counsel, Operations and Programs, Department of Justice): If I may, Madam Chair, the other recommendation was the inclusion of a provision of review of the bill after a certain period of time.

Ms. Niki Ashton: How about the piece around the non-legislative measures? It's obviously a real concern around costs incurred to the bands, to the legal systems, and the fact that we're not dealing with.... There are about 40 women's shelters across the country on reserves, out of some 600 first nations, which is obviously completely inadequate. This bill has nothing to do with that.

We're very concerned, obviously, and a number of first nations and stakeholders raised real concerns about how Bill S-2 will simply not end violence against women when all of these other matters are not being dealt with, and when the investments aren't being made by the federal government. Why aren't the non-legislative measures, which are critical, being addressed at all?

Mr. Andrew Beynon: Maybe I would start the answer to that by saying that with regard to the centre of excellence that was referred to earlier, we will have to consider after, or if, the legislation is adopted by Parliament how the centre of excellence will be set up and exactly what the funding level will be.

I would just share with the committee that in the proposals that have been published so far, inviting aboriginal institutions or organizations to consider becoming the centre of excellence if the legislation is passed, the public documents identified a maximum potential funding of approximately \$4.8 million over a period of five years. Now, that's subject to, again, the legislation being passed and subject to Treasury Board approval of the level of funding if the legislation is passed, but it gives a sense of the investment.

The other area that I would flag for the consideration of committee members is that in our implementation planning there is consideration of some funding for the RCMP and the Department of Public Safety to assist in advancing the legislation and interactions with the provinces.

I will say that I understand the point the member is making about the broad range of issues that really are at stake. There are housing issues, women's shelters issues, and improving schools issues. There are many issues. On that front, I can only say that these are some of the implementation investments. Those other issues, I think, are a point that the committee can consider and make recommendations on, but in the legislation, Bill S-2, we did not choose to put right in the provisions of it issues around implementation, such as funding of women's shelters.

Ms. Niki Ashton: Madam Chair, how long do I have?

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Your time is up.

We'll move right along to Ms. Young.

Ms. Wai Young (Vancouver South, CPC): Thank you.

I'd like to thank you for being here today. I'm going to ask you a set of very quick questions, because I find that this is such a very important and critical issue and we are sort of lacking some fundamental grounding data on it. If you can supply that to me...and I think that within yourselves you'd know who should answer. After that, I'd like to ask some broader questions.

First of all, we know that there are some 600 first nation bands. How many of them have already enacted matrimonial property rights legislation? If they have done so, which of them have done it under the First Nations Land Management Act and which have done it through self-government agreements?

• (1215)

Mr. Andrew Beynon: We could provide very precise figures, but I'll give you just a quick sense of the answer now.

First nations that operate under self-government provisions have the authority to cover matrimonial real property. They're not subject to this. The First Nations Land Management Act provides for authority of first nations to adopt their own matrimonial real property laws.

The first nations land management regime is expanding. A lot of first nations are expressing an interest in opting in to that legislation. As I recall, the figure most recently was that 22 first nations have moved to the stage of having adopted matrimonial real property laws under FNLM. I know personally that there is a lot of work amongst other FNLM first nations to move to adopting their own matrimonial real property laws.

Ms. Wai Young: In other words, this legislation is existing. It has happened in 22 first nations. So we are in fact dragging the other ones...or providing for women and children at risk, in violent situations, and bringing them into the 21st century. Is that correct?

Mr. Andrew Beynon: Yes. I would agree that there is experience, amongst FNLM first nations, for example, with matrimonial real property laws. I would fully expect that the centre of excellence, in going forward, would look at the provisional federal rules, examples of matrimonial real property laws, including those developed already by FNLM first nations.

Ms. Wai Young: We talked a lot yesterday about violence against women and children in the home, and about why the emergency orders are such an important part of Bill S-2, but nobody has banded about any figures in terms of how much violence there is.

I think the minister said something about 19%, which is three times the amount that other non-first nations situations have. That, I would think, is quite a bit—three times the amount of violence against women and children.

Obviously we know that emergency orders protect lives. Do we know how many deaths there have been in this area, and what we're anticipating in terms of saving lives once Bill S-2 is enacted?

Ms. Jo-Ann Greene: Perhaps I can provide a little bit of background to that.

There have been studies done. I don't have specific figures, but we do have available a summary of a report that provides some of the situations where emergency protection orders would have assisted those women—and men—who were in peril, or who were in situations of domestic violence, and would probably have de-escalated the situation.

An important part of the emergency protection orders is that it provides for up to 90 days, on an immediate basis, for exclusive occupation on application. In conversation with some Alberta managers of first nation shelters, one of the attendees was excited to hear about it and asked if it could be extended. In their community, their approach is holistic. They work with the offender and the family to try to rehabilitate the family. Sometimes it takes longer than the 90 days, so she was hoping that an extension could be sought.

So that is provided for as well. In the Senate, the amendment provided that now the extension, or the changing of the order beyond the 90 days, could be at the discretion of the judge. Originally in the bill, it was just an additional 90 days, for a total of 180 days; now a judge has the discretion to extend that.

That would probably address...in that community, if they made representation, they might be able to extend it beyond that.

Ms. Wai Young: Beyond the safety aspects, which you've just given us—thank you so much—I used to sit on the YWCA board in Vancouver, and we actually built residential housing for these situations, for these women who had to be sheltered.

You've mentioned studies, obviously, and research, and we've heard the testimony that has been given regarding women who wanted to stay in their homes. Would you say it's a better model for women and children to stay in their homes as opposed to being sent off to shelters?

• (1220)

Ms. Jo-Ann Greene: From...well, also as a first nations person, it's important, I think, for children and women who have their support system in the community to be able to maintain that in their community and to maintain their connection to their culture.

A study done quite a few years ago found that it would be better to have emergency protection orders available in all provincial and territorial family law. They provide such important protection to help de-escalate family violence, in some instances, and they potentially also help avoid criminal charges, if they can be used in time to avoid escalation of the violence.

Ms. Wai Young: Given the... Sorry, go ahead with a quick answer.

Mr. Andrew Beynon: A very quick answer. I think the point for the committee to consider, as I think you alluded earlier, is a question of a legislative gap. So if it were adopted, the legislation would not say women and children have to stay in the matrimonial home on reserve, it simply creates a different option. Some may want to go to emergency shelters in Vancouver or elsewhere, but right now the problem is that the option doesn't exist as something that the courts can enforce on reserve.

Ms. Wai Young: That other women have. All other women have that.

Mr. Andrew Beynon: Other women in other communities have a different set of options.

Ms. Wai Young: Exactly.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Your time's up.

We are moving right along to Ms. Bennett.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you very much.

As you know, there are still some serious objections to this bill from first nation communities and a lot of it is really, in the words of Wendy Grant-John, "The viability and effectiveness of any legislative framework will also depend on necessary financial resources being made available for implementation of non-legislative measures...".

Does the department have an action plan noting what, by, when, and how those supports would be in place?

Ms. Jo-Ann Greene: The implementation plan unfolds in stages, of course, because with the changes to Bill S-2 before it was introduced, with the addition of the 12-month transition period, the provisional federal rules within the act don't come into force until a year after the first part of the bill, which is the first nation law-making mechanism, comes into force by order in council.

Right off, there are three parts to the implementation plan. It's a communication awareness campaign. The second part is the establishment and maintenance of a centre of excellence over a five-year program at this point, which we talked about earlier. The other part is training and education for front-line officials and

officers, which includes training through the RCMP and public safety for the policing and education of Superior Court judges. Superior Court judges are at the level at which the provisional federal rules have the ability to be addressed since they deal also with divorce law.

It's intended to have regulations to help court procedures related to emergency protection orders. We've already had some engagement sessions on potential regulations with provinces and territories. Another session will be conducted in the development of that, and they are to be in place, of course, by the time the second part of the bill comes into force, the provisional federal rules part of the legislation.

Through that time also, the centre of excellence will be operating to assist first nations as that part of it comes into force with the order in council, as well as to also provide information and support—

Hon. Carolyn Bennett: What's the budget? Has the awareness program begun, and the training? What's the budget for that? There's no real reason you have to wait for the legislation to do an awareness program or the training.

• (1225)

Ms. Jo-Ann Greene: We've always been available, doing all kinds of information sessions on awareness. We have continued to provide—

Hon. Carolyn Bennett: But in terms of a real strategy of what, by, when, and how, what's the budget for those two pieces, as well as what would be the budget for the centre of excellence? It's not in this year's budget, that's for sure.

Mr. Andrew Beynon: We have to respect the decisions of Parliament. We have taken some steps as a department to try to disclose as much information as we can about the proposed legislation. If—

Hon. Carolyn Bennett: No, but in terms of the awareness program and the training, you don't need legislation for that. Women are still dying by the hands of intimate partners. There isn't the shelter space. Everyone's saying that this legislation will fix the problem—

Mr. Andrew Beynon: If I may, I think the answer is—

Hon. Carolyn Bennett: —on its own.

Mr. Andrew Beynon: —we do have to respect Parliament in terms of moving too fast on how we're implementing the legislation. You're making a good point—

Hon. Carolyn Bennett: No, no. We're talking about the complementary non-legislative things that are the big objections to this bill. People want to see those things in place.

Mr. Andrew Beynon: I understand, and if I may I would say, yes, we have worked on a draft implementation plan. We have provided for the public notification of the level of funding proposed for the centre of excellence.

Hon. Carolyn Bennett: Could you table the drafting implementation plan and the budget that you would suggest?

Mr. Andrew Beynon: Yes, I think we would be prepared to do that. Again, it's subject to final Treasury Board approval. I would also just say for the record, though, that Wendy Grant-John has made some very good points about the importance of the implementation of legislation, not just what legislation says, and I respect that.

Hon. Carolyn Bennett: If I may, she also said “a minimal role for federal legislation”—minimal role—“and a virtual universal opposition to the introduction of provincial laws (by incorporating them in a federal law) to deal with this issue.” She actually said, “there was a very strong preference for...First Nations' jurisdiction to fill the legislative gap”.

I think that we are concerned that the national Centre for First Nations Governance had its funding totally cut, and now we have to wait for a centre of excellence while there's no real ability or budget for first nations to fill this legislative gap without resources.

Mr. Andrew Beynon: On the point about the first nations' law-making authority, I would just say that I think committee members need to consider the balancing act that has been created here. It is different from what Wendy Grant-John has recommended, but there's a mechanism here for first nations to entirely displace the provisional federal rules, without this legislation dictating to them what they must put into the matrimonial real property laws.

It is for committee members to consider if that strikes the right balance between the federal government taking some action to address a gap and respecting the authority of first nations to make their own rules on a different basis, which I think is consistent with what Wendy Grant-John raised. Again, for the record I would say, yes, Wendy Grant-John is right on the point about implementation. If this legislation is enacted, to be effective we have to all look very carefully at the level of investment. So far what's public is the proposed \$4.8 million for the centre of excellence.

Hon. Carolyn Bennett: AFN has said that the transitional period needs to be at least three years. Right? I guess we have to ask the government members if that's something that they'd be prepared to consider.

Ms. Jo-Ann Greene: Just to address that, there were other parties that asked for the transition period as well. The transition period is 12 months because it strikes a balance respecting the idea that some first nations are preparing to enact their matrimonial property laws and not choosing to ever have the effect of provisional federal rules. Of course, first nations can enact their own laws under the bill at any time after it comes into force, not just within the first year.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Thank you.

Ms. Crockatt, you have five minutes.

Ms. Joan Crockatt (Calgary Centre, CPC): I very much appreciate your being here, and the candid answers. I think we're getting a very good picture of the underpinnings to this bill and I appreciate that very much.

I'm hearing that the centre of excellence does have a projected budget of almost \$5 million over five years, which is substantial, and that it will be arm's length from government. So it won't be controlled specifically by government, and there will be a good opportunity for information tools and best practices to be shared without government dictating. Is that correct?

● (1230)

Mr. Andrew Beynon: Yes, and I would add as well that the focus is on working with an existing aboriginal institution so that they have some capacity to start. There's a one-year transition period so there will be time for the centre of excellence to prepare, but it's not starting from zero with an organization that's not used to providing services, using a website, and providing information. We're trying to rely on and build on some of the existing expertise of an institution.

Ms. Joan Crockatt: We've heard quite a bit about the consultation, but I just wanted to talk a bit more about that because it is important that we fully understand how much. So there was \$8 million spent on consultation, 103 communities, and NWAC was consulted.

We've talked about Wendy Grant-John now. I gather that she issued 33 recommendations. Can you tell us how many of those were accepted?

Ms. Jo-Ann Greene: All together, there were actually more like 64, but specific to the legislative solutions or contents of the legislation, there were 33 from the analysis, and 30 of those are represented. For instance, the best interest of the child is considered. That's also in the preamble, and the court has consideration of whole sets of criteria related to emergency protection orders as well as exclusive occupation of the family home. The best interests of the children are to be considered, and that speaks back again to their ability to make a connection to their community and things like that. So that's all part of the considerations—one of the important ones—that children are important.

Ms. Joan Crockatt: Did I hear you say that 30 of her 33 recommendations were accepted?

Ms. Jo-Ann Greene: Yes, and the three that were spoken to earlier were addressed in other manners.

Ms. Joan Crockatt: They were?

Ms. Jo-Ann Greene: Yes.

Ms. Joan Crockatt: Excellent.

Can you just tell us, on the ground, how are these emergency protection orders actually carried out? Is it going to be a complex process or a simple process? How will lives actually change for women on reserves who are in the middle of a family violence situation, given that there will be emergency protection orders provided through this legislation?

Ms. Jo-Ann Greene: I'll start, if I may, Madam Chair.

One of the things that I find is really important on a personal level is that the legislation provides for a police officer and another person—it is intended that regulations will support that it can be another person—to be able to apply on behalf of an applicant. So if that person is unable to make it, another person could.

For instance, in my community there was a young woman who was denied access to see her mother, and two weeks later she was beaten to death by her partner. Had the emergency regulations been available—it's possible she could have been worried—she might have been able to apply on behalf of. The clerk could have given her permission to do so, to have the partner removed and prevent that.

So in that instance I think that's one of the ways, with the combination, the procedurals.... Most of the provinces currently—B. C. just had their new family law come into force in March, which now includes emergency protection orders—

Ms. Joan Crockatt: That may have been a life saved right there.

Ms. Jo-Ann Greene: Yes, there may be potential for that.

Ms. Joan Crockatt: Thank you for sharing that with us.

Mr. Andrew Beynon: If I could add briefly to what Ms. Greene said, in most provinces the courts, police, and so on, are already familiar with emergency protection orders. As the concept implies, it's an emergency response, so you deal with it very quickly. This legislation would extend a very similar authority to on-reserve situations. It's something, for the most part, that the provincial authorities, provincial police, are familiar with.

The funding and the work with Public Safety and the RCMP would be oriented to trying to make sure there is the right training on this federal legislation.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): You have 10 seconds.

Ms. Joan Crockatt: Previously they would not have been able to apply for that. What would have happened to the women and children, just briefly?

Ms. Jo-Ann Greene: In response to that, quite often they end up having to leave the community, often with the children, and usually going to urban centres, leaving their support systems and their homes.

Ms. Joan Crockatt: So in the middle of the night they're packing up the belongings and rushing out of the house in crisis.

Ms. Jo-Ann Greene: Often. We heard from a woman who said—

• (1235)

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Thank you.

We now have Ms. Crowder and Ms. Day.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): I'm sharing my time, so Madam Chair, if you wouldn't mind, please let me know when two and a half minutes are up. Because I only have two and a half minutes, I'm going to pose my questions and ask you to submit your answers in writing.

Mr. Jacques, the other day I posed a question on whether the section 35 analysis had been done on this bill and you indicated that information had been provided to cabinet that was confidential. I wonder if you could tell us what factors are considered broadly in the section 35 analysis, and if you could provide that in writing, I would appreciate it.

Ms. Greene, you indicated that provincial consultations had taken place with every province and territory—I presume. I guess not the territories because there are no reserves there.

Ms. Jo-Ann Greene: Yes, just the Northwest Territories has—

Ms. Jean Crowder: Yes, just the Northwest Territories. So consultations took place with every province and territory where it was applicable. I wonder if you could provide in writing what specific concerns the provinces and territories raised and how they were specifically addressed in the legislation, and whether or not

discussions took place on the complex land codes that exist on reserve. This has come up under wills and estates, which you are probably familiar with.

My third question is with regard to analysis of implementation costs that could be borne by the first nations and the provinces, because there will be costs for the provinces.

If I have any time left, I have a fourth question that I would appreciate your speaking to. People keep talking about violence against aboriginal women and children as being part of this bill. It is mentioned actually eight times in the legislation and I won't quote the particular sections. I'm sure you're quite familiar with that. But I wonder if you could talk about what specific measures, other than what's outlined in the bill regarding emergency protection orders, will be undertaken to combat violence against aboriginal women and children.

If this is the one you could start with, how do you see the enforcement of emergency protection orders happening in rural and remote reserves, which are already underserved by enforcement officers? If you could, please start with the protection on rural and remote reserves.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): You have about 15 seconds. Otherwise you could give it to us in writing.

Ms. Jo-Ann Greene: I was just going to say it's intended that, through the regulations, they're able to apply by fax, e-mail, and telephone. They can be replied to using those same methods, and they can be granted using the same methods.

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Okay.

Madame Day.

[Translation]

Mrs. Anne-Marie Day (Charlesbourg—Haute-Saint-Charles, NDP): Good afternoon.

Thank you to the witnesses for being here again.

Yesterday, the Quebec Native Women's Association issued a press release that reiterated its opposition to Bill S-2, Family Homes on Reserves and Matrimonial Interests or Rights Act.

The president said that the bill would not comply with standards set out in the Quebec Civil Code regarding the division of matrimonial assets in the case of separation or death. However, given that 40% of native couples are in a common-law marriage, that affects 40% of women.

My question is for Mr. Jacques, from the Department of Justice.

Did your department analyze the differences there would be in the application of the provisions of Bill S-2 in Quebec, knowing that the province did not have the same legal system?

Did the department conduct impact studies on the application of Bill S-2, based on the Quebec Civil Code, to identify possible contradictions or a legal uncertainty?

Mr. Karl Jacques: Thank you for the question.

I want to quickly come back to what the honourable member of the committee said previously. It was clear, in one of the recommendations of the departmental representative, that incorporating provincial laws by reference was excluded. Under those conditions, certainly by developing a system that applies to everyone, there will be differences from province to province. There are differences with the province of Quebec, as there are with Ontario or the other provinces. The provinces all have different systems, and adopting a new system will obviously create distinctions.

Mrs. Anne-Marie Day: Is this not a legal vacuum?

Mr. Karl Jacques: It is important to mention that provincial laws continue to apply when it comes to the division of personal property, child care and support. The only difference between the two systems is the division of the family home and the value attributable to it. That is the only thing that will be distinct from system to system.

• (1240)

[English]

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Thank you.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Madam Chair.

To our three guests today, welcome back.

One of my colleagues touched on how many first nations had already enacted matrimonial property rights legislation. I believe you said—I wrote it down—22, through the First Nations Land Management Act, but I didn't actually hear if there was any outcome of that type of legislation, and whether there have been any positive effects from that legislation for the 22 that have already enacted their own matrimonial property rights legislation.

I'm just wondering if you can touch on whether you have any statistics, any positive feedback, or anything we could note that would point to how important this type of legislation actually is.

Thank you.

Ms. Jo-Ann Greene: We don't necessarily have any statistics.

The First Nations Land Management Act does not require that a copy of the matrimonial real property law be provided to the minister. But in conversations with the First Nations Land Management Resource Centre, we have been assured that, for the most part, the matrimonial real property laws have been working well within the communities, because they are community-designed and community-driven.

My understanding is that there haven't been very many appeals to the provisions they developed. There may have been the odd exception. I'm sorry, I don't have the statistics on that, nor do I know what they are. But my understanding is that they seem to be working quite well.

Ms. Roxanne James: Thank you very much.

I just want to ask you a question. I know it's come up in discussions, whether in the House or outside, just with friends or family, or whatever else.

Is it possible, through this legislation, for non-members to actually obtain and have property transferred to them permanently? I just want to get a clear answer on that. I'm pretty sure I know the answer, but again, I've heard some things out there that would imply, for example, that someone like me could end up owning property. However, I don't think that's the case. Could you clarify that, please?

Mr. Karl Jacques: No, there's no transfer possible if a person is a non-member.

Ms. Roxanne James: But if they're a non-member and they're in a situation where they've had to have emergency protection orders, do they have a right, at that particular moment, to remain in the property with their child or whatever else? Could you please explain that and for what period of time that might be?

Mr. Karl Jacques: If they do have an emergency protection order, they would have the period of time for the emergency that the judge would have attributed, and they can also apply for exclusive occupation if there's a breakdown of the marriage. At that period, it would be because the relationship is terminated, and then they could apply to stay in the home for a definitive period determined by the judge, with the children, or whatever the judge or circumstances would call for. The act sets out the circumstances that the judge might take into account to provide for the period of time and whether or not occupancy should be given.

One aspect that was amended, actually, in the Senate was to take into account the relationship of the person to the community. So if it's a perfect stranger, that would obviously play in the balance as to what period of time the person would be allocated to stay in the house.

Ms. Roxanne James: But under no circumstance would someone like me be able to have property transferred into my name and I would have the sole title—

Mr. Karl Jacques: No, the act sets out that this transfer is possible only between members.

Ms. Roxanne James: Thank you. I just wanted to clarify that.

Now, there has been some criticism of this particular legislation that it has not taken into account first nations' culture or traditions. What do you say to people who come up with that type of argument?

Ms. Jo-Ann Greene: I believe there is a complex issue related to balancing the collective interests and providing basic rights and protections to individuals on reserve. We have been very careful, as one of the recommendations by the ministerial representative, to try to balance that in the legislation. Even the 90-day portion for their immediate protection through emergency protection orders is one of those balances. Should a revoking or an extension be sought, the first nations community, the band council, can make a representation on their cultures and laws and has the ability to make a representation as part of that, and on other applications as well, so that they can be heard if they want to have input or help sort out the application.

• (1245)

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Thank you. Your time is up.

Ms. Ashton.

Ms. Niki Ashton: Thank you, Madam Chair.

I want to pick up on the last question raised by my colleague, Ms. Crowder. I realize that you look at it based on the legislative side, but of course, we have to be honest. We constantly hear from the minister about ending violence against aboriginal women, etc. Yet on so many other points, whether it's calling a national inquiry, investing in shelters, investing in housing—as was pointed out—we haven't seen any action.

Now, with respect to the emergency protection orders, in an ideal world, I think we can all agree, there's no question. This measure is extremely important. But I'll bring the case of one of the communities I represent, Garden Hill First Nation. It's an isolated community on the east side of Lake Manitoba. About 2,500 people live there. The RCMP lives on an island away from the main community. During the freeze-up or breakup of the lake, they cannot get there very easily. In fact, one of the only ways they can get there is by helicopter.

This band is in third-party management. The third-party manager has cut funding to the band constables, and this program is currently in limbo—as in, people aren't getting paid. So there's no community-based policing. Right now it's breakup season. The RCMP cannot access the community very easily.

So what good is a protection order if there is no funding in policing, if there is no women's shelter, because there isn't, if there is no transition home, because there isn't, if it does take a \$500 ticket to go to Winnipeg, which is the closest place somebody can go to get that kind of shelter? Those gaps aren't just gaps. We're talking about lives being on the line because that basic access simply does not exist.

We can talk in theoretical terms or we can talk in practical terms. I can tell you that the practical terms mean that emergency protection orders mean nothing when you don't have people to apply them, to police the situation, and of course, the services available for victims when the crime happens.

I'd be interested to hear your thoughts. Unfortunately, we don't have the political representatives to ask about that end of things, but I'd be keen to hear where you stand.

Mr. Andrew Beynon: Try it.

Ms. Jo-Ann Greene: I do know there are some areas in programming that help to address those situations. As you've mentioned, there is funding for emergency protection orders, and there is the family violence prevention program. There's an initiative that helps in instances of divorce and there is other programming that is helping to address some of those situations in the north.

Ms. Niki Ashton: Just to clarify, what kind of figures are we talking about? In the Churchill constituency there are 22 isolated communities, and 18 of them are first nations. This is just in northern Manitoba.

We keep hearing about the centre of excellence. I'm not sure that it would be in Garden Hill. So what kind of figures are we talking about? We're talking about 663 first nations. Many of them are isolated, remote. Could we have a breakdown on those figures? How much of that money will be allocated to remote first nations?

Mr. Andrew Beynon: If I may offer to the committee, you're raising a lot of points in respect of funding for housing and for police

services, women's shelters, and so on. Perhaps we could get back to the committee with some information about the funding levels in respect of those programs specifically.

Ms. Niki Ashton: Sure, I would very much appreciate that background, but I also want to make sure that when we're talking about emergency protection orders saving lives, we are clear about the lives people lead in many of these communities. I can say for a fact that a piece of paper without anybody to implement and support the situation is certainly not going to save lives.

• (1250)

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Is that it?

Okay, now we have Ms. Ambler.

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

I would argue that having a piece of paper is better than not having a piece of paper because then at least you have a place to start.

Speaking of enforcement and emergency protection orders, I'm wondering what, if any, role the centre of excellence will play in that, and in particular in remote first nation communities. Will provisions be made, as in the example that Ms. Ashton gave, for communities that are particularly remote, or under third-party management, or that might have some difficulties enforcing it? Is the centre of excellence there to help or would there be some other branch that might be able to help?

Mr. Andrew Beynon: I would answer by saying that the idea for the centre of excellence is to house it within an existing aboriginal institutional organization that already has experience dealing with more urban communities, more prosperous communities, and remote and isolated and very challenged communities. They have the skill to be able to consider very much what is the right service, what is the right type of matrimonial property law in a remote community, and what kind of provisions you should provide for. Yes, the centre of excellence should be able to provide advice, for example, on how to handle emergency protection orders where there is not a local RCMP detachment and so on.

I would come back to an earlier answer that in the implementation plan going forward our department is connected to Public Safety and to the RCMP, so how we can try to make sure the legislation is more than just paper but is actually implemented in a way that responds is on the radar screen.

I'm not going to deny the point that the committee member made. Some communities are isolated and have many challenges in terms of policing issues, far beyond just matrimonial real property.

Mrs. Stella Ambler: Sure. What I also hear you saying is that the process, especially in the centre of excellence, is going to be flexible depending on who they are dealing with. They're not going to say, here is Bill S-2 and you have to apply it this way, using this language, and implement it this way. Would that be correct?

Mr. Andrew Beynon: They are going to be arm's length. I respect those institutions. I know them, and they are very sophisticated at dealing with the great differences in circumstances of first nations across the country. It's not that one size fits all. It's not one size fits all under this legislation. It's not one size fits all under FNLM. Depending upon where they are located, FNLM first nations have different matrimonial real property laws.

Mrs. Stella Ambler: That's very good to know.

Can you tell me a bit about the ratification process that's required in the bill, because I think there have been some misconceptions around that piece as well?

Ms. Jo-Ann Greene: Certainly. I'll speak to that, Madam Chair.

One of the things I know my colleague has mentioned, but I want to reiterate, is that the bill is to address a gap in protections and rights for women, children, and families living on reserve. It only applies to those first nations that have a reserve community, and it is a first step in trying to address some of these problems that arise.

It's not meant to be comprehensive and address them all. It's for a specific purpose, and to that end the ratification part was one of the ways that, during consultations, women said they wanted some form of having input or knowing about the community's laws. So that is part of one of the...from the original it was included, but it has been changed and Bill S-2 actually has been lowered to set participation rate—

Mrs. Stella Ambler: Thresholds for—

Ms. Jo-Ann Greene: Yes, before it was a double majority required. We were told and we heard that it was—

Mrs. Stella Ambler: Difficult to get—

Ms. Jo-Ann Greene: —onerous and that most first nations felt they couldn't meet that high a standard. So now it's just a set participation rate of 25% of the eligible voters who are over the age of 18 and are community members, and that's to include on- and off-reserve members. It was requested so that they would be sure the community had input into what the community matrimonial real property laws might be like.

I think we had a lot of misunderstanding before, with the verification process that was removed. It was always just intended to review the process, not the law itself. We want to reiterate that again, that the department or the minister has no say at all in reviewing, disallowing, or cancelling anything in the first nation law. It's just up to them, between the government and the first nation members.

• (1255)

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Thank you.

Go ahead, Ms. Bateman.

Ms. Joyce Bateman (Winnipeg South Centre, CPC): Thank you so much, Madam Chair.

Thank you all for being with us again today. I had done all the reading, but I really feel that I know the information much better now.

There's one piece I'd like more depth on. If we have time, I'd love to talk about the four phases to your approach, which I very much appreciate.

But I also want to hear about the centre of excellence, because my understanding is that the centre of excellence is going to be a tool that can be accessed by all first nation communities wanting to achieve what the 22 have already achieved. Is that the case?

Mr. Andrew Beynon: Yes, I would agree.

It has several elements to it. Sure, first nations will be able to turn to the centre of excellence for advice on the contents of matrimonial real property laws, but more than that, they can turn to it for advice on the federal provisional rules. If you don't choose to make a law, what is this default federal system that the legislation calls for?

I think that will help first nation governments to make a decision on the comparison—what is it that we like in this, and what is it that we don't like? So, if we move to develop our own law, what features would we want to keep perhaps in our own law, and what would we want to customize and make more appropriate to our community?

I would fully expect that the centre of excellence, as an aboriginal institution, will look across to the First Nations Land Management Resource Centre, which assists first nations under the FNLM, in the development of all of their laws, not just matrimonial real property laws. Those laws are public. They can be obtained. So first nations, either through the centre of excellence or directly themselves, can look at existing examples of laws.

The last point I would just make is that six months ago, I think, we were at 20 FNLM matrimonial real property laws; now we're at 22. The FNLM regime is expanding, and I know there are many other first nations that are in the course of adopting their own matrimonial real property laws.

So if this legislation goes forward, right now the comparison factor is 22. I would expect it to go to 35 or 60 over time. There will be more FNLM matrimonial real property laws to compare with, both for the centre of excellence and individual first nations.

Ms. Joyce Bateman: Go ahead.

Ms. Jo-Ann Greene: Madam Chair, to understand the difference, those first nations that are choosing to go under the FNLM are choosing to opt out of the Indian Act, with about 34 provisions related to land management that currently would apply to them.

Under Bill S-2, they don't have to do that. They can develop laws to address the issue of matrimonial real property in their community, and that bill will stand alone. Through the provisions, they have the ability, should they choose, to have courts apply their law. They can set up whatever form they want. It's up to them. It just has to be compliant, as all laws in Canada, with the Canadian Charter of Rights and Freedoms, and now, where applicable, with the Canadian Human Rights Act.

It's important to recognize that there's a huge difference between the FNLM group—that's a part of it, the requirement to address those gaps that are present. It's the same for those first nations choosing to go under self-government agreements that matrimonial real property has to be addressed in some way.

• (1300)

Ms. Joyce Bateman: That's a wonderful distinction. I wasn't aware of that distinction, so I very much appreciate your adding that.

If you have a minute, you were going to tell one of my colleagues an anecdote about a woman who would have been well-served by this, and you got cut off. Ms. Greene, if you would like to use my time to share that anecdote or to finish that anecdote, I would very much appreciate it.

Ms. Jo-Ann Greene: The one about my community...?

I'm not sure...related to the emergency protection orders?

Ms. Joyce Bateman: Yes.

Ms. Jo-Ann Greene: Through the emergency protection orders, if you don't have permission of the applicant, you can seek permission to apply for an emergency protection order on behalf of someone

else. The court can grant that permission. In that instance, the daughter of the woman, fearing that something was wrong when access wasn't granted to see her mother, she could have sought that permission to seek an emergency protection order that would have possibly helped in that situation to de-escalate—

The Vice-Chair (Mrs. Tilly O'Neill Gordon): Sorry. Thank you. Time's up.

I want to thank you for being with us again today, and thank you for your words of advice and understanding. We certainly appreciate the time you've taken to be with us.

I now call for adjournment.

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