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—
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Ms. Lysane Blanchette-Lamothe

Standing Committee on the Status of Women

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• (1100)

[Translation]

The Chair (Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP)): I would like to call the 78th meeting of the Standing Committee on the Status of Women to order. Welcome. We are back from our constituency week. It is nice to see you again.

Let me remind you that we have three experts here with us today to answer any questions we may have.

My thanks to the three of you for coming back to assist us in our consideration of Bill S-2.

[English]

Pursuant to the order of reference of Wednesday, April 17, 2013, Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

[Translation]

We are continuing our clause-by-clause consideration of Bill S-2.

(Clause 42—*Notice of order*)

The Chair: We are on clause 42.

Ms. Crowder, you have the floor.

[English]

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

There's been a bit of a gap since we last talked about this. I'm referring to clause 42, which states that under this act, except under section 19, the person in whose favour the order is made and so on must send, without delay, a copy of the order to the council of any first nation.

We've raised this issue in the past, and it has to do with first nations councils' abilities to have access to the resources not only to review orders but also to making the appropriate representations. As committee members will be well aware, in subclause 41(2), which we've already dealt with, the council can make representations with respect to the cultural, social, and legal context that pertains to the application, and to present its views about whether or not the order should be made.

Once again we're dealing with the fact that it's fine to put in legislation that councils will have the opportunity, but the reality on the ground is that councils simply may not have access to the legal and financial resources.

The other issue is that some of these courts will not be close to reserves. The chiefs and councils and their legal representatives will need to travel to make those representations. Although the intent is appropriate in terms of their being able to make that representation, the reality on the ground of their being able to do that is a whole other question.

The other issue is that for first nations who already have the ability around law-making or who are already incorporating provincial law with regard to matrimonial real property, their experience in the courts has been less than successful. What they have discovered is that the courts often don't have understanding of the complexities of land codes on reserves. We've raised that issue in the past. The land codes on reserves are completely different from what we find off reserve, and it takes time and resources to educate the courts about what those land codes might be.

It's a complex matter, and the work simply hasn't been done to make sure that courts are up to speed on this matter.

• (1105)

The Chair: Thank you, Madam Jean.

[Translation]

Does anyone else wish to speak to clause 42?

Since I don't see anyone, we will move to the vote.

(Clause 42 agreed to)

(Clauses 43 to 47 agreed to)

(Clause 48—*Determination by court—interest or right*)

The Chair: Does anyone wish to speak to clause 48?

Ms. Crowder, you have the floor.

[English]

Ms. Jean Crowder: Thank you, Madame Chair.

This clause concerns cases where courts will be looking at whether a spouse, a common-law partner, or survivor in the estate of a deceased spouse and so on has an interest or right in or to a structure or lands situated on reserve.

I keep re-emphasizing this point, Madame Chair, of whether the courts have an understanding of the complexity of land codes on reserve. We know that courts are going to be faced with collective interests. They are going to be faced with certificates of possession. We actually heard, in the other committee I'm on, other witnesses talking about the fact that in some cases with regards to certificates of possession there has been such complexity in determining who the actual land holder is. Sometimes there have been up to 10 people who may have had an interest in that particular property. So when it comes to the courts determining who is going to have a right or an interest, what resources are the courts going to have to be able to examine that matter?

We've discovered as well at the aboriginal affairs committee, where we've been dealing with land management issues on reserve, that there isn't a consistency in terms of how the title is registered. There have been some recommendations made and the aboriginal affairs committee has been seized with the issues around implementing a new land title registry system for reserves so that there is some consistency. But that doesn't exist at this point in time. So it's going to be quite a challenge for courts to determine how this interest or right can be assessed when they're evaluating matrimonial real property. This piece of legislation simply doesn't deal with those kinds of complexity. So it's very difficult to support that particular provision.

The Chair: Thank you, Madame Crowder.

[*Translation*]

Does anyone else wish to speak to clause 48?

Since it does not seem so, we will move to the vote.

(Clause 48 agreed to)

(Clauses 49 to 51 agreed to)

(Clause 52—*Enforcement of orders*)

• (1110)

The Chair: Does anyone wish to speak to clause 52?

Mrs. Day, go ahead.

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

In terms of clause 52, I just wanted to say that we are in favour of granting this type of power to the councils. It is perfectly clear that the councils have jurisdiction over their own territory. However, I would like once again to draw the committee's attention to the fact that, without stronger legislative measures, without the necessary financial resources, we have reason to be seriously concerned about the actual ability of the councils to apply this power.

Madam Speaker, I am thinking of shelters, transition houses, women's centres and any legal aspects that must be put in place to be able to provide those services to the communities.

Thank you.

The Chair: Thank you, Mrs. Day.

Does anyone else wish to have the floor?

It seems not, so we will move to the vote.

(Clause 52 agreed to)

(Clauses 53 to 55 agreed to)

(Clause 56—*Order in council*)

The Chair: Amendments to clause 56 have been proposed. The NDP submitted its amendment first. If Amendment NDP-1 is defeated, amendments LIB-4 and NDP-2 will also be defeated, since they follow logically from amendment NDP-1.

If the NDP wishes to introduce amendment NDP-1, the amendment that it submitted to us, we will debate it. Since the Liberals' amendment LIB-4 follows logically from amendment NDP-1, there will be no debate on amendment LIB-4.

[*English*]

Mrs. Susan Truppe (London North Centre, CPC): Are you on clause 55 or clause 56?

The Chair: Clause 56.

Mrs. Susan Truppe: We missed clause 55, I think.

Did we do clause 55? It must have been done pretty quickly.

[*Translation*]

The Chair: Clause 55 has just been passed. We are now on clause 56.

Ms. Crowder, I see that you would like to have the floor.

[*English*]

Ms. Jean Crowder: Thank you, Madam Chair.

I'm moving an amendment NDP-1, which I believe everybody has a copy of it, that that Bill S-2, in clause 56, be amended by replacing lines 35 and 36 on page 43 with the following:

(2) in order to allow for the establishment of non-legislative measures, sections 12 to 52 come into force 36 months after the day on which section 7 comes

What we've discovered in other pieces of legislation is the need for ample time for first nations to develop their resources and to respond. I'd like to point out that in clause 55 of this legislation, first nations that are under the First Nations Land Management Act actually have a period of three years after the date of the coming into force. It brings into question why we would not allow first nations the three years to develop their own matrimonial property codes. We've heard the government speak about the fact that this legislation provides an opportunity for first nations to develop their codes. Realistically, one year is simply not enough time.

Here I want to refer back to the alternative dispute resolution tool kit that the acting commissioner on human rights referenced in his presentation. That tool kit laid out a very clear process for first nations to develop, for example, an alternative dispute resolution process. It's a complicated process. What it does is to call for full community involvement. One of the benefits it talks about in terms of this full community involvement is that it demonstrate that the community leadership is accountable and committed to continuous learning in the community, because as the first nations develop their matrimonial real property codes, it's an opportunity to develop education and awareness.

As well, the tool kit points out article 34 of the United Nations Declaration on the Rights of Indigenous Peoples states that:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

It would seem there is precedent for this in an agreement that Canada has actually become a signatory to.

In the dispute resolution booklet they talk about the four stages to developing a community-based dispute resolution process: leadership, values, and principles; capacity-building for development and engaging your community; developing your community's dispute resolution model; and implementation, monitoring, and continuous improvement.

Now, Madam Chair, it would seem to me that having one year for the coming into force of this legislation to develop that framework around the stages of what has been successful in other communities around the dispute resolution process is simply not enough. If the government were truly committed to providing the avenue for first nations to develop their own matrimonial real property codes, I would argue that allowing sufficient time and resources to do that would be a responsible thing to do.

I'm encouraging all members to support my amendment to clause 56.

•(1115)

[*Translation*]

The Chair: Thank you, Ms. Crowder.

According to my list, it is Ms. Sgro's turn now. However, I see that she would like to yield the floor to Ms. Bennett.

Go ahead, Ms. Bennett.

[*English*]

Hon. Carolyn Bennett (St. Paul's, Lib.): We obviously have an amendment that is virtually identical and will support Ms. Crowder's amendment. We really do believe that all aspects of this bill require 36 months as a minimum, as we've heard from pretty well every witness who has been asked. The reality is that the centre of excellence won't be set up; it's not anywhere close to being ready.

I do encourage all members on the government side to support Ms. Crowder's amendment. It is essential to our showing that we've at least listened to something.

[*Translation*]

The Chair: Thank you, Ms. Bennett.

There are no other speakers on the list.

We will put the question now on amendment NDP-1 introduced by Ms. Crowder.

All those in favour of the amendment so signify.

[*English*]

Hon. Carolyn Bennett: Can we have a recorded vote for this? This is appalling.

[*Translation*]

The Chair: Madam Clerk, I will let you proceed with the recorded vote.

Ms. James, it seems you have a question.

[*English*]

Ms. Roxanne James (Scarborough Centre, CPC): I just need clarification. Do two people from the Liberals vote on that particular question?

Hon. Carolyn Bennett: We haven't had the question yet.

Ms. Roxanne James: I saw the hands go up and now I hear a request for a recorded vote. I don't know how that's working, since we've already voted.

[*Translation*]

The Chair: Thank you, Ms. James. The question on the procedure is relevant. Only one vote will be counted for the Liberals and it will be Ms. Sgro's vote.

Madam Clerk, please go ahead with the recorded vote.

(Amendment negated: nays 7; yeas, 4)

•(1120)

The Chair: We will go back to the original clause 56.

Does anyone else wish to speak to clause 56?

It seems not, so we will move to the vote.

(Clause 56 agreed to)

The Chair: The clause-by-clause consideration is nearly completed. We will go back to the beginning and look at the short title as presented.

Does anyone wish to speak to the title? It does not seem so.

In that case, shall the short title carry?

(Short title agreed to)

The Chair: Let us move to the preamble.

An amendment was proposed. However, before I give the floor to Ms. Ashton, I would just like to say that no amendments have been made to the bill as presented to us and it is therefore impossible for the committee to amend the preamble. To be able to do so, an aspect, any aspect, of the bill would have had to be amended beforehand. So the committee cannot amend the preamble.

Having said that, Ms. Ashton, you would like to speak to the preamble. So go ahead.

[*English*]

Ms. Niki Ashton (Churchill, NDP): Thank you, Madam Chair.

On behalf the NDP, I'd like to express our opposition to Bill S-2. This government is not listening to first nations on a nation-to-nation basis, and we stand in solidarity with the Assembly of First Nations, the Native Women's Association of Canada, and many nations and experts across the country who have opposed this bill.

This bill will not solve the problem that it seeks to address. We know this because we have heard from the women, from the communities, and from the families whom it will affect. This bill has nothing to do with ending violence against aboriginal women, as it provides no effective, timely access to remedy. Women in remote communities have to wait for a judge or a whole court to be flown in, or have to travel hundreds of miles to a courthouse.

The New Democrats will not support any matrimonial property legislation that is not accompanied by non-legislative remedies to serious problems that, despite strong recommendation from experts such as Wendy Grant-John, are not included in the final version of Bill S-2. These include timely access to remedy; ending violence against aboriginal women through a national action plan; addressing the housing crisis on reserves, including funding for women's shelters; better access to justice, including increased funding for legal aid, especially for remote communities; lack of financial resources and time to support first nation governments to actually implement the law; and access to alternative dispute resolution.

The legislation does not respect first nations' jurisdictions and the principles of the UN Declaration on the Rights of Indigenous Peoples, to which Canada is a signatory.

We acknowledge once again that proper nation-to-nation consultation has not taken place. We are also very concerned by the process the government has insisted on following throughout this committee. We are opposed to the way debate was shut down time and time again. We oppose the fact that so many witnesses were not able to make it here, because this government insisted on bringing in time allocation on a very important bill. We oppose the fact and consider it gravely disrespectful that the Native Women's Association, for example, was only given eight minutes to speak to this committee without any time for questions and answers, something that was unfortunately a pattern faced by so many organizations coming to this committee.

We acknowledge that the government witnesses often received far more time than witnesses who had grave concerns and who represented a constituency that is deeply impacted by Bill S-2. We stand in opposition to Bill S-2 as it is, and we believe it is a grave injustice by this government to first nations across Canada.

Thank you.

[*Translation*]

The Chair: Thank you, Ms. Ashton.

Ms. Bennett, you have the floor.

[*English*]

Hon. Carolyn Bennett: Yes. I think—

[*Translation*]

The Chair: One moment, please.

Ms. Bateman, are you raising a point of order or asking a question?

Ms. Joyce Bateman (Winnipeg South Centre, CPC): I do not wish to raise a point of order, but I am just wondering about something. We have now passed all the clauses. At this stage, can the

opposition party and the third party talk about their differences of opinion? What is going on?

The Chair: Ms. Bateman, thank you for your question about the committee's procedure.

The clause-by-clause consideration of the bill includes the study of the preamble. The preamble must be agreed to by the committee. Since we did the same for each clause of the bill, we can debate the preamble according to the rule adopted by this committee, meaning that every party has a maximum of five minutes to express its opinion on the preamble before us.

So that is where we are. Then, when the debate is over, we will move to the vote to see if the committee wishes to adopt the preamble.

• (1125)

Ms. Joyce Bateman: Does that apply to all the parties?

The Chair: Yes.

Ms. Joyce Bateman: Okay. Thank you, Madam Chair.

The Chair: You are welcome, Ms. Bateman.

Ms. Bennett, go ahead.

[*English*]

Hon. Carolyn Bennett: Thank you.

In discussing the preamble to this bill, we are unfortunately and gravely having to address the fact that the objectives of the bill are timely and important and that addressing violence against women and issues of fairness is hugely important, but that most of the witnesses have been very, very clear that this bill will not address the problem as set out.

The process has been a travesty in that we have had to study a bill by first determining on what day we would do clause by clause, and then had to try to fit the witnesses in-between, regardless of extra meetings—which obviously have been interfered with by votes—and by our not actually getting to ask a question, in my case, of the Assembly of First Nations, and by the fact that the Native Women's Association only had eight minutes.

This has not been a good process. As members of Parliament, we do not believe we've been able to do our job with due diligence on this bill, a bill that indigenous senators have spoken of with grave, grave concerns. Our having to accept this bill being sent to this committee, which is not the responsibility of the Minister of Aboriginal Affairs, despite the legislation being introduced by that minister, has been a grave, grave error. Also, the way the committee and the parliamentary secretary have organized the work plan for this has been irresponsible, in that it is not right that the first thing you do is to decide what day you'll do clause by clause and then figure out how you will jam in the witnesses, such that even the people affected by this bill have not had a proper opportunity to speak.

But worse than that, there is the attitude of the members opposite, who have clearly not listened to the grave, grave implications of imposing this bill on the people affected by this bill, and who voted down a clause that would have given at least 36 months to first nations to have a chance to be able to put something in place themselves. It is just so disappointing that Parliament has reached this low in terms of what we were sent here to do as members of Parliament, which is to listen to the witnesses and then make amendments based on what the witnesses have told us. This is not some predetermined, father-knows-best approach to legislation, which, as we've heard time and time again, has not reflected the wishes of first nations in this country, and certainly not of first nation women.

I am very, very sorry that the members opposite don't seem to understand their jobs and that we are in this position today of having this bill rammed through in short order, with serious, serious flaws that will not protect first nation women and not meet the ideals articulated in the preamble of this bill.

● (1130)

[*Translation*]

The Chair: Thank you, Ms. Bennett.

Mrs. Day, you have two and a half minutes.

Mrs. Anne-Marie Day: Thank you, Madam Chair.

I would like to point out a number of things.

First, when the members from the six First Nations were here in committee, we were called to vote in the House twice, so we were not able to hear from them.

Second, I would like to point out that this bill changes the nature of property in the bands, and it is an affront to Aboriginal communities.

In addition, the communities are asking for more time. The NDP asked that we give communities more time to organize themselves in accordance with the provisions in this bill, but that will not happen. Yet it is not easy to have access to judges or justice when you are in the far north and communication with more urban communities is not easy. That will create major problems.

Furthermore, this bill has been linked to domestic violence and the protection of families and children. But who will be kicked out, when 12 to 14 people live in the same house, including the parents and grandparents, both maternal and paternal? If the responsibility is given to the mother, will the mother-in-law be thrown out? Where will she stay? That does not factor in the lack of housing or the fact

that these people need structures such as shelters and women's centres. They also need adapted and rapid transit between their homes and places where they can have timely access to justice. None of those problems will be addressed by this bill.

The bill introduces private ownership in the bands, band councils and territories. It changes the law for the people who live there, without consideration for their own paths or their own laws. None of that is being done in cooperation with the communities, which need our support as legislators.

The Chair: Thank you, Mrs. Day.

Seeing that no one else wishes to speak to the preamble, we will move to the vote.

[*English*]

Shall the preamble carry?

Some hon. members: Agreed.

[*Translation*]

The Chair: We are now looking at the title of the bill.

Since no one wishes to speak to it, we will move to the vote.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the Chair report the bill to the House?

Some hon. members: Agreed.

The Chair: I inform the committee that, as the chair of the committee, I will introduce the bill to the House this week. It will very likely be tomorrow, Wednesday.

That brings us to the end of the committee's agenda.

I would just like to let the members of the committee know that, at the next meeting of the Standing Committee on the Status of Women, next Thursday, we will meet to continue the study on sexual harassment in the workplace and we will hear from witnesses. The agenda has already been circulated. So you can see what to expect at the next meeting.

Once again, I would like to thank our guests for coming to offer their support and advice.

The meeting is adjourned.

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