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**Chair**

**Ms. Nancy Karetak-Lindell**

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## Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, April 12, 2005

• (1110)

[English]

**The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)):** Good morning. I'd like to call meeting number 28, for Tuesday, April 12, 2005, to order. Pursuant to Standing Order 108(2), we're still on the study of on-reserve matrimonial real property.

I'm very pleased this morning that we have witnesses from the Lands Advisory Board, and I understand that Chief Robert Louie, Mr. McCue, and Chief Austin Bear will be speaking. In the second hour, we'll have the Assembly of First Nations. We also have a third hour this morning, when we will have the Native Women's Association of Canada appearing before us.

Without further ado, I'll give you an opportunity to introduce the people who are with you. And again, thank you for taking the time to address the committee.

Chief Robert Louie.

**Chief Robert Louie (Chairman, Lands Advisory Board):** Thank you very much, Madam Chair.

Do you wish me to proceed with the introductions, or just carry on with the initial presentation?

**The Chair:** I had six names here, and I wasn't all that sure about who was going to speak, but the clerk assures me that the three of you will be addressing the committee and that the rest of the people are your support delegation. It's just that I didn't introduce the other two who are with you.

**Chief Robert Louie:** Let me do so, then, Madam Chair. Thank you very much.

With me is Chief Austin Bear, from the Muskoday First Nation in Saskatchewan, who is certainly pleased to offer some comments to the standing committee here this morning.

With me also is Chief Frank Whitehead, from the Opaskwayak Cree Nation in Manitoba, who is available to answer any questions should the committee be so inclined to request some input from the Opaskwayak Cree Nation; William McCue, who is councillor of the Georgina Island First Nation in Ontario and formerly chief for 16 years before recently stepping down in his last election a few months ago; and Barry Seymour, who is the former chief of the Lheidli T'enneh First Nation in British Columbia and chief there for ten years. As well, Barry Seymour and William McCue are certainly pleased to answer any questions should the committee have questions of these gentlemen.

With that, Madam Chair, I'll proceed.

Thank you very much for the opportunity to address the House of Commons standing committee on the topic of matrimonial real property law. My name, for the record, is Robert Louie. I am the chief of the Westbank First Nation in British Columbia, and I am also chairman of the Lands Advisory Board.

As you know, the Lands Advisory Board was present in Parliament in 1999 when the First Nations Land Management Act was passed to ratify the Framework Agreement on First Nations Land Management, which 14 first nations had signed with the Government of Canada in 1996. The framework agreement and the First Nations Land Management Act reflect the intention of the signatory first nations and those who have since joined this group to exercise our inherent right to manage our reserve lands and our resources. The exercise of our inherent right to manage our reserve lands and resources, for the record, is not a program of the Department of Indian Affairs. The framework agreement and the subsequent First Nations Land Management Act represent a government-to-government agreement and a relationship with Canada.

Matrimonial property law has always been a priority of the framework agreement. In fact, the operational first nations are the only first nations to date in Canada who have the explicit law-making authority to deal with this very complex area of the law. Matrimonial real property laws deal exclusively with the use, occupation, and the possession of first nations land and the division of interests in first nations land. Provincial family law statutes deal with many matters beyond the range of the framework agreement and the First Nations Land Management Act, such as support obligations, domestic contracts, dependants, claims for damages. Matters such as child custody and maintenance are usually dealt with in other provincial statutes dealing specifically with children. Divorce itself is covered by the Divorce Act, federal legislation.

The First Nations Land Management Act is a sectoral piece of self-government legislation. The focus of this legislation is on land and not on marriage. Marriage issues are relevant to the extent that they affect the scope of rights in first nations land. The purpose of a land code, which first nations developed with entering into this land management initiative, is to solve problems of land-holding and not to revise existing marriage law.

●(1115)

There are four basic rights under family law: the right to possession of the matrimonial home, the right to a division of family property, the equality of treatment between spouses, and the right to compensation for a spousal interest. These minimum standards are protected in the framework agreement. They are contained in section 5.4 of our Framework Agreement on First Nation Land Management, and are reflected in section 17 of the First Nations Land Management Act.

It is mandatory for each of the operational first nations, if they wish to manage their lands, to establish rules and procedures dealing with the first three of these rights. The fourth right, compensation for a spousal interest, is already protected by section 15 of the Canadian Charter of Rights and Freedoms and section 28 and subsection 35(4) of the Constitution.

Since the Derrickson decision of the Supreme Court of Canada almost 20 years ago—that's a case, Madam Chair, that originated in my community—the status quo has in fact remained. It is only since the Framework Agreement on First Nation Land Management that any first nation in this country has made real law on this subject matter. I challenge anyone, other than the first nation communities involved with the Lands Advisory Board.... We have gone so far as to actually have done something concrete, in legislative, law-making format, to address this extremely complex issue.

I wish to point out and to make it abundantly clear to the honourable members present that spousal separation is not a simple gender issue. It is of equal importance to both men and women. It is not just a women's issue. In many cases, men are also disadvantaged by the current vacuum on spousal separation. Of utmost importance are the children and the protection of the children. All of this is wrapped up in the matrimonial law.

There are currently 13 operational first nations under the framework agreement, with this one exception: my own first nation, the Westbank First Nation. It would number 14 of the operational first nations under the framework agreement. Our community recently moved to full self-government as of April 1, 2005.

To give you an update on the other communities, seven of the remaining first nations have enacted matrimonial real property laws. From reading the transcripts of previous witnesses, I note, Madam Chair, that it was reported that five have enacted matrimonial real property laws. The fact is that seven have. They include the Chippewas of Georgina Island, which is Bill McCue's community; the Mississaugas of Scugog Island in Ontario; the Muskoday First Nation, which Chief Austin Bear represents; the Lheidli T'enneh First Nation, which Barry Seymour represents; the Beecher Bay First Nation in British Columbia; the McLeod Lake First Nation in British Columbia; and the Whitecap Dakota in Saskatchewan.

To give you a further update, two of the 13 first nations have begun operational land management within the last year, and have 12 months to complete their matrimonial real property law. They include the Kinistin First Nation in Saskatchewan and the Sliammon First Nation in British Columbia.

Of the 13 first nations, four—not five, as I understood the previous witnesses to indicate at this hearing—have started to

complete their matrimonial real property law. They include the Skawahlook community in British Columbia, otherwise referred to as Pavilion; the Tsawwassen in British Columbia; the Nipissing First Nation in Ontario; and the Opaskwayak Cree Nation, which Chief Frank Whitehead represents.

●(1120)

The Lands Advisory Board and the resource centre have been working hard to ensure that communities that have ratified their land codes complete their matrimonial real property laws. I think it's important to explain to you the reasons a community may have difficulty in enacting its matrimonial real property law within the given timeframe of one year.

In essence, community consultation takes much longer than I think anyone really expected. Family law as it relates to property is indeed a complex issue, and the decisions communities make now will affect members' rights for years to come. It is indeed complex, and it indeed has a direct impact on people's lives. First nation communities lack the necessary financial capacity to deal with this complex issue, since little funding is being provided by the Department of Indian Affairs. That, Madam Chair and members of this committee, is a serious issue.

With regard to the size of the community, some of our first nation communities have hundreds and in some cases thousands of members, and in fact the consultation process takes longer than in many other smaller communities. Some of these larger communities include the Opaskwayak Cree Nation and the Nipissing First Nation. The first nation election may also result in the temporary suspension of work, such as what's happened at the Tsawwassen First Nation in British Columbia.

As well, a first nation may be focused on other pressing matters, such as the Skawahlook or Pavilion First Nation in British Columbia with their limestone quarry lease. This is an economic development venture that has significant impact to that community, and it's been their primary focus to finalize that lease in its terms. This holds true with many of the other communities who have other pressing issues. Time is needed to determine the policy that the community is going to follow, which the council presumably will help direct. Time is needed to draft the law. Time is needed to consult. And perhaps most significant is the timeframe the community is involved in, given the complexity of issues. As well, there's time to actually enact the law. Some communities, like mine, the Westbank First Nation, need a minimum of 90 days just to follow our law enactment process. All of this takes time.

Some of the operational first nations that have completed their matrimonial real property law have included other subject matters. Those subject matters include such areas as the following: applying their law to spouses married by tradition and/or custom; applying their law to common-law couples as well as to married couples; protection of the family home during the relationship; issues that revolve around non-first-nation members actually being spouses; and dealing with certificates of possession versus band lands in general. All of those issues are areas first nations are involved with and in fact are dealing with when they're dealing with matrimonial and real property law.

Let me make it as clear as I can: first nations under the framework agreement and those who are participating in this land management initiative are committed to the clarification of property rights' issues between men and women on reserve and in a manner that does not discriminate on the basis of sex.

I believe it is crucially important to also rectify the matter that was presented in evidence to this committee and that regards the whole issue of section 5.4 in our framework agreement.

● (1125)

The issue of matrimonial real property on reserve lands was addressed by the chiefs when they negotiated the content of the Framework Agreement on First Nation Land Management with Canada in 1996. Contrary to what was stated by previous witnesses, the provision to establish a community process in a land code to develop rules and procedures that would be applicable on the breakdown of a marriage as to the use, occupancy, and possession of reserve land and the divisions in that land was in fact already included. It was included in our original draft under then section 5.2 of our framework agreement.

Prior to the passage in Parliament of the bill formerly known as Bill C-49, the First Nations Land Management Act, the Lands Advisory Board was approached by then Minister Jane Stewart to add a clause for clarification. That clause is what's referred to now as section 5.4 of our framework agreement. We agreed that section 5.4 would be added to clarify, and in fact the beginning of that particular paragraph says "In order to clarify". In fact, that was what was done.

The matrimonial law issue has always been given significant attention and is certainly an important matter, a real matter, that is being addressed and has to be addressed by first nation communities for land management and management of resources. These are, we believe, very significant issues.

I could, if you wish, Madam Chair, speak about my own first nation at Westbank, but if the committee wished, I could turn it over to my learned colleagues for comments from their communities. I'm at your pleasure.

**The Chair:** We want to make sure we leave some room also for questions from the committee members, but I think it's very important for us also to get as clear a picture as we can get about the different regimes that are across the country. If we can, let's make it as compact as we can, because I know we started late also. Maybe there could be a very short intervention, and then you can cover some of it in the questions you get from the committee members.

**Chief Robert Louie:** Thank you very much, Madam Chair.

Perhaps I would turn to my very learned colleague, Chief Austin Bear from Muskoday First Nation.

● (1130)

**Chief Austin Bear (Lands Advisory Board):** Thank you, Robert.

Good morning, Madam Chair and honourable members of this committee.

As mentioned, and for the record, my name is Austin Bear. I'm the chief of the Muskoday First Nation in what is now the province of Saskatchewan, Treaty 6.

I would like to speak and give evidence and testimony on the actual implementation of the Muskoday First Nation law on matrimony.

The Muskoday First Nation enacted our matrimonial law in June of 2001. Sometime last summer or fall, a first nation near my community without a matrimonial law evicted one of its female members after a marital breakdown. She had married and had children with a member of that community. Because of the lack of any law or protection under the Indian Act, both she and her children were out on the street. She was forced to return to our community for refuge.

There was another situation in my own community where there was a divorce. A woman was a non-member and she had custody of the children. The man was a member and the children were members. After the breakdown, it was upheld that the best interests of the children were paramount. Our law was clear: whoever had custody had the right to stay in the matrimonial home.

The framework agreement recognized our ability to legislate and provide solutions for our members in this area. Our laws, created under the land code, have guaranteed the right of the spouse who has custody to stay in the matrimonial home. From time to time, this means that non-natives and non-members have possession of our homes. Again, our interest is in the children during these very difficult times. Even before the framework agreement, it was our custom to put the rights of the children first. The framework agreement codified and recognized the legitimacy of our customs and traditions, which we practised in the absence of any law, either provincial or federal.

Those are my comments and those are the instances and the situations that certainly were available to our first nations and to those members at the time of separation or divorce.

Thank you.

**The Chair:** Thank you very much.

We'll now start a round of questioning from the committee members.

Mr. Gary Lunn, from the Conservatives.

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

Thank you for coming to appear before us today.

We've heard from a number of witnesses and I'm pleased to hear the reports. You've testified that there are 14 operational first nations that are resolving, or have resolved in many cases, this issue of matrimonial property for families in general. I come back to Chief Robert Louie. There are two spouses in every relationship, and when there are children involved, you have to look after the interests of the children.

Having said that, there have been witnesses who have still painted some pretty grim situations in one province or another or on first nations land. These 14 operational first nations are just a tiny little sliver of what we're dealing with when you look at the whole country. What do you recommend? Do you see any potential solutions so we can ensure that we're resolving this issue for first nations people when there is a breakdown of a family and these issues are before them, right across the country? Is there something we can do as legislators in the federal Parliament to ensure that these situations don't happen?

I'll just conclude. I'm aware of situations where a spouse—and quite often it will be the woman—is in a very difficult situation, but because there is no process or no guarantee that she could stay in the matrimonial home, quite often she will stay in that abusive situation, because she has no place to turn; there's no place to go. She has young children.

I would like you to give us your thoughts on the bigger picture in all first nations land, in general, across the country.

• (1135)

**Chief Robert Louie:** Thank you very much, Mr. Lunn.

First, I wish to indicate that as far as the tiny sliver of first nations involved is concerned, albeit we have 14 operational first nations, in fact with the land management initiative we have closer to 100 first nations that are either operational, in the developmental phase, or that wish to join and are waiting to join the process. So if you look at those numbers, in fact that represents a much higher number than perhaps you might suggest.

What can be done? Right now we have, as I indicated, 14 operational first nations. We have room to add additional first nations that may wish to join the land management initiative, and subsequently to then work and develop their real property loss. Part of the flaws, I believe, that exist today is getting the support from government to add the additional first nations that right now are desperately waiting to join the land management initiative. So in that alone I would suggest to you that there would be many more communities more than willing to address the matrimonial real property law. The need is there, the desire is there, but we need the government support.

Former Minister Nault had announced several years ago, while he was then Minister of Indian Affairs, that there would be in fact a rolling 30 first nations involved in the developmental phase to deal with land code and to work on their matrimonial real property laws. Unfortunately, there has been some non-support, I believe, from government to actually meet that test and to have these numbers actually involved. We're facing that situation today, where we have room for additional first nations. The funding has been committed by Canada, but we do not have the support of Canada to add these

communities into the land management initiative. I believe that is a serious flaw, and that is something that I see could be done.

**Mr. Gary Lunn:** Why is the government not supporting this? It seems like something we should be moving forward quite aggressively, especially from what I've heard today, that what you are doing is working, that it is making a difference.

**Chief Robert Louie:** It is making a difference. I cannot answer the department's views on that. I certainly have the need expressed to me as chairman of the Lands Advisory Board by first nations across this country that are desperately waiting to enter into the land management initiative, and I know their need. I don't know if it boils down to moneys from government, costs of surveys, those types of issues.

I do know that there were commitments made by the Government of Canada, and those commitments must be honoured. And I'm hopeful that in time they will be honoured.

**Mr. Gary Lunn:** What are we talking about? What kinds of numbers are we looking at here?

**Chief Robert Louie:** To give you some indication, to meet the rolling 30 definition, there is room today for 16 first nations to be added. Right now there's support for five. So there are approximately 11 that could be added to get on with land code developments and to enter into such matters as real property law development. We have a long list of other first nation communities that would love to be in the land management process that have band council resolutions, that have letters of requests, that have met with the Lands Advisory Board and our resource centre, and that have met with the Department of Indian Affairs and Northern Development, which in fact is also waiting. So the list is long.

• (1140)

**The Chair:** I wonder if Mr. McCue wanted to add to that answer.

**Chief William McCue (Counsellor, Lands Advisory Board):** Thank you, Madam Chair.

From our resolutions, we have roughly 75 to 100 waiting to join the initiative under the framework, and these are across the country. We have interest expressed from every province. I have seen in testimony that it wasn't available to Quebec, but that is not true. We are just waiting. We've had several meetings with first nations in Quebec, and we're waiting upon resolutions for them to come aboard. There has been expressed interest in Quebec as well, so we're not eliminating or alienating any province in the country. It is open to all first nations in Canada.

**The Chair:** Thank you, Mr. Lunn.

We will now go to Mr. Bernard Cleary, from the Bloc.

[*Translation*]

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

My questions are for chiefs Austin Bear and Robert Louie.

Seeing that people are motivated by this issue and, in particular, that they attach importance to it, I would like to know what Chief Louie means when he says a lot of time is needed. Are we talking about one year, 10 years, 30 years? I'd like you to explain to me what you mean when you say time is needed.

The other question is for Mr. Bear. I see he put great emphasis on the fact that children must be given priority. I approve of that 200 percent, but I'd like to know how far that priority goes. Have you had the time to evaluate how children could be given priority?

Those are my two questions, Madam Chair.

[English]

**The Chair:** The question was directed to Chief Austin. I hope you got the whole question.

**Chief Austin Bear:** Thank you, sir, for your question.

I think in measuring or evaluating the protection of children there are a number of issues where child protection is of concern. One is addressed through the establishment of child and family services agencies, of which we are a part through our tribal council.

But with respect to real property and the matrimonial home, I mentioned that there is a history, at least in our community, and I suggest in other first nations, that prior to the matrimonial law being incorporated into the framework agreement and subsequently our land code, there was a practice of caring for children and the protection of children. That, sir—at least I can speak on behalf of my own first nation—is a practice that has met the test in our community, where, particularly after the enactment of our real property law, matrimonial law, any issue or dissension in our community has been clearly answered by our matrimonial law, a law that was passed by the people of the Muskoday First Nation. That law cannot be questioned and is paramount. The foremost interest is for the children, the protection of children, the rights of children.

Another program that we include in a more comprehensive strategy is child poverty. There are a host of concerns and issues that are involved in this that would be part of this issue. This is only one that is encompassed in a host of concerns and issues.

Thank you, sir.

•(1145)

**The Chair:** Chief Louie, did you want to add to that?

**Chief Robert Louie:** Thank you very much, Madam Chair, and thank you very much for your question, Mr. Cleary.

As to the time needed, I will suggest to this committee that perhaps three years may be an appropriate timeframe to complete a matrimonial real property law. I'll give you the reasons.

With regard to my own community, if I may use my community as the example, we passed our land code initially on July 1, 2003. According to the framework agreement, we were to have our matrimonial real property law in place by June 30, 2004. However, we were involved as well with the self-government process, which we succeeded in implementing on April 1 of this year. Under our self-government agreement we have one year from April 1, 2005, to complete our matrimonial real property law, which would bring us

up to April 1, 2006. That represents approximately two years and three months, give or take.

My feeling is three years may be a more appropriate timeframe. I can further elaborate, if Madam Chair would allow me to, as to why this time is needed specifically in my community.

**The Chair:** There are about 30 seconds left for Mr. Cleary.

**Chief Robert Louie:** Okay.

In my particular community we have many valuable private land holdings. My community is working on a weekly basis to deal with such issues as common-law marriages creating property rights; under B.C. family law, common-law partnerships do not create property rights. We're dealing with the issue of how to treat business properties, such as rental properties or commercial properties, and we're considering modifying a provision in our law to deal with this issue.

We're dealing with large family land holdings that are undeveloped, and some non-Indian spouses and their rights. We're dealing with locatee lands versus band lands in general. We're dealing with some lands valued, in fact, in the millions of dollars per acre. We're dealing with a situation in which we've looked at linking the consideration of land interests to the determination of other financial issues between separating spouses, support and custody, division of non-land assets—all of those matters.

We're dealing with the impact of the new law on existing holdings, which will be affected as of the date the law comes into force. That will have a major impact on many families. Setting specific dates when the calculation of interest begins is an issue—all those areas. The apportionment of interest on separation has become an issue. Under B.C. family law, there's a presumption of equal entitlement of property on separation; a court is allowed to alter this presumption based on the principles of variance. We're dealing with those principles of variance, and we're dealing with what the principles of variance should be.

These very complex issues simply take a lot of time. To consult is one thing, and we've got working groups involved. We are also involved in communicating it to our whole membership, both on and off reserve. It is a lengthy process; it does take time, and the issues in fact are very complex.

•(1150)

**The Chair:** Thank you very much.

We'll now go on to Mr. Martin from the NDP.

I'm sorry, I allowed a little more time for Mr. Cleary because Mr. Lunn didn't use all this time, so I ruled that out.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** That's fine. We yield to your good judgment, Madam Chair, as always.

Thank you, Chief Louie, for a very good overview of the state of the situation as it stands. We can tell by your introductory remarks just how complex this is. I'm not sure I feel qualified to even comment on the complexity, nor do I honestly believe it's our business to comment, so I open my remarks by saying I'm sensitive that it may not be the role of a table full of non-aboriginal people in this place or anywhere else to be dictating or making law that affects how you allocate land and resources in your communities.

I guess that's how I'll start my questioning. You outlined the number of first nations at various stages of implementing land codes. Of those that have arrived at land codes, can you tell me how many allocate land by custom and tradition, or by...? If I understand you correctly, you can structure yourself as per the Indian Act, or as per custom and tradition. Is there a clean division? Can you give me numbers as to how various first nations that have arrived at a code have structured themselves?

**Chief Robert Louie:** Thank you very much, Mr. Martin.

We've in fact looked at the numbers. Of those communities involved in the operational and/or developmental phase process as it exists today, approximately 50% of communities have band lands only. The other 50% have what we refer to as CP, or certificates of possession, lands.

I think it is more complex when you have the certificates of possession, where lands are treated as akin to fee simple ownership; that's where the complexity lies. But it's roughly fifty-fifty among those participating today.

**Mr. Pat Martin:** That would probably be 36 scheduled communities. Is that the number you're dividing, so that there are roughly 36 scheduled communities under the First Nations Land Management Act?

You used quite a few different numbers, including 14 original signatories. I remember Bill C-49, which stated there were 14 communities, and many others have indicated an interest in being under the parameters of the First Nations Land Management Act. Our researcher used the number of 36. How do we arrive at that figure? Is that along a certain progress of...?

I'll let you answer.

**Chief Robert Louie:** Thank you very much, Mr. Martin.

The 36 are those who have been on the list for some time now. The names of those first nation communities have been submitted to the Department of Indian Affairs. So the 36 are those who are either in the developmental phase and actually developing a land code, or who were initially on the list, some of whom were approved to participate by Canada. They represent the 36.

The 14 are those who have been operational, with one small exception, my community at Westbank, which is now under self-government. So we remove ourselves from the 14, and there are now 13 communities operational under the First Nations Land Management Act.

**Mr. Pat Martin:** That explains the previous witnesses who were citing 13. I was tempted to correct them, because I was here when there were 14 on the list, and was wondering how that list shrank, but obviously it shrank in a happy way and you, as of April 1, in

Westbank actually have a first nations self-governance agreement, a bilateral agreement.

• (1155)

**Chief William McCue:** If I may add, 36 have signed the framework agreement itself with the Government of Canada.

**Mr. Pat Martin:** Thank you, that is helpful.

**The Chair:** Mr. Martin, the list of the 36 is also in our big white book, in the section on the First Nations Land Management Act.

Mary, the researcher, just assured me of that.

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

I am concerned that while we are about to hear witnesses today from the Native Women's Association of Canada and the Assembly of First Nations, there is a constitutional challenge under way. I guess Chief Tina Leveque, from the Brokenhead Reserve in Manitoba, will be making a presentation on behalf of the Assembly of First Nations. On behalf of the Native Women's Association, in the absence of any matrimonial real property language in the Indian Act or the First Nations Land Management Act, they're arguing in a constitutional challenge. I know they'll explain their logic and rationale when they're witnesses, but it would be helpful to have the views of this group as well.

Do you feel that's justified, and is there an absence in the First Nations Land Management Act of a reference to matrimonial real property?

**Chief Robert Louie:** In our framework agreement on first nations land management, I refer you to paragraph 5.4 thereof, which I believe is very, very clear.

**Mr. Pat Martin:** That's the 1998 amendment.

**Chief Robert Louie:** It's the framework agreement that was adopted into legislation as well, as referenced in the 1999 legislation, the First Nations Land Management Act.

**Mr. Pat Martin:** Right, so 5.4, in your view, covers that.

**Chief Robert Louie:** It makes it very, very clear, or clarifies the intention of what is actually needed on the breakdown of a marriage, and our communities have been abiding by this and working to ensure that all of these issues addressed in 5.4 are being met. It is a lengthy process, as I've indicated.

**Mr. Pat Martin:** But where is the legislative gap then that we keep hearing reference to?

**Chief Robert Louie:** There is a legislative gap in this sense. If a first nation community is not involved in the land management initiative, then they are under the Indian Act. Under the Indian Act there is a vacuum. I think that vacuum is certainly real and it certainly affects a lot of first nations.

I think the essence of what we have attempted to do and are working on, on a daily basis, is to ensure that the inherent rights of first nation communities are in fact recognized. No two first nations can be deemed to be identical. There are different cultures and traditions in all of our communities across Canada, and we believe they must be respected and honoured. In our opinion and that of the communities that have been involved, it's always been felt that the law-making in matrimonial real property laws and in other land management areas must be in fact the desire of that particular community. That's where really the hard work is necessary.

**Mr. Pat Martin:** That's why this lengthy ratification process or consultation. Your point is that the 12 months, as contemplated in the framework, is not adequate in many cases.

**Chief Robert Louie:** That's correct. In hindsight, yes, the 12 months is really not adequate. Many of our first nations have been able to meet that timeframe and have worked hard to meet that timeframe, while others, like my own community for example, simply have not been able to meet that timeframe but are actively working on it and have a lot of our community members actively engaged on a daily basis on this. It depends on the community.

**Mr. Pat Martin:** Yes, I understand. Thank you.

**The Chair:** We now have Sue Barnes from the government side as the last questioner for this round of witnesses.

**Hon. Sue Barnes (London West, Lib.):** Thank you, Madam Chair.

Thank you, chiefs and former chiefs of your bands. Everyone around this table recognizes the hard work you've done to get to this stage. We appreciate hearing your testimony for our education.

Most of you, I think—with the exception of one at the table right now—in your matrimonial process incorporated, at least partially, provincial legislation in your own matrimonial accords. I'd like to understand why you chose to do that. I think, Chief Bear, you're still in the process right now. No? Sorry. Why did you incorporate that, as opposed to starting from scratch?

On the other thing that's a real follow-up, as new people come into the system and get in the lineup, is there any sharing of information with each individual band, with other bands, so everybody doesn't start from scratch, or is it so unique in your own territory that you don't want to do that for some reason? Is there some sort of repository? Is everybody reinventing the wheel? Please lay out the groundwork, because I need that information on the record.

Who would like to start?

• (1200)

**Chief Austin Bear:** I can answer that.

There are two processes. Initially a first nation shows an interest. Chief Robert Louie, the chairperson of the Lands Advisory Board, will meet in what we call a political meeting with the leadership of the first nation. Once beyond that stage, the Lands Advisory Board resource centre provides opportunity for the first nations for assistance in initially explaining to either the lands committee or whoever they wish to be involved at that time the framework agreement, the community process, what is required—developing a community action plan that identifies the process the community will

engage and the developmental funding and technical support that's available to the first nations.

As for first nations in Saskatchewan, the Muskoday First Nation doesn't jealously protect anything that we've done and we are willing to share with first nations in British Columbia, Manitoba, Ontario, or wherever. And likewise, this prevails through the first nations that have gone before and have completed the process. We share information and experiences across the country.

**Hon. Sue Barnes:** Is there a central repository anywhere for your documents that other people can access?

**Chief Austin Bear:** Of course we have it online on the Internet. We have a resource centre office in Kanata, which is well resourced, both in human and technical resources. Also we have one additional satellite office in Saskatchewan. Certainly we are available to first nations for consultation, information, and providing that support, so that first nations are not redeveloping the wheel and planning alone from their initial start.

**Hon. Sue Barnes:** Mr. Seymour, do you want to add anything?

**Chief Barry Seymour (Lands Advisory Board):** Thank you.

Of the first nations that have already developed their laws, I believe there is a lot of consistency in them. I don't know if those laws have been shared with the committee at this time.

**Hon. Sue Barnes:** Chief Whitehead.

**Chief Frank Whitehead (Lands Advisory Board):** Thank you very much, Honourable Sue Barnes, Madam Chair, honourable members.

I'd just like to add to that. When we're talking about laws in our first nation communities, we often look back in our traditions to see how order was maintained. It's something similar to what Chief Austin Bear mentioned earlier about a non-member of OCN being given the opportunity and right to remain in the community with his children in the house they shared. That's the kind of thing we respond to in a fair and just manner, in looking after the interests of the people in the community.

With reference to the provincial statutes, in 1965 Opaskwayak Cree Nation adopted the provincial Highway Traffic Act, simply to bring order or enhance order in the community in the area of concern and responsibility for the safety and well-being of the members.

We do not claim to be the experts in all laws pertaining to safety and the protection of people. We will often look at other laws that are fair and just. In this case, for example, our chairperson of lands management is meeting in Thompson, Manitoba, with our members now.

We have members all over the place—Winnipeg, Brandon, Saskatoon, Prince Albert, Calgary, Edmonton, and Prince George. They range in numbers. It's important for us to reach all of them and get their views and opinions on what they'd like to see in the matrimonial real property act and laws. It's important for us, and that's why it has taken so long to do this.

When we enter into a process like this with the Government of Canada's blessing and encouragement, it's important for the Government of Canada to understand why it takes so long for us to complete the process, because reaching everybody and hearing their opinions is important to us before we make a final decision.

Thank you.

•(1205)

**The Chair:** Thank you very much.

That brings us to the end of our first hour of witnesses. I thank the questioners and the witnesses for sticking roughly to our time limits. We're making this a three-hour meeting today and we have a lot of witnesses to hear from. So I'd like to take this opportunity to thank our first-hour witnesses for the great information they gave us.

I want to thank all of you again for your presentations this morning. We certainly wish we had more time to address some of the concerns the witnesses want to share with the committee.

Chief Robert Louie.

**Chief Robert Louie:** Thank you very much, Madam Chair.

The issue we're talking about is very complex and important, and I know the chiefs and their communities are involved. There are so many things we haven't touched upon that need to be discussed, so if this committee desires, we are willing to attend again and further elaborate.

The last question Honourable Sue Barnes raised is a very important one. The matrimonial real property laws we have right now deal exclusively with the use, occupation, and possession of first nation land and the division of interests in first nation land. We haven't referentially incorporated provincial legislation because provincial legislation applies on all of the other matters. In many cases those matters are interrelated, but it has been the direction of the communities involved that we deal with the real property issues as they apply on reserve lands, as opposed to the non-real-property matters that are covered by provincial legislation, and other matters such as divorce, and so forth, covered by the Divorce Act. This is something we have been very mindful of, and have been so directed by our communities.

**The Chair:** Thank you very much.

We have lunch for the committee members today because we have an extra hour that we're trying to fit in.

I again want to thank those at this part of our meeting this morning. We have so many witnesses to hear from that we're just not able to go beyond the hour we have allotted. So again, my apologies. I know it's a very complex issue, but we're trying give as much time as we can to all the witnesses we're trying to hear. I'm at the mercy of the committee members, who allotted only so many sessions for the topic at hand.

As you can see from the briefing material our researchers have made for us, there is a lot of material to cover. After hearing the witnesses, if the committee members have more questions I hope they can contact the witnesses directly. I hope we'll have time to write a report and take the time to explore further some of the things we've heard from all the witnesses. I know we don't do justice to all

the witnesses who come before us, but we usually have limited time to hear as many witnesses as we can. So I thank you for coming all the way from B.C., Saskatchewan, Manitoba, and Ontario to appear before us this morning.

Thank you.

•(1210)

**Chief Robert Louie:** Thank you very much, Madam Chair, and thank you, honourable members of this panel.

**The Chair:** Thank you.

There are just a few housekeeping things. We have two more hours to go through, so we'll suspend for a few minutes to get the other witnesses on, but we do have a lunch for the members. I don't think I have lunch for absolutely everyone in this room, but we want to make sure the members, the committee staff, the interpreters, the messengers, and the operators get something to eat. We want to make sure those people who want to have lunch get the chance.

Thank you.

•(1212)

(Pause)

•(1222)

**The Chair:** I'd like to call the meeting back to order, please.

We now have the Assembly of First Nations, represented by Chief Tina Leveque. I welcome you to this meeting. I see that you have some people with you, so please take the time to introduce your delegation. We look forward to hearing from you in this hour.

Welcome to our committee.

**Chief Tina Leveque (Assembly of First Nations):** Good afternoon, everyone.

I'm very thankful for this opportunity to be a witness here on this very important subject. I have with me Candice Metallic, associate legal counsel, AFN, and Marie Frawley-Henry, director of international affairs at AFN. Throughout the question period, if any questions of a legal nature arise, I may call upon either one to respond and assist me in that way.

Without further ado, I'd like to go into my presentation on matrimonial real property. Just as a brief history of the matrimonial real property issue, almost four years ago I was a participant in one of the focus group sessions on matrimonial real property that was done through one of the sections of the Department of Indian Affairs, and here we are almost four years later. After that focus group ended, my thoughts were, where do we go from here? Obviously, it hasn't just lain on a shelf and gathered dust, and I'm very thankful for that, and here we are at this level. There has been some movement, and I'm very pleased with that.

With that, I would say thank you for inviting me to be here to speak on this important issue. My name, of course, is Tina Leveque; I'm chief of the Brokenhead Ojibway Nation in Treaty 1 territory in Manitoba. I'm a member also of the Assembly of First Nations Women's Council, and I'm here today representing the first nations and National Chief Phil Fontaine, who is across the hall. Today I introduce Candice, associate legal counsel, and of course Marie Frawley-Henry.

The Assembly of First Nations is a national organization representing first nations citizens in Canada. We are inclusive of all our people: youth, elders, men, women, and our citizens who live on and off reserve. That is becoming an increasingly important element in all our governance in first nations on a day-to-day basis: our on- and off-reserve. The AFN has a women's council that is comprised of representatives from all regions of the country. The chairperson of the AFN Women's Council is Chief Maureen Chapman of Skawahlook First Nation, and she sits as a member of the AFN executive as well. Unfortunately, she couldn't be here today because of previous commitments.

The real issue we're talking about today, matrimonial real property on reserve, is a critical issue and a pressing issue. As I understand it, the interest and mandate this committee has on the matter is reflected in a letter from Minister Andy Scott to the chairperson of this committee. In the letter, the minister states:

I am writing to seek the advice of the Standing Committee on Aboriginal Affairs and Northern Development on how the federal Crown can best address the longstanding issue of on-reserve matrimonial real property as it affects married, common-law, and same-sex couples on reserve.

Moreover, the minister specifically encourages this committee to consult broadly with affected first nations leaders and communities, first nations women, and legal experts.

Of course we agree with the need for such broad consultations, not as a delay measure, but to ensure getting the best information and the best advice. In 2002, first nations chiefs from across the country passed a resolution mandating the AFN to coordinate a strategy to deal with concerns surrounding matrimonial real property on reserve.

In that regard, AFN wishes to take a proactive approach on this issue that will address equality both in the short and long term, but such that any measure will facilitate and accommodate the exercise of inherent right of community collective will in these matters. However, we can't ignore the larger context for this discussion when we consider legislative or other kinds of remedies. They will not work in the long term unless we address the poverty and domestic conflict issues that bring about separation of families. Indeed, the matrimonial real property rights issue is part of a larger agenda.

● (1225)

Recently the Assembly of First Nations undertook an initiative to address on a comprehensive basis the many challenges facing first nations children, women elders, and communities as a whole. The result of our discussions was the presentation of a report on the recognition and implementation of first nations government. This is the context and framework in which we will speak to address our challenges. The report contemplates an approach that is both visionary and also recognizes the need to address issues on an immediate basis. In other words, our approach is based on the fact

that we need to address the long-term solution, but we can take immediate steps to begin making the necessary changes.

All first nations people—men, women, and children—are affected by the issue we are talking about today. There are heart-wrenching stories of people who have suffered displacement, dislocation, and denial of their basic rights. There is uncertainty created by the current legislation, along with an associated jurisdictional gap that has been festering many years, especially since the Supreme Court of Canada cited the cases of *Derrickson v. Derrickson* and *Paul v. Paul*. In those cases the court determined that provincial legislation governing the distribution of real property on reserve upon marriage breakdown was inapplicable.

Problems arising from this situation must be addressed in a timely and sustainable manner, and we believe this can be best achieved through a cooperative process between first nations and government. Having said that, I want to caution this committee against recommending a quick fix or a so-called easy fix. The quick fix is a fragile fix at best, and is likely no fix at all. The chiefs of Canada are clear: we do not want more tinkering with the Indian Act. The act is a source of this problem, and in fact the source of many of the problems we 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.

You may have heard first nations making the same point to this committee during the hearings on the then-proposed First Nations Governance Act. I am not here to revisit that discussion, but some of the statements made during those hearings may help to point the way forward. During those hearings many first nations stated that they would support the repeal of section 67 of the Canadian Human Rights Act. This section shields the Indian Act from the protections provided for under the Canadian Human Rights Act. Repealing it would expose the Indian Act to those protections and provide mechanisms to enforce equality and fairness. In this way we would avoid tinkering with a piece of legislation that is going to wither and die anyway as first nations move toward real self-determination.

Self-determination and self-government should be our guiding principles when we are seeking solutions. The United Nations has stated that one of the key concepts of government and an essential function of government is to protect human rights and property rights and to have the ability to enforce those laws and protections. Law-making is a hollow exercise if we can't enforce those laws.

Any solution must be prospective and must support, strengthen, and affirm the jurisdiction and law-making capacity of first nations, rather than perpetuate the colonial legacy of the Indian Act. The current government policies regarding land and membership procedures have favoured a paternalistic western approach to land tenure, where individual males receive certificates of possession. This directly contradicts first nations communal notions of land stewardship. We anticipate that ultimately first nations will 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.

The Sucker Creek First Nation in Ontario is a solid example of a first nation embracing responsibility for matrimonial real property in a manner consistent with their culture and tradition. This is a community that has made its own law and policy on matrimonial real property, a law that was created by the community and endorsed by the community through a referendum. I urge this committee to review this law, because it is constructive and could serve as a best-practice model for your work and the work of other first nations.

● (1230)

However, here is where we enter the paradox of first nations and federal government relations. Even though the law was fully supported by the community and addresses the gaps and the problems in current legislation, the response received by the Sucker Creek First Nation from the federal government is that it cannot accept the first nations law because it exceeds the bylaw-making powers in section 81 of the Indian Act.

It should be clear that Sucker Creek did not develop and submit its land as an Indian Act bylaw. Its law is an expression of collective community will. The federal government created legislation in the form of the Indian Act, which it recognizes is flawed and unfair, but it cannot accept or accommodate a solution from a first nation, because it does not conform to the flawed and unfair legislation it is trying to fix.

This is why we are advocating for an inclusive and collaborative approach to address this issue, an approach that respects the government-to-government relationship between first nations and crown. This approach must be based on finding acceptable options that work to strengthen and affirm the jurisdiction and law-making capacity of first nations.

Let me repeat what I said earlier. We are not saying that we have to wait for finalization of self-government agreements to ensure the rights of our citizens are fully protected. We do not want Indian Act amendments, but there are interim measures that can be considered, provided it is understood these are interim measures that operate only until first nations assert their inherent jurisdiction and law-making authority.

In our view, there are both legislative and non-legislative options to consider in addressing matrimonial real property on reserve. In the legislative context, one option may be the collaborative development of interim legislation coupled with adequate resources to ensure first nations can implement them in order to provide immediate access to critical family remedies on reserve, while recognizing the inherent jurisdiction and law-making powers of first nations in relation to matrimonial real property.

However, any potential legislation must be a joint first nations and crown undertaking at the onset and must contain some fundamental provisions. For example, the legislation must be enabling rather than prescriptive. It must recognize the laws that have been developed by first nations such as the Sucker Creek First Nation. It must support the development of matrimonial property laws by first nations. The interim legislation would have to contain a sunset clause to ensure that it is truly interim and a non-derogation clause to protect first nations' inherent jurisdiction over these matters.

It would also be advisable to anticipate proposals for reforms in other areas related to matrimonial property remedies, such as enforcement of compensation orders and the need of non-member spouses for interim exclusive possession of the family home.

In the non-legislative context, some first nations have been addressing matrimonial real property issues through their housing policies. If Canada is serious about addressing matrimonial real property on reserve, it would provide first nations with adequate resources to develop such policies, initiate a strong first nations education campaign, and document best practices as a resource for other first nations.

Though our focus must be on long-term sustainable solutions and the broader issues related to first nations jurisdiction, law-making authority, and self-determination, we must have control over the decisions that affect our lives and our communities. The solutions will only be legitimate, and seen to be legitimate, if they come from the community and are supported by the community.

We are recommending to this committee that resources be provided for first nations to draw on existing work and share best practices so they can begin to design their own policies and laws that will correct the problems and fill the gaps.

Furthermore, the Assembly of First Nations is fully prepared to work with the federal government on any mandated entity to find solutions that work in the best interest of first nations.

● (1235)

Equally important, the Assembly of First Nations is fully prepared to work with the Native Women's Association of Canada and any other organizations to find comprehensive and lasting solutions that will work in the best interests of us all. We need efficient and effective action, but we do not need the quick fix; we need the right fix.

In addition to this, I'd like to bring to you a community perspective. We gave the example of the Sucker Creek First Nation, but this is affecting all our first nations in one way or another to one degree or another on a daily basis, even as we speak right now. In Brokenhead, I know, we don't have a documented paper that says this is how we address this when it comes up, but in the last two decades we have been exercising best practices in addressing this when it has come up.

We are now in a community consultation process in our housing policies. We have several housing policies, three that are going through the community process now, and in those policies we address situations like matrimonial real property.

But before this process started, we did have a practice of listening to the couple whose marriage was breaking up. What we do in Brokenhead is that whoever has care and custody of the children will receive the family home, and that has worked well. We don't get involved in how they come about determining who gets care and custody of the children. We say, once you have decided who has care and custody of the children, then that person will get the home. That's just the way we have done that in practice. It was fair and less disruptive to the children and less traumatic; they're already going through so much.

But on a more, you could say, personal or individual level, I can say it does not seem strange this would happen. For any society or first nation—in any nation—the place people learn their values and develop their character and their personality is in the home at first. It's where they're taught. When a family home breaks up, it's very traumatic on an individual. It's traumatic even on a community, and then when you have many, many, many homes, it affects us at a national level.

We see that in the divorce rates in secular society and in the breakup of homes and marriages. The onslaught is coming against homes for us as a nation in secular society, but it is even more prevalent in first nations. When you don't have that foundation to build character and there's instability, it affects you as an individual and it affects you as you grow up.

So as to the effects of matrimonial real property, to bring some kind of stability and some kind of structure and order to this whole issue is very important. As a woman and a mother, having gone through a broken marriage at one point and seeing the effect on my children in the long term, I can appreciate the issues that have been brought forward here on matrimonial real property.

We must work together collaboratively to bring about some kind of change that will be mutually respectful, and that is why we are here for this presentation today. I'm hoping this is just the start of much broader consultation. We can go a long way with this.

●(1240)

I appreciate that, but I must also tell you there are many first nations like us that I know of in Manitoba that do practise what we do in a fair manner. Yet in all honesty, I must say there are first nations that don't, though I'm thankful that those first nations that don't are fewer than those that do. The ones that do that belong to our tribal council have a mechanism to address it in a fair way. I know you are receiving things from maybe the legal perspective and

reports at the upper level, but you receive very little of the day-to-day practices from first nations on a day-to-day basis.

So I want to assure you that....Sorry.

**The Chair:** I'm afraid I'm going to have to ask you to give a chance to the committee members to ask questions. I've let you go for twenty minutes, and the presentation time is about ten. I want to make sure committee members have a chance to ask questions. You can add in the rest of your presentation in your answers.

I'd like to start with Mr. Jim Prentice for the Conservatives.

**Mr. Jim Prentice (Calgary Centre-North, CPC):** Chief, I'd like to thank you first for coming and then for your constructive thoughts on this subject.

We're more interested in hearing from you than from me and the committee members at this point. We're here to learn from you. I wonder if you might go into some more specifics about how you would suggest we approach this particular study and this particular problem. I don't think you've quite finished your presentation.

●(1245)

**Chief Tina Leveque:** More specifics? The word would be "consultation" in whatever form we can discuss this: certainly, consultation with political leaders, but more importantly consultation from a legal perspective and also from the human perspective, directly with people right at the reserve level and in urban areas as well.

**Mr. Jim Prentice:** You've spoken of mechanisms outside the Indian Act, which you described as part of the problem. I'm inclined to agree with you in that respect. What sorts of solutions do you see outside the Indian Act?

**Chief Tina Leveque:** Well, I would ask Candice to jump in at any time—or Marie.

**Mr. Jim Prentice:** Please.

**Ms. Candice Metallic (Legal Counsel, Assembly of First Nations):** Thank you.

In our presentation we've provided some options; at this time I don't think we're interested in endorsing particularly any of the options. We just want to approach this in a very creative manner that ensures first nations are involved with the development of the solution, because based on what Chief Leveque has stated and what you will hear across the country from the chiefs, it's essential that the solutions come from the community.

As Chief Leveque has stated, many communities deal with this on a very pragmatic level because they have to, so although the Indian Act doesn't provide for any specific authority to make bylaws, they've had to look at other ways to address the problem on the ground. Many of them have chosen to do that through their housing policies and citizenship policies. You've heard just previously from the First Nations Land Management Act chiefs; that's one mechanism first nations have chosen to try to address this and other land-management-related problems.

There are some interim measures, in terms of interim legislation, but we want to be clear that any type of interim legislation—not amendments to the Indian Act, but a specific piece of interim legislation—has to be interim in nature, because essentially first nations will strongly assert we possess the inherent jurisdiction to deal with all the matters falling within the confines of our law-making ability within our communities, our traditional territories, so that has to be respected.

We laid out a few options in terms of interim legislative measures, such as ensuring there's a sunset clause. We want to ensure the legislation is enabling, rather than prescriptive, so it assists first nations that—like Chief Tina Leveque's community—have a practice of dealing with these issues, but may not have had the resources to put it down in written form, in laws and policies, and recognizes communities like Chief Pat Madahbee's community of Sucker Creek in Ontario; this enabling legislation must recognize the laws they have already created in a very legitimate way.

That's one of the options we thought might be useful for the committee to consider. We've also suggested that.... This issue has been outstanding since 1986, essentially. The problems arose long before that, but in 1986 the Supreme Court recognized, in the *Derrickson v. Derrickson* and *Paul v. Paul* decisions, that provincial laws dealing with real property don't apply on reserves. Nineteen years have passed since anything has been done.

One of the options we've proposed is that Canada take a very proactive approach in educating communities about what the non-legislative options are, ensuring communities have capacity to address policies, to create the policies, to engage in the community consultations, to develop these laws and policies, and perhaps to develop a best-practices manual that could be used by other first nations, not necessarily as a template—I don't think we would advocate that—but as a model, so if first nations needed some guidance as to what the options were, those would be available.

• (1250)

**The Chair:** Mr. Prentice, you have some time left.

**Mr. Jim Prentice:** In this collision between collective rights and individual rights, coupled with our Constitution and the charter, how do you weigh all of that? In terms of the way forward, how do you think we should be looking at any proposals?

**Ms. Candice Metallic:** That's a very complicated issue. I would not propose to answer it in a way that would address all first nations, because I firmly believe it's up to each community to determine how they are going to address the individual rights within their collective communities.

A lot of times I feel there is an assumption first nations don't take into consideration the collective rights and the rights protected in the

charter, so I think essentially it's up to the individual communities to determine how those rights are going to be addressed within their spheres of jurisdiction.

**The Chair:** You have time left if you want to use it.

**Mr. Jim Prentice:** That's fine.

**The Chair:** Mr. Cleary.

[*Translation*]

**Mr. Bernard Cleary:** Thank you, Madam Chair. I wonder whether I should thank you when you cut me off at the end.

Chief Levesque, I myself live on an Innu reserve in Mashteuiatsh. I'm obviously very familiar with this problem, although undoubtedly not as much as you. I think it took a female chief to give us as clearer a picture of this entire question. You did that very well. I thank you for that because it will greatly assist us in taking a position; that much is clear.

I also think you're realistic in suggesting that we not move to resolve this issue too quickly because it's too serious and too important for the future of children, first of all, and for the future of our communities and the women who live there. So I think that's very wise advice.

I'm going to focus more on another part of your speech. With Aboriginal women from across Canada and elsewhere, you see that the government should work with the Assembly of First Nations in deciding on a certain number of major principles, and thus to do a real clean-up, which could also be based on a consultation in each of the communities or each of the nations. You obviously say that it will take a certain amount of time to do that. Time appears to be extremely important, but, from the requests we've received, particularly from certain women's groups, it also seems that people want this to be resolved as soon as possible. But it will no doubt take a few years; it can't be resolved in six months or a year.

Have you had the opportunity to think a bit about the time it will take to arrive at effective solutions and to pass the necessary legislation, which won't be just adjustments to existing statutes, which are completely obsolete on these matters? Ultimately, I'm asking you how much time you think it will take and how we can work on our reserves to reach solutions.

[*English*]

**Chief Tina Leveque:** First of all, I would not even begin to guesstimate an exact time, other than to say that, as well as a time, we need, as a parallel, resources to educate our people on a ground level and in the major urban areas, because it affects both on and off reserve. A lot of our people want to move back to the community. This is one element where I know, on a personal basis, they don't want to move back because maybe they had a bad experience in their past, but surely we need the financial resources and the human resources to be able to deliver consistent education and awareness, which will eventually, maybe, lead to legislation.

If we do get the adequate resources, we may not need legislation. Certainly I could throw out times such as maybe 10 years or 15 years, because these things move slowly, but I don't want to say that's how much time we need. I don't want to put us in a box, because as you know, things move very slowly when it comes to legislation and things like that.

This is a national issue, especially in first nations. I know the male counterparts of chiefs, talking realistically, at first were hesitant to approach the subject, but because of more and more women coming on stream in committees within our communities, and more and more women taking on the roles of leadership in our communities, certainly that has gone a long way to advancing women's and children's issues in first nations. I applaud the women across this country who have taken on the challenge to go into places of leadership and areas of committee work and things like that. It has really advanced women's and children's issues.

Candice just wrote me a note saying it's already being addressed in some first nations through policy development. That's true. Going back to our development, we should have those finalized within the next year in our housing policy, to address that element in our policies. But it doesn't just stop at housing policy. It reflects in child and family, it reflects in health, it reflects in policing, and it reflects in justice. In every element and every program in our first nations, it's there.

Thank you.

• (1255)

**The Chair:** Thank you very much.

That brings us to Mr. Martin, from the NDP.

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

Thank you, Chief Leveque, for being here, and welcome, a friendly face from Manitoba.

As you have noticed, we're wrestling with this possibly as much as anybody has. I keep coming back to part of your remarks where you talk about the possible clash of implementing any kind of formula or template—or model, even, in softer terms—in comparison to the inherent right of self-government. Even if imposing provincial guidelines or real property issues is a default in the absence of the first nations developing their own code, doesn't that impose conditions on a community? When the timelines are unreasonably short and the default position is the imposition of a code that's foreign to tradition and custom, how do we get past that? It seems like an almost insurmountable problem.

If we embrace the inherent right to self-government, if we're going to be true to even the 1995 declaration that we acknowledge real property issues to be integral to the right to self-determination, and if we acknowledge that the viability and success of first nations communities is inexorably linked to their degree of self-determination, are we not treading on the possibility of interfering with that right by whatever way this committee ends up recommending?

• (1300)

**Chief Tina Leveque:** Inevitably, there are always going to be clashes. That's the nature of humanity—one group opposing another group: one says yes, one says no. But the one thing that humanity is

gifted with is the power of reason. So, yes, I know there are going to be challenges and opposition maybe, but I'm still of the notion that we can get beyond that with the power of reason. That's the reason we're here today. We've made many advancements in Indian country on many issues, and I see this as no different from any other issue. We will advance beyond this. In spite of the obstacles and the challenges we face, we can get beyond it. I truly believe that.

**Mr. Pat Martin:** I appreciate both the tone and the content of your remarks.

The equality provisions go to the basis of what we are working towards here, obviously. We as a nation and we as a people and as first nations adhere to equality provisions, but there are cultural sensitivities that get overlooked sometimes.

There's one example that keeps coming back to me. I met with some Ojibwa elders around the time of the Charlottetown accord debates, when aboriginal women were quite rightly sounding the alarm that if some of the Charlottetown accord provisions went forward, aboriginal women could be left out. And I remember one elder saying, "In my community"—she was from northern Ontario—"the women aren't even allowed to run for office". Everybody sort of shook their heads and said it was terrible. Then she said, "But the men aren't allowed to vote". So what seemed like inequality had somehow been figured out over the centuries, had been balanced out.

I guess I'm asking a question here, but I'm making a comment too. I'm really apprehensive as we move forward with this study that we're being clumsy perhaps, crudely entering into an area that we know nothing about. It smacks of colonial arrogance for this body to be interfering with something we've only recently embraced as the inherent right to aboriginal self-government under section 35 of the Constitution Act, 1982. This is a recent landmark policy ruling by the federal government, and it just seems contradictory, in a sense, to even be having this debate.

**Chief Tina Leveque:** That's all the more reason for collaboration.

**Mr. Pat Martin:** I suppose.

**Chief Tina Leveque:** It's essential. We can't go forward without you and you can't go forward without us. That's the basis of collaboration.

The elders are right, you know. My husband is the head of the household, as someone told me. I said, "Yes, my husband is the head of the household, but I'm the neck".

**Mr. Pat Martin:** In my own household, I make all the big decisions and my wife makes all the small decisions. In the 25 years we've been married, there haven't been any big decisions to make. I'm still waiting.

**Chief Tina Leveque:** So women have a powerful influence.

**Mr. Pat Martin:** Thank you.

**The Chair:** Thank you, Mr. Martin.

I have Mr. Valley for the government side, as the last questioner. Mr. Valley.

**Mr. Roger Valley (Kenora, Lib.):** I gather that means the chair is going to speed me up here.

Thank you for coming out today. I especially was glad to hear your last comments about collaboration, because we need your help. With us providing the resources and with your thoughts, we can move this forward.

You mentioned the communities. You mentioned that not all communities are at the same state in the country or at the same level in terms of what they do with real property or matrimonial rights and everything else. You mentioned—I think it was either your home community or a community you're very aware of—that the consideration for the home depends on who has custody of the children. How is that arrived at, with your information from across the country? My question is particularly related to the remote sites, the sites that are strictly accessed by air. What information would you have on those? How do they decide who has custody of the children?

• (1305)

**Chief Tina Leveque:** That's a very good question. In our tribal council area, there are two very northern first nations accessible only by air or winter road. My husband's originally from one of those communities, so I'm aware of how they handle some of these issues. They're lacking in knowledge at the ground level. They're lacking in knowledge about their rights. When they become aware of their rights, they are often surprised. Education and awareness is the key in those remote communities, for the women and children and even the men.

An extended family member, in the breakup of a home, demanded that a woman give him all the child tax. I made her aware that she didn't have to. He told her that she had to give it to him by law. Once she was aware, she was able to go to the court. They use the courts a lot in the fly-in communities. They have travelling judges who come in two, three times a month. But ignorance of their rights is a great deterrent for some of them. Once they know, though, they're able to speak up about it.

**Mr. Roger Valley:** I'm from the riding just east of you, the Kenora riding, which has a lot of remote sites. So it's always a concern. You mentioned best practices. There's some concern over a template or a model that we could use in the short term. Chief Leveque, you mentioned many times that there's no quick fix here, but I don't know that we can wait 15 or 20 years, after the frustration of waiting 19.

Is there not a possibility of finding something that works and using it, while the communities develop their own processes, their own answers to these questions? Even with the best scenario we have right now, we're talking decades. Fifteen years is too long to put off correcting some of these issues. Has any thought been given to short-term solutions?

Also, you mentioned human nature—that not everyone cooperates all the time. What do we do if there are some communities that do not want to move forward on this issue? You mentioned that common sense and reason will prevail. But if that doesn't happen there will be people suffering.

Those are a couple of big questions.

**Chief Tina Leveque:** I can only say what we've done in Brokenhead. At some point in Brokenhead's past history, the leadership did not want to advance. They were comfortable in their status quo. Again, it was women who gathered together to change things, once they were empowered with knowledge. The key here is empowerment, an awareness of rights and liberties. Something happened in this group of women. They just pressured and went about until they got what they wanted. They persevered.

An awareness of their rights and liberties, of what they can and can't do, is extremely important to those communities at the ground level. That's why we need resources. We need to change that status quo.

• (1310)

**Mr. Roger Valley:** Does the Native Women's Association of Canada have a different philosophy on how they would approach the remote communities, where isolation is a severe problem? Is there a program that reaches out, or one that asks for the resources to reach out, to make sure that the individuals in these communities know these issues?

**Chief Tina Leveque:** At Brokenhead we piggyback on other meetings and take advantage of opportunities to get on our little soap box and inform people of what's happening. That's how we do it. But it's not adequate. We need to get more global and more consistent.

**Ms. Candice Metallic:** To answer your question about the short-term solutions, I would caution against trying to develop any template that would be applicable across the country, because—as I'm sure you appreciate—all first nations are distinct in their traditions and in their approaches. Some first nations look to the traditional practices of addressing property issues to deal with matrimonial issues. What I think you will see happening if you go down that road or you recommend that type of solution is the chiefs aren't going to accept it, because it's going to be another imposition. It's going to be another encroachment on what they see as their jurisdiction.

So I would caution against that type of approach for those reasons. I don't think it will be well received among the first nation leadership in the country.

**Mr. Roger Valley:** One last question?

**The Chair:** I'm sorry.

I want to try to be fair to all the witnesses who are appearing before us, because the next hour will be a non-flexible hour because of the question period that everyone will have to go to. So I don't mean to be rude, but I want to be as fair as I can be to all the three slots that I have.

I want to thank you very much for your interventions this morning and the very insightful words you had for us. Thank you for appearing before the committee.

I will suspend for a minute at the very most, just to change the witness names.

Thank you, Chief Tina Leveque.

•(1312) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1315)

**The Chair:** I'd like to call the meeting back to order, please, since we're very limited for time right now.

I want to welcome the next set of witnesses before us. We have the Native Women's Association of Canada, represented by Beverley Jacobs this morning. She has with her Cherlyn Billy, but I also recognize Marilyn Buffalo. Thank you for coming to speak to the committee this morning.

I'd like to ask you to start with your presentation, and then there will be a round of questioning from the members shortly after.

**Ms. Beverley Jacobs (President, Native Women's Association of Canada):** [*Witness speaks in her native language*]. I bring greetings of peace and wellness to all of you, as well as provide you with my name in my language.

[*Translation*]

**Mr. Marcel Gagnon (Saint-Maurice—Champlain, BQ):** Madam Chair, the interpreter would like to have the presentation.

[*English*]

**The Chair:** You are not getting translation?

[*Translation*]

**Mr. Marcel Gagnon:** It would help him do his job.

[*English*]

**The Chair:** I don't think there was a brief given to the committee. I don't have one. I just have oral presentations. As far as I know, I don't have one.

Thank you.

**Ms. Beverley Jacobs:** In my introduction of my name, I said it means "she's visiting". So I'm here to visit you—to present our issues that are affecting aboriginal women in Canada and to provide solutions to address these issues.

I'd like to thank the Standing Committee on Aboriginal Affairs for ensuring that I'm able to speak to you about these pressing issues of matrimonial property on reserve and how it's affecting aboriginal women.

We've had a long record of seeking the changed conditions affecting the quality of life for aboriginal women. We have a particular interest in seeking justice for aboriginal women who are having to live in poverty and continued marginalization.

We also have a particular interest in seeking justice for women who are victims of racialized and sexualized violence. We all know the deplorable situation regarding the issue of the lack of recourse for first nations women when they separate or divorce from their partners.

This issue wasn't even considered by the federal government until the Native Women's Association brought a legal challenge under the Charter of Rights and Freedoms against the federal government because of the absence of family law protection for women and children on reserves.

We know this issue was already addressed by the Senate committee on human rights. I presented at this committee prior to my position as president of the Native Women's Association.

We also know that the Department of Indian Affairs is studying this issue. We also know that this issue is being addressed at international fora. We, as a national organization, have been presenting it at various international meetings. We are aware that the UN specifically addressed this in its UN-HABITAT report most recently.

So we believe this issue has been researched enough. We all know the issues and something needs to be done immediately. We are having to deal with a political and legal system that remains stagnant. When a new government is put in place, new politicians and leaders need to be educated on this issue.

We already know that the Supreme Court of Canada has made a decision regarding the matrimonial home that has affected all first nations women who are separating. They have no legal recourse that any other first nations woman—or any other woman, for that matter—has who is living off reserve.

First nations women and children living on reserve are the most vulnerable as a result of having their most basic human right violated: not having a home. As noted in an article written by myself and Mary Eberts, we stated that this situation was as a result of almost two centuries of Canadian law-making both before and after Confederation that has had as its explicit objective the assimilation of indigenous peoples.

The Indian Act, originating in pre-Confederation legislation, deliberately created landholding and governance systems for indigenous peoples designed to undermine their traditional structures and practices to the point where they could not resist assimilation. The Indian Act deliberately barred women from a role in these debased systems.

I also noted in a report by Indian and Northern Affairs Canada that the minister has consulted with aboriginal leaders but has not consulted with me or the Native Women's Association of Canada on this specific issue. I believe the issues specifically affecting first nations women have to come directly from the women, directly from those women and children who have been affected by this lack of legal recourse. They will tell you their stories and they will tell you what they're dealing with.

Many first nations women living on reserve, when having to go through a terrible separation or divorce, are also dealing with issues of violence—family violence, domestic violence, whatever you want to call it. Their children are most affected by having to live through these terrible situations, and when there is no recourse for them to stay in their own homes, this creates even more detrimental situations for the women and their children.

I receive calls from women who are being evicted from their homes. They are mostly poor and they have nowhere to go. Many are forced to live in urban or rural areas and this sometimes results in even worse situations.

● (1320)

Violence against aboriginal women in this country is at its most critical level. Aboriginal women suffer from all social, economic, cultural, political, and civil problems that breed violence, such as post-colonial structural inequalities, racialized and sexualized violence, poverty, lack of justice, low education and employment rates, little or no political participation, as well as a lack of adequate access to matrimonial property rights.

High rates of violence experienced by aboriginal women have negative impacts on children and youth, having the effect of perpetuating the cycle of violence through involvement in gangs and street exploitation, for example. Gendered racism is in part responsible for such high rates of violence against aboriginal women. If aboriginal women were valued, the high rates of violence against them would not be tolerated by any community. This pattern of oppression occurs within aboriginal communities, and it occurs in urban and rural areas. Aboriginal women are objectified and abused based on their status in society. Aboriginal women are specific targets of violence and abuse.

We have estimated that over 500 aboriginal women have gone missing or been found murdered. Despite these shocking numbers, society remains silent. Some of these women may have been directly affected by the impact of legalized racism, such as the Indian Act. They were affected because of residential schools, the child welfare system, and the sexual discrimination in the Indian Act, and they may also have had a lack of recourse to their family home. In other words, their lives bore all the markings of the violence of colonization.

In response to the issues of violence against aboriginal women, and responding to these critical numbers, the Native Women's Association has launched a successful Sisters in Spirit campaign. We have called on the federal government to fund research and education campaigns to end violence against aboriginal women, and these issues would be addressed in that educational campaign. It is an initiative by and for aboriginal women, for our communities, for our families, for our men, for our women, for our children. This isn't just a women's issue. This affects all members of our communities and it affects the specific issue we are addressing today.

With respect to specific family law issues, when we're talking about first nations housing policies and how custody orders apply on reserve, it is a good idea, but historically the custody orders are still based on who has power and control. We're still talking about a violence issue, because men still have power and control. They can take control and take advantage of that situation, taking the children

so that they have the home. The children end up being in the middle of this problem.

It is the position of the Native Women's Association that specific legislation has to be passed immediately on an interim basis. The issues within first nations communities need to be addressed. Our lawyers are working on drafting a possible piece of legislation, and we would like to use that in consultation with our aboriginal women in remote areas, urban areas, first nations communities, and all across the country. But we need the resources to be able to do that, because we don't have the resources to do that.

We cannot wait for the Indian Act to be amended; we know how long that takes. If there's a new election we'll have to start all over again, so we are always having to deal with that situation in first nations communities because we are dealing with this political, legal system.

We are aware that there is a move to repeal section 67 of the Canadian Human Rights Act, which exempts status Indians from the human rights legislation, in order that the Canadian Human Rights Act will apply. This is relevant, because many first nations women have no recourse at all when their rights are being violated in their communities. They have no recourse to challenge their band councils for discriminating against them and for forcing them out of their own communities. We demand basic human rights for our women and children.

Thank you for listening.

● (1325)

**The Chair:** Thank you very much.

I thank you very much for sticking within the timeframe so that I can give time to the committee members to ask questions.

Mr. Prentice, we'll lead off with the Conservative Party.

**Mr. Jim Prentice:** Thank you, Madam Chair.

Let me just welcome all of you here. Firstly, Cherlyn Billy, we don't really know each other, but welcome.

Beverly Jacobs, welcome. You are a very well-respected person, and I'd like to speak in a few moments about your association.

Marilyn Buffalo, welcome. Marilyn is an extraordinarily well-known and well-respected person, who has done great work for her people and the Native Women's Association over many years.

We're privileged to have all three of you here with us today.

I'd like to go back a bit. I was struck, Beverley, by one comment you made relating to the consultation you've had or haven't had with the minister. Did I understand you to say that the Minister of Indian Affairs has never consulted with you as the president of the Native Women's Association on the whole issue of matrimonial property? You've never sat down with him, or you've never had a discussion?

**Ms. Beverley Jacobs:** Well, we've been trying. Actually, our focus has been on the Sisters in Spirit campaign in the last little while. I've been trying to set up meetings, but they haven't happened yet.

**Mr. Jim Prentice:** Has there been any funding forthcoming for your Sisters in Spirit campaign?

**Ms. Beverley Jacobs:** Well, that's what we're working on. Our initial funding from the Department of Indian Affairs was an initial \$150,000, which we were originally told would be \$200,000 to the end of March this last fiscal year. As part of the package deal that we had discussed, we would accept \$5 million over five years. We had a process we were working on for an announcement on February 14, which did not happen. We had families come to Ottawa during that weekend who were ecstatic or happy thinking that something was finally going to be done for them. To be told in the eleventh hour on a Friday afternoon that it wasn't going to happen, they were quite disappointed and upset; it was a blow to our families.

All we were asking for was an announcement that funding was coming.

**Mr. Jim Prentice:** So that announcement was cancelled on February 14?

**Ms. Beverley Jacobs:** That announcement was cancelled. I would have to say that as a result of everything that's happened so far, we are working on a five-year workplan, but there hasn't been anything specific to us in writing saying "You have \$5 million over five years".

• (1330)

**Mr. Jim Prentice:** So as we sit here today, you're no further ahead than when you started?

**Ms. Beverley Jacobs:** We are assuming that it's coming, because we're working on a five-year workplan. If we weren't working on a five-year workplan, what's the point?

**Mr. Jim Prentice:** If I could come back, Ms. Jacobs, to the question of interim legislation, you were very clear that you think the government needs to proceed immediately with interim legislation to protect women and children. Without getting into specifics, it would be fair to say we've heard from other witnesses who take the position that the committee should proceed much more slowly than that, and that there should be consultation, for lack of a better term, however extensive, with first nations people across the country. How do you reconcile your position with what we've heard from some others?

**Ms. Beverley Jacobs:** I think what I was saying was that if we drafted the interim legislation, we could use that legislation to consult with the communities, to bring it to the communities and get their responses, and to hear what is actually happening and whether it's going to be useful. We would also, at that time, consult within first nations communities, with women, with youth, because they're also being affected, to get a direct answer from first nations communities, because it may not even be something they would

want. We're saying it should happen immediately, but we still think that the communities need to be consulted, even before anything is....

**Mr. Jim Prentice:** Okay. But if this were to come together in a way you would be satisfied with, you would like to see interim legislation or draft legislation arrived at, followed by consultation across the country on that draft. Is that fair?

**Ms. Beverley Jacobs:** Yes.

**Mr. Jim Prentice:** I know that you have some very capable lawyers working with the Native Women's Association. Do I understand that you're offering to put before us draft legislation that we could consider?

**Ms. Beverley Jacobs:** Yes, this is what we're working on. I think if it comes from the organization and it comes from our board—because it has to go through our national board as well, so it will come from the whole national organization and representatives in its feedback, even before we bring it to you—then we have the organization itself approving what needs to be done in order to bring it to the community.

**Mr. Jim Prentice:** Well, I might encourage you with those efforts on behalf of my colleagues and myself. The chair could clarify just how many more meetings we have to deal with matrimonial property, but the sooner you're able to put that in front of us, the sooner we would be able to act on it.

As a committee, I think it's fair to say, we're obviously strongly interested in the position and the specific idea of the Native Women's Association, since the whole purpose of this legislation will be to protect native women on reserves. So what you say has a direct bearing on where we're going here.

I'm quite anxiously, personally, with my colleagues, that we have your thoughts in front of the committee, in writing, as quickly as possible.

I don't know, Marilyn or Beverley, if you'd like to address that.

**Ms. Marilyn Buffalo (Member, Native Women's Association of Canada):** Thank you.

I'm happy to be here. I feel like I've been in a time capsule. As previous president of Native Women's Association of Canada, I see that there's been really no progress made. As a matter of fact, we've regressed on this issue.

I want to also explain that I have not been inactive on indigenous women's issues. This past May I chaired the Indigenous Women's Caucus at the United Nations in New York, at the indigenous peoples' forum. So I am up to date as far as things go in Canada and am hearing and listening to voices elsewhere.

I think that Canada has a lot of work to do. This is an issue that not only impacts on reserve, but has a direct impact on what happens off reserve. This is a provincial problem. As well, every province in this country better take note of that. Yes, this is a federal issue that was caused by the Indian Act legislation that's national in scope and that we are still fighting to this day. The Indian Act is the worst thing that ever happened to our people. The minister still has a direct say on the day-to-day business that goes on in our nations. The women are more and more marginalized. We are poor. The native women in this country are forced to live on nothing. The provinces are clawing back on funding. There's no way we can ensure that funding is there for health, education, and for the survival of the children. If the women are poor, then the children have a lesser chance of survival.

Look at the statistics today with a report released today. Ladies and gentlemen, I encourage everyone of you to read it. It was not a report that anyone could be proud of. Rudolfo Stavenhagen, who toured Canada, issued a report today that everyone in this committee should read. It's very damaging to Canada and its record on keeping up to date.

What happened was this Liberal government continued to undermine the Native Women's Association of Canada by forming NAWA, which we call sometimes not so lovingly the Nault Aboriginal Women's Association. It was created by Bob Nault. Rather than deal with this issue head-on, this government went directly to a disgruntled group of individuals and created another group, and funding went to them, so that this issue never got dealt with.

Yes, I am very passionate about this, because I too as past president should be submitting a phone bill to the minister's office for all the calls that I get day and night from women who are in dire straits. I must also say I'm here as an individual, as a concerned mother and grandmother.

There are people out there who will take the hard line and will say there should not be any legislation. You go to the senior high-level meetings in this country and the premiers and the Prime Minister and the ministers of justice and nobody has an answer to this problem. Yet the statistics rise. In the cities of this country we have youth who are organizing themselves. We've been warned about this by the royal commission report. We have report after report. When I was president of native women, we did all the legal work for you for nothing—for the government, for all of those first nations that were involved in the First Nations Land Management Act—and we were laughed at and ridiculed in public. Nothing has moved since.

So I encourage you to fund the Native Women's Association of Canada, which has the spiritual and the intellectual capacity to bring before this committee and before this government a piece of legislation that everyone could be proud of and live with.

Thank you.

●(1335)

**The Chair:** Thank you very much, Marilyn.

We'll now go on to Mr. Cleary.

[*Translation*]

**Mr. Bernard Cleary:** Thank you, Madam Chair.

Thank you, Mesdames, for coming to meet with us today. Obviously, we always learn things when we meet with you. We always think we know to what extent Aboriginal women are "mistreated" in this matter as a whole, but every time I have an opportunity to meet with you and to hear from you, I learn something new. In my view, today you've shed light on part of what was unclear.

This issue poses a problem for me. On the one hand, there is a group of women who are in a hurry because they think this should be resolved quickly, in view of the scope of the problems. On the other hand, another group is telling us that we can't go quickly, that we have to take the time to do it, and so on. I believe both positions are real, true. However, the fact that you're proposing your temporary, interim bill to us today solves my own problems. Ultimately, we could quickly pass an interim bill, which would solve the problems of the group that proposes it. We could also respond to the other people who say this is a complicated problem that should be studied in greater depth.

In my opinion, the solution you put forward is acceptable as soon as possible. There's obviously the entire funding aspect. That's mainly the problem. To prepare a bill, we need money. We also need money to work with you. I think we should try to see, each on our own side, how we could support you in this regard.

Personally, on behalf of my party, the Bloc Québécois, I'm prepared to support you and even to pilot your bill so that you can achieve your objectives, which I think would help us move forward on this issue. We can support you.

You've undoubtedly thought about the content of this bill. So I'll ask you my question. Can you tell us about it in somewhat greater depth and tell us what this bill should cover?

●(1340)

[*English*]

**Ms. Beverley Jacobs:** We are just working on the various areas of the legislation now. We're talking specifically about issues of violence. We have to talk about that. We have to talk about the custody orders and the family law issues that need to be addressed. We need to talk about the housing policies on reserve and how they're going to be affected.

I don't really want to get into details about the legislation specifically because I haven't really had a chance to even consult with our lawyer who is drafting it right now. She is putting it together, and she is working on it as we speak. So I would like to talk about that maybe in more detail at another time.

**The Chair:** There is a little bit of time left if you want to share it.

Mr. Gagnon, go ahead, then, please.

[*Translation*]

**Mr. Marcel Gagnon:** My colleague just said he learns a lot when he meets with you; the same is true for me. There are Aboriginal communities in my riding. When you talk about the problems you encounter, you undoubtedly know, because you represent Aboriginal women across Canada, that we also meet them in our communities, back home.

What fascinates me somewhat when I hear you—and this is also true for the other group we just met earlier—is your patience because the issues you defend are known issues. They haven't emerged recently; they're known. Every time I go to meet Aboriginal people in my riding, I encounter the misery and problems you have. I see how slowly things move. When you mentioned that you're asking for money, for example, to try to defend yourselves and to consult your communities, and that people are petty with you when there's the sponsorship scandal, that makes me... I won't say the word, but there's a little violence in me, a lot of violence.

Thank you for waking us up once again. Together with my colleague and all those who are concerned about the situation—I doubt there are any opposite—I hope action is taken as soon as possible. Count on us to support you in this matter.

You talked about an act for consulting purposes. Should there be an act, or would consultations in the form of a White Paper, for example, enable you to develop your own act?

● (1345)

[*English*]

**The Chair:** We don't really have time. Perhaps we can carry on with the next questioner.

**Mr. Marcel Gagnon:** Okay, thank you.

**The Chair:** Mr. Martin is next, but seeing that he's not here, I'll go on to Mr. St. Amand.

**Mr. Lloyd St. Amand (Brant, Lib.):** Thank you, Madam Chair.

Thank you to the witnesses for presenting today with dignified passion, which is always the most persuasive.

We've heard from others who have talked about a collaborative approach, a consultative approach. That implies more time. I get the very clear impression from you that because of the power imbalance, it's a little bit like mediation. Mediation is futile if the two parties are not equally balanced. I presume that, having thought it through long and hard, you have reached the firm conclusion that legislation is required, that we can consult until the cows come home and the problem isn't going to be fixed. Is that the case?

**Ms. Beverley Jacobs:** I think what I'm saying is that on an interim basis we're dealing with legislation. We would like to ensure that legislation is passed. In order to do that, we need to consult with first nations communities, with our women all across the country. We are hoping that it would be done, when I was talking about immediate, in the next two years. We're talking about a process that we have to go through within the communities themselves.

This process itself in passing legislation takes time anyway. It takes how long for legislation to be passed? So if we have a draft of the legislation to be able to bring to the communities to discuss, it

will enable them to have a voice and for our women to have a voice in the communities.

**Mr. Lloyd St. Amand:** You see the pressing issues as not exclusively but primarily affecting women.

**Ms. Beverley Jacobs:** They primarily affect women, youth, and children, because when we're talking about issues of separation, divorce, and the matrimonial home, usually it's the women and children who are forced to leave.

**Mr. Lloyd St. Amand:** I understand there is no real movement in any province to significantly change provincial legislation in each province. More or less, lawyers and parties who work within the family law act or the family relations act are by and large content with it.

What thought, if any, has been given to incorporating, more or less *carte blanche*, the provisions of provincial legislation so they would apply on reserve, as they now do off reserve?

● (1350)

**Ms. Beverley Jacobs:** I don't even think that's an issue, because the Supreme Court of Canada has already said that does not apply.

**Mr. Lloyd St. Amand:** But in terms of a draft bill or draft legislation to be brought forward by yourselves or a committee on your behalf, what thought if any has been given to essentially working within the ambit of legislation that has already proved successful for off-reserve spouses, and simply providing a mechanism to apply it on reserve?

**Ms. Beverley Jacobs:** I would want to consult with our lawyer about how that would apply, because we're talking about very specific and complex applications of provincial law and jurisdictional issues. Those are the issues we are addressing. I just can't give you an answer as to how yet.

**Mr. Lloyd St. Amand:** Can you leave us with the starkest or most dramatic example of why something needs to be done sooner rather than later—a particular incident involving a young mother? Is there any example that is at the forefront of your memory when you think, “Yes, we must do something”?

**Ms. Beverley Jacobs:** I can just give you an example of a woman on reserve who has recently contacted me. She has a four-year-old, and has been evicted from the matrimonial home. That's a very specific issue where, if they have to leave the home, they have nowhere to go.

**Mr. Lloyd St. Amand:** She's clearly living on reserve with one child.

**Ms. Beverley Jacobs:** Yes. She has one child and she has nowhere to go. So she either has to find a shelter, if there is a shelter in her community, or move to the city, with no money, and find a place to live.

**Mr. Lloyd St. Amand:** Thank you.

**The Chair:** Marilyn wants to add to this, but we only have about a minute or so left.

**Ms. Marilyn Buffalo:** Thank you.

This is by no means a small issue. It's very large and will require consultations. If the term of the day to be used is a more collaborative approach, then so be it, but please make sure the Native Women's Association of Canada is given the same amount of funding as the male-dominated organizations. That's the only way it's going to work. It costs money to do this technical and legal work, and you know that.

In the past, the Native Women's Association of Canada has never been in a position to move anything forward, yet to this day I'm still approached by people who say, "Marilyn, when are you guys going to do this?" I say, "What do you mean? I haven't been president for the last six years. What are you talking about?" That's what I meant when I said we've been in a time capsule.

The Canadian government is also in a time capsule, and let me tell you why. The 1995 inherent right policy on aboriginal affairs—in other words, the current policy the government is still maintaining today—does not have the capacity to address family law issues, because that is left completely under the jurisdiction of the provinces. They don't even address issues like child welfare. Something as simple and fundamental as child welfare is not addressed by the federal government because they refuse to address it. It's not under their agenda of the day.

It is a big problem. The government has to do a major policy overhaul in order for this issue to come to the forefront. It takes more than just a House of Commons committee. Do you know what I'm saying? It's a massive undertaking, where all parties have to sit equally across the table.

It's no longer the way it was 30 years ago. When our grandmothers and aunts.... By the way, my late aunt, Jean Goodwill,

was also instrumental in founding the Native Women's Association of Canada. She influenced me.

We are the country's poorest of the poor. Please understand that the chiefs in the nations have no moneys to address the poverty in the communities. We are facing further and further cutbacks every year. Our youth are the fastest-growing demographic in this country. Where are these people going to go to school? Where are they going to live? In the midst of all of that, you have family violence situations, where people get frustrated with each other, and sometimes it doesn't turn out to be the best.

Almost always it's the women and the children who leave for the urban centres, which is why we have so many displaced first nations. It is not a women's issue—we've been saying that for years—but it's a family issue and a nation's issue. More importantly, the onus is on this government, and whatever it will be tomorrow, next month, or in the next years. The problem is going to continue. It will worsen if it's not addressed.

Thank you.

•(1355)

**The Chair:** Thank you very much. That brings this round of questioning to a close, since we were able to get all the present parties' questions in all of the three different hours.

I thank you for your cooperation. Since we just have enough time to get to question period, I want to thank our third-hour witnesses for appearing before this committee.

Our next meeting will be Thursday. Thank you again.

The meeting is adjourned.

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