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Chair

Ms. Nancy Karetak-Lindell

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● (1105)

[*English*]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning, everyone.

I want to thank Jeremy for taking my spot the last Thursday we were here—I know he's not here.

I want to thank our witness, Mary Eberts, for agreeing to do this via teleconference. We have a few members here, and I'd like to make sure you know who they are. We have Gary Lunn for the Conservatives; we have Mr. Bernard Cleary for the Bloc; and then, on the government side, we have the Honourable Sue Barnes, parliamentary secretary to the Minister of Indian Affairs, Lloyd St. Amand, Roger Valley, and myself, Nancy Karetak-Lindell, chair of the committee. Also, Jim Prentice just walked in.

We'll give you about ten minutes or so to do your presentation and then we'll do a round of questions, starting with the Conservatives and then the Bloc, and if the NDP happen to come in, they'll have a question, and then we'll go to the government side and we'll take it from there.

Thank you again. I know it's awfully early over where you are, so thank you again for agreeing to do this by teleconference. Any time you're ready, feel free to start.

Ms. Mary Eberts (Legal Counsel, Eberts Symes Street Pinto and Jull): Thank you very much.

Let me begin by introducing myself. This year I hold the Gordon F. Henderson Chair in Human Rights at the University of Ottawa, at the Human Rights Centre, which is based in the Faculty of Law. Since 1991 I have acted as counsel to the Native Women's Association of Canada on a number of matters relating to the Constitution of Canada and the charter. One of the matters on which I represent the Native Women's Association of Canada is the charter litigation that the association has brought against the Government of Canada because of their failure to have any provisions relating to matrimonial property on reserve. So although I am today appearing as an individual witness, I do have these associations with the Native Women's Association, which I would like you to be aware of. I don't speak for them today, but that's my background.

I'd like to begin with a little review of the bodies that have said that this problem of matrimonial property on reserve is a serious problem and should be fixed. They include the Royal Commission on Aboriginal Peoples; the Aboriginal Justice Inquiry of Manitoba, and the more recent implementation commission for that inquiry; Mavis Erickson, special representative on protection of first nation women's rights; Alberta judge Thomas Goodson, presiding over the inquiry into the fatality of Connie and Ty Jacobs; the Senate of Canada; and the United Nations, both a special rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and also the CEDAW treaty body.

The Native Women's Association of Canada and its member organizations have been seeking replacement of matrimonial property provisions relating to reserves since 1989, with the landmark study of the Ontario Native Women's Association on family violence. The National Association of Women and the Law and the Women's Legal Education and Action Fund have also called for repair of this problem.

This is not just an issue of repair of an old problem that was revealed by the Derrickson and Paul cases; no, there is also a continuing failure by the Government of Canada to address this issue. For example, when the First Nations Land Management Act was passed, the Native Women's Association of Canada made many representations to the government that this legislation should address this problem specifically, and those representations were refused. The Government of Canada has acknowledged that there is no protection for aboriginal women and children living on reserves in this area. They have done so specifically in the litigation that has been brought by the Native Women's Association of Canada. Their defence is that this is a matter that should be dealt with by way of self-government agreements; however, in the years since the government announced its self-government policy there have been only, by the government's own testimony, five self-government agreements that deal with this issue.

The organizations that have condemned this gap in the law have done so in the strongest possible terms. This is not only discrimination against aboriginal women and children, which emphasizes and increases their vulnerability and their exclusion, not only from Canadian society but from their own societies, but it is, as a matter of public law in Canada, a grave failure of the rule of law. The Supreme Court of Canada has defined the “rule of law” in this country as including the requirement that there be an order of positive laws within which ordinary people can live their lives and organize their affairs.

● (1110)

The order of positive laws required by the rule of law in Canada does not exist on reserves with respect to matrimonial property. This means there is no protection for women and children when a spouse turns violent. There is no opportunity for that spouse to be excluded from the matrimonial home, and there are no opportunities for orders for possession, occupation, a share of the matrimonial home, or a transfer of that home into the name of the spouse on the termination of the relationship. This places aboriginal women and children in a position that no other women and children in the country face.

It is often suggested that the reason there has been no solution to this problem lies in the conflict between individual rights, namely, women's rights, and community rights. With Beverly Jacobs, the current president of the Native Women's Association of Canada, I wrote a paper on this issue for a publication called *Feminist Voices*. In the paper, "On Building Solutions for Women's Equality: Matrimonial Property on Reserve, Community Development and Advisory Councils", we show that this issue does not arise from a conflict between individual and community rights.

In our paper, Ms. Jacobs and I make the point that it is not in the communities' interests to lose their women and their children when violence forces them out of their communities. It is not in the communities' interests to have those children raised in poverty in nearby cities, cut off from their relations, their language, and their culture. It is not in the communities' interests to lose a whole generation of women's leadership, which they have done since the decisions in Derrickson and Paul. When women, who are the keepers of the culture and the mainstay of the clans, are forced out of the communities and into the cities to live in poverty because of family violence and the inability of the women to secure an interest in the matrimonial home, aboriginal communities lose a whole generation of women's leadership.

Only since the early 1950s have women had the right to stand for election and to vote in band council elections. For those women to be forced off reserve means that they are in effect lost to those communities. It was only with the decision of Corbiere v. Her Majesty the Queen in the 1990s that the Supreme Court has recognized the right of off-reserve people to vote in band council elections. Between that time and the earlier decisions of Derrickson and Paul, all of the women who left the reserves because of family violence and because of this gap in the rule of law were lost to those communities, and their leadership was lost. That is not in the interests of the communities, and when the Government of Canada says that there is no solution because of this conflict between individual and community rights, I respectfully suggest that the Government of Canada is taking a very narrow view of community rights.

I further suggest that the reason there has not been a solution before now is that the Government of Canada has been afraid to go against the chiefs and Indian Act band governments. The government has been afraid even to start the legislative process on the matter that would result in legislation coming before the House. The Native Women's Association has been told that if it can bring a solution before the government that the Assembly of First Nations and other aboriginal groups with an interest in this issue would agree with, it could move forward. With all due respect to the Government of Canada, it is not the responsibility of an underfunded women's organization to do the homework of the Government of Canada. Under the law of Canada, it is the government that has the responsibility to consult with native groups.

● (1115)

It may be advantageous for some Indian Act governments to have this uncertainty in the law because it increases their control over their constituents. Be that as it may, it is the constitutional obligation of the Government of Canada to repair the gap in the rule of law and to do so in its own consultations, in its own deliberations, and not pass those on to the Native Women's Association of Canada to do for them.

Legislation should be passed immediately. Every organization that has taken a look at this issue says that. The Native Women's Association of Canada has been working on a draft. It's in outline form; the board of the Native Women's Association has not approved it yet to take on the road. Moreover, the Native Women's Association cannot do this on a shoestring.

The Royal Commission on Aboriginal Peoples and the Senate of Canada have both recommended that aboriginal women should be deeply and equally involved in the development of a solution to this problem.

One of the things that I say to this committee today is that it would be very valuable towards achieving that aim if this committee would report to the House that the Native Women's Association of Canada should be given a sum of money to finish its work on its own suggested draft legislation and workshop it around the country to receive the views of the aboriginal community. That would be, I submit, helpful to the process, and it would be necessary for NWAC to have this funding in order to do that activity.

The legislation that NWAC has been working on in broad outline has several elements. First of all, it contains a permission for Indian bands to have their own land codes, and where there is such a land code the provisions in the Indian Act would not apply. It is essential that the sovereignty and self-government of Indian bands be recognized by allowing them to pass their own land codes, whether they're under the land management act or not.

These would be family law, matrimonial home land codes that would cover the situation where a band had taken the trouble to develop one. Where a band had not, the draft legislation of the Native Women's Association of Canada provides for exclusion orders where there is family violence, orders of possession at the instigation of either spouse, or a transfer or sale order at the instigation of either spouse.

Those four elements, in our respectful submission, are the bare essentials for any legislative solution to this problem. That is the opportunity for Indian band governments to step up and have their own matrimonial property regimes and then the orders of exclusion, possession, transfer, or sale that would be available under the Indian Act if those Indian band governments did not do so.

Those are my submissions, and I would be happy to take questions.

The Chair: Thank you very much.

For some reason, I thought you were in British Columbia, but I was told that you're in Toronto.

● (1120)

Ms. Mary Eberts: I was in British Columbia until May 1.

The Chair: We're going to do a round of questioning, and Jim Prentice will start off, with the Conservative Party.

Mr. Jim Prentice (Calgary Centre-North, CPC): Thank you very much, Mary. Wherever you are, your submissions are most welcome to our committee.

Just for the record, I would like to have your background, your experience and credentials, clearly in front of the committee. You are extremely well respected as a legal counsel. As I understand it, you are legal counsel as well to the Native Women's Association, is that right?

Ms. Mary Eberts: Yes, I am.

Mr. Jim Prentice: You've been their counsel on ongoing litigation. Which litigation?

Ms. Mary Eberts: I have acted for them since 1991. I was, in fact, counsel to the Native Women's Association of Canada in the Corbiere case, in which we supported John Corbiere in his bid for voting for off-reserve band members.

I was the counsel to the Native Women's Association of Canada during the Charlottetown accord discussions. I am counsel to the Sisters in Spirit campaign of the Native Women's Association about the missing and murdered aboriginal women, and I am counsel to them in the Sawridge case dealing with Bill C-31.

I appeared before Judge Goodson in the year-long inquest into the deaths of Connie and Ty Jacobs in Alberta on behalf of the Native Women's Association of Canada. I have appeared several times for them before legislative committees, and, as I said, I am their counsel in the matrimonial property case under the charter against the federal government.

Mr. Jim Prentice: Humility doesn't allow you to say this, but I think it would be fair for me to say you are one of the most experienced people in the country on this issue, and that you've been an outstanding advocate for aboriginal women in this country for the last 15 to 20 years.

First, I'd like to deal with your point that the minister and the Government of Canada have an obligation to act here, and that really what we have is a lack of courage and vision on the part of the government to bring forward legislation. Instead, the minister is turning to what you referred to as underfunded women's organizations to draft legislation for them.

I'd like you to elaborate on that, because it is a point our party has certainly been making in these deliberations for some time.

Ms. Mary Eberts: The obligation to act comes, I believe, from the very basic constitutional rule of law that there is now no rule of law on reserves with respect to matrimonial property issues. At best, there are actions by individual bands pursuant to bylaws or band council resolutions, but there is no code of law that those bands are applying when they act in that way, so even though some bands are doing something, it is all ad hoc and at their own discretion. There are no procedural rights and there are no substantive rights for any of the people who are dealing with the bands on these issues, so no matter how much goodwill the bands may have, there is still a situation where there is no rule of law.

Section 15 of the charter says that every individual is equal before and under the law, and entitled to the equal protection and equal benefit of the law. These aboriginal women and children living on reserves do not have any protection or any benefit of the law. There is a huge problem.

Mr. Jim Prentice: At any time in the last 15 years since you've been involved—certainly the last 12 years—has the Government of Canada or the minister come forward and proposed specific legislation that would protect aboriginal women and children in the way you're describing? Has the Native Women's Association of Canada seen any action from the government whatsoever?

Ms. Mary Eberts: There has been no legislation proposed. There has been no work on this issue by the Government of Canada.

I can also add that the only policy work I have seen from the Government of Canada on this issue—starting, for example, with the commissioning of the paper by Cornet and Lendor—started only after the Native Women's Association of Canada brought its charter case, and the Government of Canada, in that charter case, is arguing that the Native Women's Association of Canada has no standing to bring the case, so it's even trying to get that case shot out of the water and doing a bit of mild policy work that we finally pushed them into doing when we sued them. That's the only thing we've seen from the Government of Canada since the decision in the Derrickson and Paul cases before 1990.

● (1125)

Mr. Jim Prentice: So the sum total of the Government of Canada's efforts, at this point in time, is to appear in court and argue that the Native Women's Association doesn't have standing or status to speak on behalf of native women. I'm glad we have that clear.

How much money does the Native Women's Association of Canada require in order to proceed in the manner you've described? You've indicated that the association is prepared to put forward proposed legislation, or the framework of legislation, and take that across Canada and try to be helpful to the process. Can you quantify how much financial assistance is required to do that?

Ms. Mary Eberts: I believe a good job could be done for about $500,000, because we would have to deal with all of the travel, and the arrangements into some of the more remote communities, attend a lot of gatherings that take place on a regional basis, as well as ensure that the association had the professional back-up to do the work. I think that would be the minimum the association would need over one year in order to do a good job of consulting and coming up with a solution, or at least a proposed solution.

Mr. Jim Prentice: You've put that request in front of our committee today. I respect that.

Have you, or are you going to, put that request in front of either the department or the minister?

Ms. Mary Eberts: At various times in the past, the Native Women's Association of Canada has asked for such funding. I know that under the leadership of president Marilyn Buffalo, who led the efforts to have this matter dealt with in the land management codes, the Native Women's Association asked for funding to do this kind of development work on the issue, and they were refused. I don't have the complete history of the refusals of such attempts, but I do recall that was one such occasion.

With respect to asking for funds, the Native Women's Association is currently waiting for the Government of Canada to deliver upon its promise that it would be funded to deal with the missing and murdered women through the Sisters in Spirit campaign. That promise was made by the Government of Canada and has not been fulfilled as yet. Until that promise has been fulfilled, it would be difficult for the association to ask for this funding. It would compromise the success of the discussions with the Sisters in Spirit campaign.

All I'm saying here, today, is that this is what the association needs to do what the government has asked it to do. Eventually, I suppose, it will put forward another formal request to the government for such funding. In the meantime, a recommendation from this committee that that funding is desirable would help it, since it seems to be very difficult for the Native Women's Association to succeed in getting any funding from the government.

Mr. Jim Prentice: Thank you very much.

The Chair: Thank you, Jim.

We're now on to the Bloc, led by Mr. Bernard Cleary.

● (1130)

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): I want to thank you very much for taking part in this committee's proceedings. We have a duty to hear you out on a number of issues.

You can correct me if I've misunderstood you, but you seem to think that the government has failed to prove it intention of taking action to address the situation, simply because it has chosen to put this off until later, that is forever. It seems it wants everything to be formalized in an agreement. Consider how long it takes to conclude agreements of this nature, it's clear that I won't live long enough to see the outcome of these efforts.

Moreover, the time for action is now. You said it, and so have we. The only solution that seemed to carry any promise — at least to my mind — was the initiative proposed by the Native Women's Association of Canada. Representatives of this Association expressed to us their willingness to work on draft legislation. Obviously, that costs money and you've pegged the cost of a bill at between $500,000 and $1 million. That seems very high, but considering how many negotiations have been undertaken without much success, it may not be that much after all.

Do you agree that the only solution is to have a bill that would be drafted by a native group and that the Native Women's Association is the right group to take on this task?

[*English*]

Ms. Mary Eberts: Thank you very much for your questions.

On your first question, about whether it appears as if the government has any will to act, I fear I must say that's how it does appear to me. The only responses we have had to our litigation are endless motions, finally culminating in this motion to strike out the litigation on the grounds that the Native Women's Association has no standing to represent the interests of women in such a charter case. The policy work that has been done since our litigation is just the creation of studies. There have been no white papers, no effort by the government to consult with the national aboriginal organizations, and no overtures to the Native Women's Association of Canada to take a lead role, or indeed any role, in the development of this legislation.

The Senate of Canada recommended in its report that native women play a strong role in the development of long-term solutions in this area. The Royal Commission on Aboriginal Peoples made the same recommendation. So far there has been no overture from the government toward the Native Women's Association.

As for the proposal of the Native Women's Association to work to present some kind of legislation, we believe it would be very fruitful for the Native Women's Association to have a bill and consult around the country on that bill among aboriginal people. All too often the Government of Canada has said to aboriginal women that it will not do what they want unless they get aboriginal men onside, so when the Government of Canada acts it will not face criticism from aboriginal men. But the Government of Canada has repeatedly asked this of native women, and it has never put its money where its mouth was on that request.

The idea of letting the Native Women's Association drive this project with funding...and I said $500,000 for one year, and if the process goes beyond that it would have to be renewed for another sum. It's very high, you suggest, but when you look at all the money the government is spending on aboriginal issues and the fact that this one continues to languish, I am sure it could come up with it, no problem.

● (1135)

The Chair: Mr. Cleary, you have some time left.

[*Translation*]

Mr. Bernard Cleary: Surely you've examined this file from every possible angle. What other related matters do you consider to be of utmost importance? Legislation is one thing, but other pieces need to fall into place in order for this issue to be settled once and for all, and for the safety of native women and children to be secured for the future.

[*English*]

The Chair: Answer, please.

Ms. Mary Eberts: Thank you.

One of the perennial difficulties in this area is that there is an insufficient supply of housing on reserve for all of the people who wish to live there. When it passed Bill C-31 in 1985, the federal government promised that it would provide funding to reserves to build housing for all of the people who wished to come back to the reserve after regaining their status under Bill C-31. The federal government never fulfilled that promise. The money it provided to the reserves for such housing was a very, very small amount, compared with the demand. There were already large backlogs of requests for housing, so in some cases the women and their children who wished to come back to the reserve were placed on a waiting list well behind other people still waiting for housing, and none of them have ever gotten that housing.

The federal government needs to put substantial resources into the question of reserve housing so that there will be homes for the people who wish to live there. One of the problems that has resulted from the federal government's insufficient supply of funds following Bill C-31 is that the women who regained their status under Bill C-31, and their families, in many parts of the country have suffered tremendous discrimination from bands who cannot stand the pressure that their return is placing on resources that are already stretched past the breaking point. So the only solution for them is to keep the women off. Having an adequate supply of housing on reserve would be a tremendous improvement. Right now, women who leave their spouses because of violence and are unable to secure their own matrimonial home literally have no place else to go on the reserve because there are no other houses. Already there are several families or several generations of one family living in small, often substandard, homes. This issue exposes the really dreadful condition of housing on reserves as a result of the failure of the federal government to honour the promise it made to band communities when it passed Bill C-31 in 1985, twenty years ago.

● (1140)

The Chair: Thank you.

Now we'll go to Mr. Roger Valley for the government side.

Mr. Roger Valley (Kenora, Lib.): Thank you.

Thank you, Mary, for taking time to join us today. You've given us quite a history of what's happened since 1985 regarding the promise that was made by the Conservative government in 1985 but never lived up to. We're here about a new government. We've heard from the other side of the table that governments haven't done a lot in the past, but this is a new government. In fact, the majority of parliamentarians here on this committee are new parliamentarians.

So we have a new day, and we're trying to move this issue forward. We've tried to keep it on the agenda here since we've come back to Parliament. We were unable to get it on the agenda. We had a plan to move this issue forward, and other things derailed it, so we're working hard to make sure that we have the time to hear the information that everyone has to provide for us.

You mentioned that a number of us—my colleagues here—suffer from the problem in our ridings of huge distances. You just talked about the fact that the housing creates the problem where they can't stay in community. I'd just like to know what your experience is regarding someone having to move 600 to 800 kilometres away or further because there are no available houses on the reserve?

My next question will be, if matrimonial real property legislation came forward, what would be needed to ensure the effective enforcement of the court orders in regard to seizure of reserve property so the right spouse could get the property and could actually move into the house when there was that shortage? All governments intend to deal with a shortage of housing, and we're struggling to get that done. I believe 100% in what you say, that this is one of the major problems that we face. Can you give us a bit of your experience when they literally have to move hundreds of kilometres away, and what that means?

Ms. Mary Eberts: The problem people face then is that they are literally cut off from their families, from their cultures, and from all of their support.

When he heard the Lavell case under the old Canadian Bill of Rights, Justice Bora Laskin, who later became the chief justice, said that these women were literally excommunicated from their communities when they had to leave, and that is the effect of losing culture, family, everything. When they have to go that far away....

Sometimes what happens is that in a violent situation a woman will be faced with this choice: she can go to a shelter, but that shelter is hundreds of kilometres away. The band may actually be willing to pay for her and her children to be airlifted to a shelter off the reserve, hundreds of kilometres away. But then she's down there in a shelter. It's temporary housing. She can't get back to the reserve, and there are no resources for her in the area around the shelter, so she is really stranded. What women will do in that situation, if they can, is move in and live on the floor of somebody else's house, sleep in the cupboard of somebody else's house, in order to prevent the situation where they are driven out of their communities in that way.

One of the things that is necessary, I think, besides increasing the housing stock, is that there be better enforcement mechanisms and more protection for aboriginal women who are facing violence in reserve situations. We have had this well documented by, for example, the commission that is following up on the Manitoba aboriginal justice inquiry recommendations. They say that while there may be good enforcement mechanisms for family violence in centres like Winnipeg, once you get outside into the remote and isolated communities, there is no effective protection for women who are facing family violence. They'll call the police, and the police won't come. Or they'll call and call again looking for help to avert a violent situation, and the police will only come after somebody has been beaten up. Then they come to arrest someone, which is no good in that situation at all.

There must be better work on the part of police, whether it's RCMP or provincial police or reserve police, to deal with safety issues facing women. That is one of the things the Native Women's Association is trying to do in its Sisters in Spirit campaign. It wants to develop protocols with the police for dealing with safety issues for aboriginal women.

● (1145)

The Chair: Thank you.

You have a minute and 45 seconds. Are you going to share that with someone?

Mr. Roger Valley: Just to get to the second part of my question, then, what is going to be needed in the legislation? If property has to be dealt with on a reserve—the actual seizure of reserve property or the house that's in question—how do we put it in legislation so that the spouse can be protected, with the children? How does that come about, with your experience?

Ms. Mary Eberts: The mechanism that's used in I think all family law and family property legislation in the provinces and territories is for there to be an order of the court allowing possession or occupation of the home. There are actually three types of orders. One, which we've characterized generically as an exclusion order, is a more short-term order where a violent spouse is ordered to stay away and the non-violent spouse and the children are given an order that allows them to stay in the matrimonial home. And then more mid-term solutions are orders of occupation of the matrimonial home, which give the spouse—usually the custodial spouse—the right to occupy the matrimonial home, regardless of who has the title, or on reserve it would be the certificate of possession.

These court orders can be enforced. They are enforced in non-reserve situations, and if there were federal legislation allowing for these court orders to be made and providing for their enforcement, they would also be enforced in the on-reserve situation. It's just providing the court with jurisdiction to make the order on reserve and then providing for the enforcement of that order. You would have to provide that the order could be enforced vis-à-vis property on reserve.

The other thing that would be necessary would be amendment of the Indian Act in some way to allow for the certificates of possession to be transferred between the spouses to allow a spouse who is not a band member or even an Indian Act registrant to reside in property or hold property on reserve. So there would have to be some changes to sections like 20, 27, and 89 of the Indian Act. The legislation that the Native Women's Association is working on has dealt with the necessity to amend those sections.

The Chair: Thank you very much.

We have time for one more round of one question each for this witness. We'll start with Mr. Jeremy Harrison. We're back to the Conservatives.

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

Thank you very much to Ms. Eberts.

I found very interesting in your presentation the broad outline of the proposed legislation the Native Women's Association of Canada is working on. I'm wondering if you could just run over that briefly again, but also if you could provide any additional details on the broad direction.

Ms. Mary Eberts: One of the things the Native Women's Association considers important is the recognition of sovereignty, to the extent of allowing or facilitating bands to develop their own matrimonial property codes. One section provides for the right of bands to enact a family or matrimonial property code applicable to lands on reserve and to band members and their spouses and children. It provides for a procedure the band would go through to do that. Unlike Bill C-31, the bands don't have to act within a narrow timeframe to do that, but they can just do it anytime.

Also, it's considered important for there to be recognition of each spouse's right to occupy or possess the family home during the spousal relationship, whether the certificate of possession of that home is in the name of one spouse or both their names, or what have you.

Then we go on to consider the three kinds of orders. The exclusion order would give relief to a spouse in the case of violence, allowing the non-violent spouse to exclude the other one from the matrimonial home and to live in that home. An order of possession would grant sole possession of the family home to the applicant spouse for a definite or indefinite term. Then a transfer or sale order would transfer an interest into the name of a particular spouse, whether or not the spouse were a band member or a registered Indian. This order would also permit the sale of the home and the division of the proceeds of sale. The difficulty is that this order could not order sale to persons who were not band members or registered Indians. It's a different situation from where the spouse gets an order to her benefit, because you can't let these kinds of orders open up reserve property to colonization by those who are not band members or who are not registered Indians, simply because there's an order for sale of reserve land in a matrimonial case.

It should also provide for the ability of spouses to make agreements about their land and matrimonial home; recognize common-law partners; and be consistent with the federal legislation recognizing same-sex conjugal partners, as well as opposite sex ones.

So that's the broad outline of what we're working on. As I said, the board has not passed in review the legislation that's under construction, but that's the broad outline. I hope it helps you.

● (1150)

The Chair: I'm trying to get as many parties as possible to ask questions, so I'm going to try to make sure you summarize your answers.

We're now going from the opposition to the government and then back.

Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Ms. Eberts, have you had an opportunity to view any of the proceedings before this committee, or to become familiar with prior presentations?

Ms. Mary Eberts: I was here on the first day when you continued with the residential schools issue. Since that time, I've downloaded several days of evidence to read what people have said, but I don't think I've read all of it.

Mr. Lloyd St. Amand: So you've indicated that there are certain groups, and I'll concede, several groups, that want the federal government to proceed with legislation.

You should know, and I don't mean this unkindly, that we have heard from many individuals, many chiefs, in moderate tones, who have said in so many words, “Don't impose legislation on us. Don't ram it down our collective community throats. Let us work it out among ourselves.”

I'm just wondering then what your reaction is to those chiefs, male chiefs, who have said they will work it out as a community, because they are dealing with first nations, Métis, and Inuit communities with a certain mindset, a certain culture. What is your reaction to that?

● (1155)

Ms. Mary Eberts: Well, as I said in the article that I wrote with Ms. Jacobs, we made it clear that we respect the sovereignty of first peoples. It's essential for Canada to have that recognition. The legislation that I've been talking about includes a specific section that recognizes the right of bands to make their own codes, and if they make their own codes, the federal legislation would not apply. But it is also necessary, in my respectful submission, to look out for those situations where the bands do not make their own rules, where they just proceed on an ad hoc basis, and individual women, especially in their most vulnerable moments, are without recourse. If a band won't help them, they are totally without recourse and they are in a situation where there is no rule of law.

So for Canada to refuse to act with respect to all women, because some women are going to have their issues addressed and a code of conduct for their aboriginal government developed by that government, is only a partial answer. Canada has to look after women whose aboriginal governments don't behave responsibly.

Mr. Lloyd St. Amand: So let me then just ask you something pointedly. Chief Strater Crowfoot presented to us and said that more and more, these marital situations are being dealt with in a mediated fashion by elders, a number of whom are female elders. In short, he said communities can work these issues out themselves, that those separated spouses, typically women, who are in need have recourse to the elders. I take it you quite disagree with that.

Ms. Mary Eberts: Well, I don't think it's fair of you to put the situation in that fashion, and I don't think you've listened to what I've said. I said that I have a profound respect for the ability and the right of aboriginal communities to work things out in their own ways and to exercise their own sovereignty. But I am also saying that there are communities that don't behave responsibly and where those responsible things are not happening. So in the proposal I talked about, the Indian Act would totally recognize the right of any band to have a family code or a system that would totally recognize the right of elders to be mediators or what have you. They could do whatever they liked and they could set that up and the Indian Act would not intrude any further. What I am saying then is—

The Chair: The next questioner.

Ms. Mary Eberts: —that for those communities that don't want to go that way, and where the women are just left hanging, there should be something in the Indian Act that would deal with them. And that's why the legislation should do both.

The Chair: We'll go to the next questioner.

Mr. Bernard Cleary, you may have a very short intervention and then we'll go on to the next witness. Thank you.

[*Translation*]

Mr. Bernard Cleary: I have a very brief comment to make.

In recent days and over the course of these past few meetings, Mr. Valley has repeatedly stated that a great deal of the committee's time has been wasted. I would respond to that allegation by saying — as we've stated many times over — that the Liberal Party is the one wasting our time. And the reason is quite simple. I followed the work of the Royal Commission on Aboriginal Peoples while the proceedings were under way. We'll never be able to submit a report that is similar in scope to the one presented by the Royal Commission. Instead of meeting as a committee and rehashing the subject amongst ourselves, we would do better to take the Royal Commission report off the shelf and to implement its recommendations.

That's all I wanted to say.

● (1200)

[*English*]

The Chair: Thank you very much. We will now go on to the next witness.

I thank Ms. Mary Eberts for her intervention this morning and for agreeing to do this by teleconference.

We have a few minutes to listen to the next witness, and then we have to go for a vote in the House of Commons. So if the next witness can come to the table, we can listen to his intervention.

What we'll do is make sure we hear your intervention. I don't believe we're going to have time to ask any questions, but we want to make sure that your presentation is on record. I apologize, but we do have a vote coming up in the House of Commons that we all have to go back for.

I'll give you the floor right away.

Chief R. Miskokomon (Co-Chair, Renewal Commission, Assembly of First Nations): Thank you very much. I'm very pleased to have been invited to present to you today.

My name is Joe Miskokomon. I am from the Chippewa of the Thames First Nation, located in southwestern Ontario. I've spent the past 25 years-plus as Grand Council Chief of the Union of Ontario Indians, and I've been a chief and a councillor within my own community for over 20 years. Currently I am the co-chair of the Assembly of First Nations Renewal Commission, which is established to look at a complete organizational review of the entire Assembly of First Nations.

Because this will deal with the issue of consultation, which I'll come to further into my presentation, I'd like to inform the committee, seeing that there won't be questions, that over the past 10 months the renewal commission has held 24 separate hearings nationally from coast to coast to coast. We've had 399 submissions made to our 24 hearings.

In perspective, I would like to place it this way in front of the committee: our hearings have attracted 20 presenters per hearing over a 10-month period, where we were financed $2 million, and we're still on that money. When you compare that to what RCAP had, the Royal Commission on Aboriginal Peoples had five years to study, to do a number of hearings, and they had $55 million. So in relation to what the AFN has done in organizational structure compared to RCAP, we've had 20 presenters compared to their 21.5 presenters.

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 and women, and citizens who live both on and off reserve. Interestingly enough, over half of our hearings were done within urban settings, so we had a tremendous number of presentations made by first nation people living within urban settings across Canada.

The renewal commission is an arm's-length entity mandated to engage in a broad-based discussion with first nation peoples and others of all demographics and regions, including representation from communities and urban first nation people from across Canada.

On December 9, 2003, National Chief Phil Fontaine announced that an AFN renewal commission would be established and introduced Wendy Grant-John, from British Columbia, and me as the co-chairs.

In January 2004 the renewal commission was formally established, with the sole mandate to revamp the AFN by engaging first nation citizens from across Canada through an inclusive process to reflect on the current organizational changes needed for a national organization.

The criteria for selection of candidates for commissioner were that they were to be highly experienced individuals with political and public service backgrounds, both legal and academic contributions, possess a broad understanding of the issues, and have the ability to offer a national perspective on necessary organizational changes. Further, we were to have a wide range of experience and come from diverse backgrounds, geographically, socially, and culturally. We are currently 10 commissioners with the AFN renewal commission, who come from the north, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the east coast, as well as having a youth representative. In total, six women and five men were chosen as commissioners for the renewal initiative.

The commission used both the target approach and an open call for submissions that were received. Invitations by both mail and telephone were issued to first nations, tribal councils, political and territorial organizations, urban organizations, and native women's groups in advance of the hearings. Traditional customs were also honoured, requesting participation by first nation citizens through a distribution of tobacco. Notices of the public hearings were circulated in print material and broadcast on radio.

The presenters consisted of chiefs, council, members from our own communities, PTO representatives, community-based organizations, and first nation citizens alike. In addition to the public hearings, the renewal commission held a focus group, as well as collecting e-mail submissions through our website.

● (1205)

From our process we have determined that the matrimonial and real property issues on reserves are critical in nature and widespread, as they detrimentally affect family relationships and leave first nation residents vulnerable.

The need for change is immediate, yet a long-term solution must be well thought out and inclusive of many perspectives. MRP is a very complex issue that involves finding a solution that incorporates the different cultural sensitivities and regional diversities within communities. For example, in most provinces the issue of treaties has to be considered, while in other areas the existence of other cultural norms and traditions form land entitlement notions, and the collective use must be considered.

Our experience, through the consultation process we have engaged in, has led to determinations that both urban and rural first nation citizens recognize that their spokespeople are the chiefs and councils of their community, and that at a national level it is the AFN who represents the first nations. Through the various mechanisms gathered within the renewal commission process, it has been repeatedly stated that the first nation leadership and citizens in Canada acknowledge and accept the representative nature of the Assembly of First Nations. Our material substantiates that the AFN speaks for all first nation individuals, regardless of gender or residence. The Assembly of First Nations is in the best position to lead the process to address matrimonial and real property issues. As a national organization representing all first nation people, we are able to conduct the consultative process that needs to happen prior to solutions being found.

Through the AFN's previous submission to this committee, you are aware of the interim process AFN used to incorporate various perspectives into its administrative and operational practices. Specifically, you have been informed of the nature of the AFN's women's council and their role in the AFN executive process. We are an organization that is dedicated to being inclusive and thorough in our representation. The native women's council is one substantial mechanism that can be used to ensure this.

It has been previously stated that the AFN agrees there is a need for a broad and thorough consultation on the issue of matrimonial and real property and that broad consultations ensure the best information and advice is brought forward as a solution. In this same regard, the AFN renewal commission supports the statement and puts forth a recommendation that the AFN form a lead consultation and include organizations that will provide integrated information as partners in this process.

To accomplish broad consultation necessitates the appropriate financial commitment by the federal government. The government needs to ensure that the appropriate resources are allocated to fulfil this process. It is our belief that, through the inclusion of all stakeholder organizations, the AFN will submit concrete recommendations to remedy the situation of matrimonial and real property. An example of how this may work was presented in Halifax during our public hearings by the president of the National Association of Friendship Centres, whereby it was stated that this organization—the national friendship centres, and its affiliates—would be willing to sign a protocol agreement with the AFN to outline specific areas of focus for each organization. It was stated that consultation and political representation would be the responsibility of the AFN and that service delivery to urban first nation peoples would be that of the friendship centres.

Again, I would like to reiterate that resolving matrimonial and real property issues will require more than a quick fix. This issue has been left as one of the outstanding constitutional items between the federal and provincial governments and first nations leadership. According to conventional practice, which has been affirmed by the Supreme Court decisions, first nations leadership, through the AFN, should lead the exercise to find the solution to this important issue.

The AFN commission supports a submission by the AFN prior to proposing new legislation that incorporates guaranteed gender equity. This solution needs to originate from first nations, for first nations, and truly reflect first nation values. Legislation cannot be imposed on first nations through Euro-Canadian values. Historical examples of legislation imposed on first nations people are endless, and the devastating effects resound in the first nation community to this date.

● (1210)

Supporting proposed changes to the MRP in first nations communities necessitates other financial commitments by the federal government. For example, I'm proposing that Industry Canada expand the mandate of the aboriginal capital corporations to have the authority to establish loans for the purposes of matrimonial real property divisions, and land value being secured by the first nations themselves. The ability of an aboriginal capital corporation to determine interest rates that reflect the same commercial rates as other lending institutions should also be put in place. Securing and adapting the ACC as one of the integral mechanisms to achieving equitable distribution upon marriage breakdown in a first nation is an example of infrastructure and fair resourcing needed to accomplish the goal of addressing MRP.

It is recommended that if there is proposed legislation, it must empower first nations to develop their own matrimonial real property system, giving ultimate authority to determine the details of their land management regime, with a timeline for adopting MRP. As an example, it has been suggested that three years, with an additional availability of two years' extension, be granted to first nations to develop a system of land management for matrimonial real property. The first nations developments specifically must be incorporating standards that will be developed through a consultation process. An example is the adoption of the international standards on the issue that preclude discrimination based on gender.

If the AFN's interim legislative approach is used, appropriate financial resources must be transferred to communities to develop their own system of resolving matrimonial real property issues. Communities need resources to develop this necessary infrastructure, with a very clear end result that produces the necessary MRP system that meets the predetermined standards. Developing these standards is where the AFN must be consulting. It must involve the very stakeholders who have valuable input in the development of MRP on first nations.

In conclusion, Madam Chairman, I would like to highlight the substantive recommendations I've made. Number one, there needs to be a long-term solution, not a quick fix. Number two, it must incorporate cultural tradition and address regional sensitivity. Number three, the national chief is the national representative and spokesperson for all first nations citizens. Number four, the AFN is the best positioned to provide the consultative framework required for this process, including the perspectives of the urban organizations. Number five, if it is new legislation, as is being proposed, the federal government should provide communities with the necessary infrastructure and resources on an interim basis. Number six, this may involve changing the mandate of the ACCs to include establishing loans for the purpose of adhering to first nations' laws and policies. Number seven, I recommend that a new regime allow for first nations to develop their own land management processes that address MRP using appropriate standards and timelines.

● (1215)

The Chair: Thank you very much. The timing was great. We apologize that we have to leave without asking questions, but thank you very much for a very thorough presentation.

The meeting is adjourned.

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