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Ms. Lysane Blanchette-Lamothe

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● (1530)

[*Translation*]

The Chair (Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP)): I'd like to welcome you to the 73rd meeting of the Standing Committee on the Status of Women. Today, the committee is continuing its review of Bill S-2, An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves.

We will hear from Canadian Human Rights Commission representatives: Mr. David Langtry, Mr. Michael Smith and Ms. Valerie Phillips.

[*English*]

Thank you very much for being with us. You will have 10 minutes to make your opening remarks, and then we'll go to questions from members of Parliament.

[*Translation*]

We will then pause to allow the other witnesses to take their seats, following which the meeting will resume.

Mr. Langtry, you have the floor.

Mr. David Langtry (Acting Chief Commissioner, Canadian Human Rights Commission): Madam Chair and honourable committee members, thank you for inviting the Canadian Human Rights Commission to speak to you today on the traditional territory of the Algonquin people.

I have three main points.

First, the need for fair, available and accessible systems to deal with matrimonial real property on reserves is an urgent human rights matter.

Second, many first nations do not have the resources to develop an effective matrimonial real property system.

Third, challenges to the commission's jurisdiction could affect our ability to deal with complaints that involve matrimonial real property systems in first nations communities.

[*English*]

Both international and domestic human rights standards call for the equal treatment of women under the law. These same standards also call for the protection of women and their children against violence. For women living on reserve when a marriage ends, they are more likely to suffer disadvantage. The absence of fair systems to deal with matrimonial and real property puts them at an even greater disadvantage. This brings me to my second point.

It would appear that the intention of this bill is to provide a mechanism for dealing with matrimonial and real property on reserves, while first nations develop their own systems. Although the measure is meant to be temporary, many first nations lack the financial and human resources to develop effective dispute resolution systems. This is part of a larger issue.

There are also limited resources for other on-reserve measures associated with matrimonial and real property, such as housing, emergency shelters, counselling, and legal assistance. The commission has learned this reality in its work with first nations organizations.

In working with several first nations stakeholders, the commission developed a tool kit to help first nations increase their capacity to resolve human rights disputes as close to their source as possible. In many communities we were told that implementing such a system would not be possible with the resources they had at their disposal. This brings me to my third point.

Current challenges to the commission's jurisdiction could affect our ability to deal with complaints related to matrimonial and real property systems in first nations communities. In administering the Canadian Human Rights Act, the commission receives discrimination complaints regarding employment and services provided by organizations under federal jurisdiction; this includes first nations governments.

In 2008 Parliament amended the Canadian Human Rights Act to include the Indian Act. This meant that people living on reserve could challenge both the federal government and their own first nations government when they believed they were being discriminated against. Although the commission's mandate is clear, our jurisdiction is being challenged.

Under section 5 of the act, most government activities have been considered to be a service. However, many of the complaints the commission has received against the federal government dealing with aboriginal issues have been challenged by some parties, including the Attorney General. These challenges include what constitutes a service. If these challenges are successful, all funding for services that the Government of Canada provides could fall outside the jurisdiction of the Canadian Human Rights Act.

It is unclear whether a first nations matrimonial and real property system would be considered a service under the act.

In conclusion, this committee has heard, or will hear, from a number of witnesses who will be directly impacted by this legislation. I believe, as you do, of course, that their input is critical.

● (1535)

I encourage you to consider the following three questions during your deliberations. First, will the proposed legislation provide women with fair access to justice? Second, will the proposed legislation ensure that women will be able to access their rights in a safe way? And third, do first nations communities have the capacity they need to develop and implement their own matrimonial real property systems, and if not, what can be done to correct this problem?

I thank you for your attention, and we welcome your questions.

[*Translation*]

The Chair: Thank you, Mr. Langtry.

We'll now move on to the first round of questions.

Ms. Truppe, you have seven minutes.

[*English*]

Mrs. Susan Truppe (London North Centre, CPC): Thank you, Madam Chair.

Thank you, Mr. Langtry, for being here today. The purpose of Bill S-2 is to address the inequity in matrimonial real property protections and rights on reserves, especially regarding the matrimonial home and protections for primary caregivers, the majority of whom are women. It also seeks to protect individuals in situations of family violence, separation, divorce, or death.

Do you believe that aboriginal men and women on reserves should have the same access to matrimonial property protections as other Canadians do?

Mr. David Langtry: Certainly. In a like manner with our advocating for the repeal of section 67, it has always been the position of the Canadian Human Rights Commission that all Canadians ought to have the same access to human rights protection. Certainly that was the argument advanced then, that for 35 years first nations people—over 700,000 people in this country—were not afforded the same opportunity as every other Canadian. So the answer is yes.

Mrs. Susan Truppe: Thank you.

Do you agree that Bill S-2 would provide first nations women with matrimonial property protections and rights similar to those that other women off reserve have?

Mr. David Langtry: It would be our view, and certainly my personal view during my 15 years as a family law practitioner, that the system being proposed in S-2 would be similar, as it affords the same rights for off-reserve people, which is access, in the absence of development of their own matrimonial real property regime in a first nations community, to provincial and territorial courts after the one-year transition period, which would be similar to others seeking recourse. The problem still is, do first nations women living on reserve have access to provincial and territorial courts?

● (1540)

Mrs. Susan Truppe: When you were speaking for women living on reserve when a marriage ends, you mentioned that they are more likely to suffer disadvantage. The absence of fair systems to deal with matrimonial real property puts them at an even greater disadvantage. Why is this, and what are some of the disadvantages they would be experiencing?

Mr. David Langtry: I certainly do not mean to speak on behalf of and for first nations women, aboriginal women, living on reserve. I would invite Valerie Phillips, who is legal counsel with our legal advisory service and has been engaged in...we're conducting aboriginal women round tables as part of our access to justice, meaning access to the Canadian Human Rights Commission, the complaint process, and the provisions of those services. It's through the course of that process that we hear of the conditions and the challenges facing first nations or aboriginal women living on reserve, and these would include lack of awareness, the fear of reprisal for speaking out, general safety and security, issues of trust with leadership, and of course many first nations women, aboriginal women, following a marriage breakdown, may be, together with children, required or forced in many circumstances to leave the community, whether because of lack of adequate housing or for other reasons.

Many aboriginal women face issues of lack of education and job skills, and they find themselves alone in a community without the necessary resources and no support services. Again, I would address the issue of the lack of domestic shelters in first nations communities and the lack of counselling and support services.

Mrs. Susan Truppe: Bill S-2 enables a peace officer to seek emergency protection orders on someone else's behalf. This means that in situations of family violence, another individual can make the application, rather than requiring the victim of violence to leave the home and confront the violent spouse or common-law partner.

Do you agree that enabling a peace officer to seek emergency protection orders will support individuals on reserves who are experiencing family violence by providing them with more flexible options?

Mr. David Langtry: From the Canadian Human Rights Commission's point of view, and not being in a position to necessarily address what issues might face residents of a reserve, and again, not wanting to speak on their behalf...having said that, let me say that having as many options to protect and having greater access to justice would be something that would always be supported, if somebody truly has the choice and the option and the access and are aware of their rights, since if they're not aware of their rights, they can't exercise them.

Mrs. Susan Truppe: One of the options that was discussed in the context of the centre of excellence was to consider options for making applications for emergency protection orders online. Do you think this would help to make emergency protection orders more accessible to individuals living in more remote reserve locations?

Mr. David Langtry: I suppose the question we've been addressing—not directly answering that, but certainly in terms of access to our system of complaints—is that as much as we say let's go online and have online complaint forms, especially for remote communities, first nations communities, there may not always be Internet access, and there may not always be the ability to access. Even if there is Internet access, there may not be the infrastructure or the equipment and so on to access it. We've gone to an online complaint form assessments process. But being mindful that there's a large segment of the population, particularly the most vulnerable, who most need the services we provide, we always allow both the in-person contact and the assistance and do not say that it can all be found online.

Mrs. Susan Truppe: Thank you.

How much time do I have?

The Chair: You still have five seconds.

Mrs. Susan Truppe: Five seconds? I'll pass, then.

Thank you very much.

The Chair: Thank you, Madame Truppe.

I'll now turn to Madame Crowder for her seven minutes.

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

Thank you, Commissioner Langtry. I think the three questions you posed at the end of your presentation are very good questions, in terms of fair access to justice, being able to access their rights in a safe way, and of course the capacity to develop and implement their own matrimonial real property.

I want to just touch.... Of course, I was on the aboriginal affairs committee when we were dealing with the repeal of section 67. In that piece of legislation there was a three-year transition period to allow communities to get up to speed with their new obligations. In this particular piece of legislation, there's only a one-year transition period.

Can you say something about the importance of having an adequate transition period in order to bring communities up to speed?

● (1545)

Mr. David Langtry: Yes, and thank you for the question.

You may recall we had spoken to the transition period during the repeal of section 67, and it was changed to the three years by agreement. Our experience was...in the three years we had done modelling after constitutional amendments that occurred as well. The reality at that time—and I would draw the analogy to this legislation—was that when the Canadian Human Rights Act was passed in 1977, the section 67 restriction was intended as a temporary exemption, which of course lasted for 31 years before it was ultimately repealed. The point we were making was that a one-year transition period would be insufficient for first nations governments who have never been under the operation of the Canadian Human Rights Act, whereas the federal government and federally regulated employers had 30 years of working under the act.

We welcomed and acknowledged publicly that we supported the three years that was ultimately agreed to. I can say in our experience that even the three years may not have been sufficient, but thankfully there were three years, because we continued to work with first nations governments in a number of ways, particularly in developing not only the awareness but also the tool kit I referenced about alternative dispute mechanisms. Some communities have them, many don't, and many have asked us for assistance on how they should develop those. That work is ongoing, even though we've had now since June 2008. Of course, we're approaching the fifth anniversary since the change.

So in welcoming a sufficient period of time, even for engagement within the community, for first nations to ensure that if they want to develop their own legislation, their own matrimonial real property legislation, even apart from an alternative mechanism, one year may not be sufficient for engaging the community.

Ms. Jean Crowder: I want to touch on your tool kit. I didn't have time to read the whole piece, but you talk about fair access to justice and accessing their rights in a safe way. We've heard some testimony that would indicate that just because people were able to access the provincial court system and have a division of property, it may well be that the community still potentially may not be a safe place. It's possible. There could be reprisals; there could be some very bad feelings.

When I looked at your community-based dispute resolution, one of the things I noticed was that this included the entire community throughout the stages of its development of the dispute resolution process. I think in other places there is evidence that this is an education process for the community as well, so that the whole community can be brought up to speed with a different way of handling things. For example, people could use examples on matrimonial real property.

Do you see value in having this dispute resolution process funded, for communities to develop as a tool, to help deal with some of the repercussions of the new matrimonial real property law?

Mr. David Langtry: Absolutely, I do. I would view the alternative dispute mechanism, depending on what each community chooses for itself to have...it could have a very broad application covering all disputes. The model we're promoting isn't restrictive only to those issues that could arise under the Canadian Human Rights Act as a complaint. This would be community-based or regional-based or what have you—again, whatever the community.

The tool kit does use examples of some successful and developing first nations dispute mechanisms. We've engaged those communities in helping us develop this tool kit and I would see it as being possible to address some of the issues that would arise under the matrimonial property as well.

I want to hasten to add—because you've referenced safety—that under the Canadian Human Rights Act there is provision where if a complaint comes to us, we can require the complainant to access the alternate dispute mechanism. That, however, is a discretionary provision. They are not required. So the mere existence of a good system in place does not mean we would turn it away.

I raise that because in our round tables we have heard from aboriginal women that they may not feel safe in accessing the community-based alternate dispute mechanism if one were established. We are assuring them that they're not required to if a complainant says here are the reasons why I don't want to access that and we want to come to the Canadian Human Rights Commission. Then certainly we can do that.

The general principle is, the closer to the source of the dispute and the sooner it can be resolved, the better it is for all parties.

● (1550)

The Chair: You have 30 seconds.

Ms. Jean Crowder: Just a quick comment on the online process, it's not just rural and remote communities. I live on Vancouver Island, in Nanaimo—Cowichan, an hour north of Victoria, and one kilometre off the highway people do not have access to high-speed Internet. So that's not a panacea in terms of dealing with these matters.

Thank you very much, Commissioner Langtry.

The Chair: Thank you, Madam Crowder.

We will turn now to Madame O'Neill Gordon for your seven minutes.

Mrs. Tilly O'Neill Gordon (Miramichi, CPC): Thank you, and thank you, Mr. Langtry. It's nice to have you here and to listen to your presentation.

I want to assure you that our government has always sent a clear message that violence against women, wherever it occurs, should not be tolerated. But women on reserves are being abused and victimized without the protections they need, and especially without the rights and protections that all other women across Canada have.

Certainly we've had lots of consultations for Bill S-2. There have been 103 consultations across 76 communities and our government has spent over $8 million in this study. We see the need to go forward and make this happen.

It's been 25 years since this legal gap has been identified. Everyone, including our witnesses, agree that Bill S-2 is not meant to be a catch-all piece of legislation and that it has been drafted to address a specific legal loophole.

Do you agree that the first nations men and women living on reserves should not have to wait another 25 years for this legal gap to be closed? We need action on this now to protect the lives of women.

Mr. David Langtry: Let me say that we certainly advanced a similar position regarding the repeal of section 67. All Canadians—and it should not be restricted to non-aboriginal or non-first nations—should have the same rights as all other Canadians. That was the argument we advanced then for the repeal of section 67. We welcomed the repeal of section 67 and the process it went through.

When I appeared in the past, I was asked a question about whether the repeal of section 67 would address all of the issues in first nations communities. I'm paraphrasing the question somewhat. I answered that question the same way I answered this one.

Legislation alone will not deal with all of the root causes of issues in first nations communities. But as we said in the opening, it has been identified that the need for a fair, available, and accessible system of dealing with matrimonial real property is an urgent human rights issue.

So yes, it is necessary, from everything I've heard. There is no disagreement that there's a need for it. Some have suggested different ways to go about achieving that, but I would personally agree, based on my background, and on behalf of the commission, that there is certainly a need for that. But everybody should be mindful that it will not address the root causes, in many situations.

● (1555)

Mrs. Tilly O'Neill Gordon: We say the same. Just because it won't address all the causes, that doesn't mean it's safer to be at a standstill. We want to proceed with this too.

Before I got to be a member of Parliament, I was a teacher on a reserve. I would often see the hardship and the heartache, which of course a breakup in a family anywhere would cause. In dealing with the children, I saw that there was an awful lot of violence and heartache for these kids.

Do you agree that the presence of children in the family should be considered when determining who gets to maintain the occupation of a family home upon the breakup of a marriage or relationship?

Mr. David Langtry: If I may be permitted to put on the hat of my past practice, family law, I would say yes, certainly.

I was assistant deputy minister of Child and Family Services in Manitoba, which had responsibility for child welfare, domestic violence prevention programs, child day care, and so on.

In legislation, and in the courts, the most important thing is always the best interests of the child. Many courts, many decisions, and many writers will acknowledge that keeping a child in the matrimonial home is far better than requiring them to move. It has always been my position that possession of the marital home should follow the custody of the children.

Mrs. Tilly O'Neill Gordon: Shelters will only provide them with shelter; that's all.

I agree with you, as we all do, that children need to stay in their homes, where they feel comfortable and at ease and there's not such a big mixup for the poor little ones as there would be if they had to go into a different environment. I'm happy to hear you say that you also feel that the children are better off in their homes, even better off than going to a shelter.

Does the CHRC agree that access to emergency protection orders will help to ensure the safety of a person who is in a situation of family violence?

Mr. David Langtry: Again, if I may be permitted to say so not on behalf of CHRC, protective orders are always wanted in urgent or emergency situations. Unfortunately, we know that whether in a first nations community or beyond, the protective orders do not always provide safety and security for the person. I'm in no way, shape, or form saying that they shouldn't be available. That's just the reality.

As we heard from aboriginal women, the concern is that even if they have all the protective orders but are perhaps required or still want to remain within their community, they may be subject to retribution for taking these actions, and their health and safety and security may well be at risk.

So yes, I would support the protective order, but then it becomes an issue of enforcement and observance within that first nations community.

The Chair: Thank you, Madame O'Neill Gordon.

Madame Bennett, you have seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you very much, and thank you for our testimony.

I think the last comment was very important. Whether it's in cities...or in rural communities in particular, where everybody knows where somebody lives, unless there's 24/7 protection, a piece of paper doesn't really do it in those situations. Women have to make their own decisions based on their safety and their perceived risk of retribution.

As you know, those of us on our side felt that Wendy Grant-John was very eloquent in stating that the legislation on its own wouldn't do the job, that there needed to be provisions for the non-legislative outstanding issues that you've outlined.

I guess we have to say on this side, and on the record, that our answer to your three questions will be no, no, and no. Unless there is an actual commitment, we cannot allow the government to think they can pass this piece of legislation—which allows for a protection order but then walks away without any further commitment. There's not a lot of trust that this will happen, whether it's water or matrimonial real property.

I guess the government is going to push this thing through anyway. We need to know, how can you help us fix it? I guess one issue would be the capacity for first nations to build the capacity. As you said in the repeal of section 67, there was a three-year transition period to allow people to build the capacity. Certainly, what we've heard is that 12 months will not be enough.

I guess they're also talking about a centre of excellence that won't even be up and running when this bill is passed. Would you believe that 12 months is enough to create capacity in enough communities to make this at least work a little bit, or would you suggest that it be 36 months, like it was for the repeal of section 67?

● (1600)

Mr. David Langtry: Again, from the experience we had, we welcomed the 36 months. We found it very helpful to be working with first nations, both people and governments, in providing the information and so on.

In terms of providing capacity, capacity, of course, is a very broad catch-all, if you will, for a number of things, so for the human and financial resource issue, no. But in terms of developing capacity, again, I would hearken back to the comments I made about having an alternate dispute mechanism in place. Many first nations, because of the work we have been doing with them and that they've been doing on their own...we have offered assistance to those communities who may wish for some help and guidance. We developed the tool kit in conjunction with first nations, with their input. They're well on their way.

It would seem to me that if they are faced with the potential of it becoming provincial-territorial after one year, and they choose not to have that—they would rather govern it themselves—they might either avail themselves of the tool kit that I saw the AFN develop for model legislation or they may move toward having an alternate dispute mechanism that may deal with some of the issues.

As I said before, our experience in working with first nations communities is that many of them look for a fulsome engagement with their communities. One year just doesn't provide that when you have the limitations and the restrictions that face first nations communities right now in this country. Would a longer period of time be welcome? Yes, but I think first nations have proven resilient in the past, and I think they would work as hard as they can.

Hon. Carolyn Bennett: Commissioner, I know when we did the study on the changes to the Divorce Act and custody, certainly there was very poignant testimony that if there's violence or if there's a par differential like that, the ADR process is sometimes not appropriate. People actually need to have a different route. Do you have any views on that, with your experience?

Mr. David Langtry: Absolutely. Certainly that's been identified in the cases that come now, with the existing ones, where there's an alternate dispute. Oftentimes, because of a particular vulnerability, whether because of mental health issues or a sexual harassment or sexual abuse complaint, we will hear from the complainant that they don't want to be put into that ADR process. The reality is, of course, that many ADR practitioners address power imbalance, but some of the other issues.... So if it were to put a woman at risk at all by being required to go through that process, then we would say, in the circumstances of this particular case, that this would not be a viable option to refer out and we would receive that complaint.

● (1605)

Hon. Carolyn Bennett: Thank you.

[*Translation*]

The Chair: Thank you, Ms. Bennett.

You still have 30 seconds, if you have one last question.

Hon. Carolyn Bennett: No.

The Chair: Fine.

So now we'll begin the second round of questions. Ms. James has the floor.

[*English*]

You have five minutes.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Madam Chair. Welcome to our committee. I missed the last meeting, so it's a pleasure to see you today, and also, Mr. Langtry, our guest.

I listened to your opening remarks and some of the answers you've given to my colleagues and also across the way. You mentioned something about a lack of domestic shelters. I'm just trying to get a handle on this. What would be the reason that a woman on a reserve, or a woman and her children, would need to go to a shelter? Perhaps you could just explain why that is, because I heard you say it and I want to understand why a woman would need to go there in the first place.

Mr. David Langtry: Certainly. A victim of domestic violence who is afraid to be in her own home will, on an emergency basis, need to seek out for herself, and oftentimes her children, a safe place to go, a safe house, which would be a domestic violence shelter.

The difficulty, of course, of not having one in a community, particularly in a remote community is, how do the woman and children make their way to another centre? I would have to say, having been responsible, that there aren't likely enough shelters in Manitoba generally anywhere, not just in first nations communities.

Ms. Roxanne James: Thank you.

I live in the riding of Scarborough Centre; it's part of the GTA. I do not live on a reserve. If I were in a situation of domestic violence, I would not have to leave my home; I would not be there living in fear. Most times the person who is accused, or the abuser, is actually removed from the home and the person who is subjected to the violence has the opportunity to stay in that home. It's a right that I and everyone in this committee and everyone here in this room has equal rights to: the matrimonial property, or where they live with their family.

So when I hear that one of the reasons a woman might have to go to a shelter is because she can't stay in her home, or she's afraid to be there, I can only think that this legislation, Bill S-2, is going to help that issue in particular. There is no legislation that's going to cure all situations and all issues, neither in the rest of Canada nor off reserve.

In your opinion, do you not believe that Bill S-2 will reduce the need for many women living on reserves to have to flee their own homes and go to a shelter?

Mr. David Langtry: I'm not sure about that, again because of what we've heard from aboriginal women, not just for me.

You're absolutely right that a woman would have every right to go to court and get an order of sole occupation in an urgent situation, or the police would come and remove the husband from the home, and those kinds of things. Sometimes they don't avail themselves of that because they're afraid that if they try contacting the police, they will come to very, very serious harm. The same problems would occur but perhaps be even greater in a first nations community.

Ms. Roxanne James: Thank you.

So it's a real issue. I think in some cases, when we think of domestic violence, the people who abuse do it because they can get away with it. If someone thinks for a moment that they're going to lose total access to their matrimonial property, or the home they live in or share with their wife or their spouse, and they think there's an opportunity that they might actually lose that possession, do you think that would curb someone so that they would actually take a second look and stop the abuse, or treat the other person in a more respectable way?

Generations and generations back, women fought to have the right to vote. When I think back—before my time, obviously—women were not always treated equally in the family home either. But times have changed.

I have to tell you, though, that not too long ago I spoke to my husband about this very issue, about the need for Bill S-2. He could not believe that in this day and age, here in Canada, a country like Canada, there are women living here—in Canada—who do not have equal rights to matrimonial property and are forced out of their home. He could not believe it.

I guess I'm asking you that question, because although Bill S-2 may not solve all the problems on reserves, certainly it will help some. Do you agree?

● (1610)

Mr. David Langtry: I would again draw an analogy. When I told people that before June 2008, 700,000 aboriginal people in this country did not have access to the Canadian Human Rights Act, did not have equal access to human rights protection and the ability to seek redress for abuse, they also were astounded that this would happen.

That changed, of course, and at that time I also said the mirror legislation won't necessarily.... But legislation absolutely is needed.

Ms. Roxanne James: Thank you.

The Chair: I have to interrupt you.

Madame Ashton, for five minutes.

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

Thank you for your presentation.

On the legal side of things, Mr. Langtry, I know you obviously have quite a bit of experience there. One of the concerns that's been raised is the provincial court's capacity to deal with what are the complex land arrangements, land codes, that first nations have that differ across the board. We've heard about the very limited transition period, but there isn't much talk around the provincial court's capacity to deal with these codes.

I wonder if you could speak to that, and if you perhaps share that concern.

Mr. David Langtry: I don't feel I am in a position to be able to speak to that, only because, apart from a limited jurisdiction that we may have in terms of dealing with transfer of certificates of possession and the like...if we received a complaint on that. But beyond that, in terms of the lack of fee simple and ownership, certificates of occupation, and certificates of possession, it's not something within our experience.

I don't know if you have any....

Ms. Niki Ashton: I can move on to another question. Thank you.

You do raise questions around the capacity, and you certainly make reference to the real inequalities that exist on very basic levels in first nations when it comes to capacity and resources.

I wonder if you could speak to that for just a minute, to some of those root causes, but also the inequities that exist in terms of capacity and resources on first nations that are problematic.

Mr. David Langtry: Sure. I'll answer that in a couple of ways.

The first way is to reference, which I haven't done yet, the child welfare case that is currently before a tribunal and that has been through the Federal Court and the Federal Court of Appeal. It now is being heard on the merits. We received a complaint, referred it to tribunal, and are participating in an allegation or an assertion from the AFN and First Nations Child & Family Caring Society that funding for child welfare services on reserve is discriminatory in that it is less than funding for children off reserve. Obviously many of the issues of child welfare are tied into matrimonial breakup and the like. So there would be that.

When we were talking about the repeal of section 67, we were hearing this from first nations communities, and also from leadership: how are we going to address remedial orders when we don't have adequate housing; how can you say we're discriminatory by not providing housing if there isn't adequate housing?

So there are a number of very significant issues that we are facing. Some of these will be detailed in a data report on the equality rights of aboriginal people in Canada, which we'll be releasing within the next six weeks or so. That has looked at seven indices of well-being. It's a series of the four designated groups that we're doing. We've released one on persons with disabilities, and now one on aboriginal people, which reinforces much of the data that is known.

But the situation is such that the problems are myriad. If there was a simple solution, it would have been found, I would suggest, some time ago.

Ms. Niki Ashton: There's a lot of talk around emergency protection orders, and one of the main issues here is the fact that there aren't enough police to enforce them. I'm wondering in your work what information you have around the access to policing on first nations in Canada and how that interacts with human rights abuses.

Mr. David Langtry: In like manner that we have received complaints alleging discriminatory funding in terms of the child welfare, we also have received and referred to tribunal complaints on the very same...but for police services. We receive complaints, which I would describe as systemic complaints, on services being provided for police, for education, for health care, and the like, which I was addressing, certainly, and referring to when I said the challenges as to whether these constitute service....

The case law is pretty clear that pure funding is not a service, but it's when the funding comes with additional strings attached that we say it crosses the line and becomes a service. Those issues are referred to tribunal.

● (1615)

The Chair: Thank you, Madame Ashton.

[*Translation*]

Ms. Bateman, it's your turn. You have five minutes.

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

[*English*]

Thank you so much for being with us again, Mr. Langtry. It is wonderful to have you back with this different issue to address.

I'm not going to repeat what my colleague Tilly O'Neill Gordon talked about, our extensive, over $8 million consultation process, and the reason for that is that the time goes too quickly.

I was very interested to hear that you, too, are engaging in quite an extensive consultation process with the aboriginal community, and that two of the key findings you had.... You were listing them off so quickly that I couldn't catch them all, but fear of reprisal was one of them, and issues of trust with leadership was another. Those are huge.

If a woman is at risk and is potentially a victim of physical violence, it's pretty difficult to go up against headquarters, isn't it? Could you speak briefly to that finding?

Mr. David Langtry: Yes. Thank you for the question.

Maybe it's not so much a finding, but what we've heard in regard to a number of issues that have been raised by aboriginal women. The reality is that they're living oftentimes in isolated communities. There are issues over leadership, of whether they're not part of...and there are sometimes issues in terms of what community it is. As everybody knows, of course, not all first nations are the same nation: they're nations.

They have all of those issues that confront them, oftentimes compounded by being aboriginal women living in poverty.

Ms. Joyce Bateman: That fear of reprisal piece, when you're speaking out against those in control, is a huge issue.

It's interesting to note that we're hearing from the opposition that the $8 million wasn't sufficient in regard to consultation, and it's interesting to also note that historically, in 1960, when a Conservative government introduced the vote to aboriginal people, it was the aboriginal community at the time that said there hadn't been enough consultation. I don't think there's one of us right now who would say to take back the vote, that we haven't consulted enough, and I think this will be the same issue.

Sir, you have experience as the ADM of family services in Manitoba, my province. You and I have a lot in common, because women and children who first have been beaten and then have been told to leave the home with nothing but the shirts on their backs often end up in the care of family services, and certainly often ended up in the care of my school division. We tried our very best to help these families and to provide supports. We worked in partnership with your organization.

This is meant to address that so that these children can actually stay in their homes. Based on your experience, could you speak to that briefly?

Mr. David Langtry: Yes, absolutely, and I'm happy to. One of the issues, as an example, in the child welfare case is that too much money is pointed towards protection services, towards apprehension, as opposed to support services to allow children to remain in their own home.

I can say, certainly both as a lawyer and as ADM, that sometimes it's just that some support is needed to be placed, but it is better for children to be in their own home, as long as it's safe and secure. Measures that can be done to keep children safe in their own home and with their parents is a situation that is preferable to apprehension and to being placed in foster care and sometimes passed from home to home.

● (1620)

Ms. Joyce Bateman: That's absolutely true, as we well know in Manitoba.

The centre of excellence, which has also been much maligned by the opposition, gives an opportunity for the leadership of the 22 first nations communities that have already initiated this kind of law. There are more than 600 first nations communities in our great country, but 22 have initiated that leadership. The centre of excellence, in which we're going to invest millions of dollars, is going to enable those first nations to demonstrate their leadership to those who would follow.

Will this help communities find a way to have the rights they need?

The Chair: Give us a very short answer, please.

Mr. David Langtry: I would say that we would always support first nations leadership and first nations determining their own future as to the way in which they would provide services for their own people. That includes doing so via a human rights commission. We would welcome a first nations human rights commission.

The Chair: Thank you, Mr. Langtry.

I'm now turning to Madame Ashton for five minutes of questioning.

Ms. Niki Ashton: Thank you very much.

Our question revolves around the fact that discussions did take place with certain first nations. We find that these were inadequate, but beyond that and at the core of it, what a lot of the first nations raised was that concerns with Bill S-2 weren't actually heard and are not reflected in Bill S-2, which, as we know, is the most recent iteration of this government's efforts in recent years concerning matrimonial property rights.

I have before me a letter from Chief Shining Turtle, and I'll read a section of it.

> During the period October 2006 to today May 2013, we did not receive any support, advice, consultation, accommodation, from the Federal [government or] Indian and Northern Affairs Canada on any stage of our MRP law development.

This goes back to the fact that Chief Shining Turtle's community, Whitefish River First Nation, has worked at developing their own MRP law for their citizens. Here we can see—and certainly the government should know—Whitefish River First Nation's work on this, and yet they've chosen not to respond to the first nation, certainly not to work with them in developing their own code.

I'm wondering how problematic you find it that first nations concerns haven't been heard and that in fact some of those who have made the effort, as we hear in this case, haven't heard a response.

Mr. David Langtry: I would say that during the discussions and debate around section 67, a similar question was asked of me. I said that the Canadian Human Rights Commission, of course, does not undertake to discharge the honour of the crown and conduct the consultation; we're engaged with the community. I left it to first nations and the government to respond as to whether adequate or full or meaningful consultation occurred. From our point of view, in developing all of our policies, our programs, our tool kits—everything we're doing—it's about access to justice.

Our view is that we need to engage with those first nations who wish to engage with us, and we listen and we hear. We have to know the interpretive provision, which you may all be aware of, that talks about gender equality as well as about individual and collective rights. We need to hear from them and learn from them.

So we engage extensively, again not in order to say that we're here to tell you what is good for you, but to say we want to hear from you as to what you need in order to access our services.

Ms. Niki Ashton: That sentiment sounds so important. We would have liked to see it in the deliberations that have led to this point in the formation of Bill S-2.

Just going back to your statement around respect for individual and collective rights, one of the concerns raised is about the way in which this infringes on treaty and aboriginal rights and on the sense of collective rights that first nations have.

Could you speak to that piece and to the importance of that understanding?

Mr. David Langtry: In the Canadian Human Rights Act, even as a quasi-constitutional statute, there is the non-derogation, non-abrogation provision in our legislation, with the repeal of section 67, and there is provision, as you know, in the interpretive provision, which says that we have to give due regard to legal traditions and customary laws of first nations in any complaint against the first nations.

In some of what we were hearing from the first nations we were meeting with at the time of the repeal of section 67, they were questioning our jurisdiction and saying that even we as an organization—though again, the provision is in there—took away from their aboriginal and treaty rights. My response always was: these are the laws of Canada; if you develop your own system for addressing human rights, we would certainly welcome it, but we continue to be bound to do this, though nothing we can do can abrogate or derogate from rights under the charter and from aboriginal treaty rights.

● (1625)

The Chair: You have 20 more seconds.

Ms. Niki Ashton: Thank you.

Just quickly, going back to the socio-economic indicators, we know that indigenous women are the most marginalized women in Canada, whether it's quality of life, length of life, etc.

I'm wondering if you could speak to some of these indicators, for aboriginal women in particular.

The Chair: We won't have time to listen to your answer. Sorry about that.

Some of you have two minutes.

Madame Young, it is your two minutes.

Ms. Wai Young (Vancouver South, CPC): Thank you so much, Madame Chair.

Thank you for being here today.

I'm going to make this very quick because I have only two minutes, as you know.

I want to table a document, which we have here, where we have asked the Government of Canada to provide us with information on the funding it has provided.

I'm going to skip over housing and a number of health issues, and the billions and billions of dollars that are allocated and spent every year on this, to quickly say that in terms of Justice, which I think was raised here, there was an investment in 2011-12 for $12.5 million, which brings the total federal investment to nearly $100 million since 2007.

I could go on about the aboriginal courtwork program—over 200 courtworkers and $5.5 million a year, etc.—but I'm going to table these documents, which detail the millions and millions of dollars that are spent on programs and services. We could sit here for a millennium and talk about whether that's not enough, how these services should be provided, and through which streams.

Of course, we totally support the fact that first nations should be developing their own systems within their own reserves. What I want to focus on, though, given my lack of time, is what you said on page 1 of your own presentation, that “the need for fair, available and accessible systems to deal with matrimonial real property on reserves is an urgent human rights matter”.

This issue, as you know, has been identified for 25 years as being a gap in legislation. This is a bill that's been in the works, back and forth between government, for over four or five years.

The Chair: You have 15 seconds.

Ms. Wai Young: It's gone back and forth.

I guess my question to you really is, what do you mean by urgent? Should we talk for another 25 years about this?

Mr. David Langtry: No. I would not say urgent is 25 years, the same as I felt that 31 years was not a temporary measure for the inclusion of section 67 in the Canadian Human Rights Act.

The Chair: Sorry to interrupt you, Mr. Langtry.

[*Translation*]

That concludes the first part of our meeting.

[*English*]

Once more, I want to thank our guests today.

[*Translation*]

We will break for a few minutes.

[*English*]

I will ask our next witnesses to approach.

● (1625)

(Pause)

● (1630)

[*Translation*]

The Chair: We will now resume the committee meeting. We'd like to maximize the time we have available with our witnesses.

During this second part of the meeting, we will hear from Ms. Joan Jack of the Berens River First Nation, and Ms. Kim Baird,

[*English*]

the former Chief of Tsawwassen First Nation.

Thank you very much to both of you for being with us today.

[*Translation*]

You will each have a maximum of 10 minutes for your opening remarks. We will then take questions from the members.

Ms. Jack, you may begin your opening remarks.

[*English*]

Mrs. Joan Jack (Councillor, Berens River First Nation): I was hoping you'd start with the former chief here, out of deference to her position.

To start, I would like to say *miigwetch* to the committee for inviting me here and thank you to the Southeast Tribal Council for getting me here.

My name is Joan Jack and I have the privilege of serving my people as a part of the Berens River First Nation chief and council. My portfolio on council is health, social and CFS—child and family services. I left Berens River yesterday in a light snowstorm and boarded a 206 airplane to the end of the road.

On a personal note, I am a mother of six, or maybe seven, or maybe more if you count all the children my husband and I have raised over the last 20 years. I am a survivor of domestic violence in my twenties—different husband. Sometimes leaving is the answer. I'm also a lawyer and a member of the Manitoba bar.

I'm ultimately here as an indigenous women to assert our rights as indigenous women in an indigenous context. Before I continue, I want to apologize from my heart, as I will surely offend someone, and while that is not my intent, I invite you to make peace with me later.

I don't know how many of you realize that it's welfare day today, and for sure in Berens River there will be women abused tonight. But the women probably won't leave, because the solutions to why we are violent and why we tolerate violence are not simple, and leaving and dividing our poverty when you live on an isolated reserve is not always the solution.

When I was invited a short time ago, I began downloading documents to review. I realized I was causing a clear-cut, so I stopped. Instead, as is our culture, I went to look to see what other first nations women in leadership were saying. On March 9, 2007, Wendy Grant-John, who I admire greatly, submitted a report through the Native Women's Association of Canada, and I found that Wendy had said:

> The Ministerial Representative's key recommendation respecting a legislative option is a concurrent jurisdiction model in which First Nation jurisdiction over matrimonial real property including dispute resolution would be immediately recognized and take paramountcy over any conflicts with federal or provincial law.

Wendy went on to say:

> The viability and effectiveness of any legislative framework will also depend on necessary financial resources being made available for implementation of non-legislative measures such as...prevention of family violence programs.

And I thought, "I agree." Why isn't this legislation coming out of section 35 as concurrent jurisdiction? Maybe it can't be done? I doubt that.

But I'm not going to get into legal intellectual gymnastics, even though it's tempting, because it is welfare day back home and our people are suffering. My people are suffering and our families are suffering. We are suffering because we continue to resist colonization and assimilation by staying and living in terrible living conditions, because we love our land and we love Berens River. The majority of our people live on reserve, and more would come home if there were opportunities.

So we live without proper housing, water, sewer, roads—the list goes on. We must stop coping with alcohol and drugs, for sure. But what makes me the saddest is that apparently the majority of Canadians can't figure out why we just don't all move to the city and get a job. We have moved to the cities, and in the face of racism and a lack of skills and education, we turn to crime as a source of income and have started gangs as a means of economic activity.

Instead of working with us through legislation that implements concurrent jurisdiction through section 35, the federal government has cut funding to family violence programs, cut funding to language programs, cut funding to health programs, cut funding to healing programs. Basically, no matter how many of us die.... And we are dying. I have not been to so many funerals in my whole life since I moved back home to my reserve. All the ways in which we might continue healing and recovering from colonization—healing and education—have been replaced with a "suite of legislation". Goodness knows who will understand or implement these solutions on reserve. What federal department will administer the legislation? Which court will administer this legislation? The court that flies into Berens River? Where will the Berens River First Nation get money to develop and implement its own laws. If the legislation is out of subsection 91(24), which it is, then it's subject to the Minister of Indian Affairs—sorry, no one back home knows the new name.

● (1635)

We, as Indian Act chiefs and councils, will administer the law we develop in accordance with the rules set out in this legislation, and we will administer that law under the Minister of Indian Affairs and become first nations municipalities. Just as there is municipal law subject to the provincial law, our laws will be subject to federal jurisdiction. I don't think this is what Wendy meant by concurrent jurisdiction.

This legislation is another clear and deliberate step towards the creation of municipal governments subject to federal power. This is not what Wendy said was the solution.

I'd guess today that only about 10%—and if you don't hear anything, I want you to hear this, please, because I know you all care. I know you're not sitting there because you don't care. You're sitting there as women because you care. But 10% of the first nations governments—that's my guess, and that's generous—have been able to muster their own strength again sufficient to recover from the cultural genocide of residential and day schools, the assimilation policy to kill the Indian in the child.

What I think is going on is that first nations governments without treaties—again, this is just my view—see the municipal solutions as a transitional solution to ensure that more Indian money doesn't get transferred to the provincial governments and away from their people. I would say, honestly, with deep respect, that these first nations governments are all located near urban centres where they have property that is actually worth money. For the rest of us, the 90% who don't live near urban centres, we mostly live in mouldy, old, overcrowded houses that are the cause of much of the domestic violence and low education scores.

Don't get me wrong: there is no excuse or justification for domestic violence. But if the federal and provincial governments really wanted to help first nations women and children on reserve, they would work cooperatively with us to provide more housing—period.

Let's just start with houses that don't mould and see how that affects domestic violence. Yes, many, many first nations women stay in abusive relationships because they simply don't want to leave the house—true. There is no other house to go to, and the husband doesn't want to leave the house either, because where's the house he's going to go to?

However, I know there are many, many more first nations women who love their husbands or common-law spouses and just want the violence to stop. They don't want to leave. They want to heal. They want to heal with their spouses and children, as a family.

This push for legislation out of subsection 91(24) and not section 35, in my opinion, is about the money and the continued assimilation policy that equals economic development through legislated racism.

The federal and provincial governments continue to tell us, “You must do things like me. You must create law like mine. You must be like me.” Like a spruce tree is not a pine tree, I am not you.

In the meantime, the federal government says, “We will have our provinces take care of your women and children in their mouldy, overcrowded houses without running water and sewers, and we will help them if they want to leave.”

When I was first elected to the Berens River chief and council, I sat in the court in Berens River and watched our people, my people, paraded through the legal system with an average of five minutes' face time with their legal aid lawyer, month after month, remand after remand. Then they breached. Then they were sent to jail. Then they were flown out, only to be remanded again. One month I watched a young mother who brought her newborn to court to show the baby to the father who was handcuffed, as the baby was obviously born between his charges and his breach. So sad. People sober up and they're sorry. They don't want to break up.

If this legislation goes through and there are some women on reserve who want to access justice, how are they supposed to do that? At present, women are being forced under family maintenance rules through welfare and are told to file for support, but you have to go to Winnipeg to get a lawyer.

I'm conscious of the time, Madam Chair.

● (1640)

The Chair: Yes. It will be a bit less than a minute. If you can, please conclude.

Mrs. Joan Jack: Well, I'll just read the last two pages, then I'm done.

There is no way in my mind that we can call what is happening in the rural, remote, and isolated fly-in community circuit courts anywhere in Canada justice or even access to justice. Our young men, and even some older men, plead guilty to get it over with, do their time, learn how to be better criminals, and then come back home with a new skill set.

I make a point about people being punished for having a disease, which I also think is one that I'd like you to take to heart and consider. You know, we don't punish diabetics for eating doughnuts. I know I've trivialized it, but it's the same thing. My people are suffering from alcoholism, and yet we're criminalized and our families are fractured and we're punished. And it's not the solution.

I understand my comments are going to be distributed, so if anyone has any questions with the remaining part, they can ask them.

Thank you, Madam Chair.

[*Translation*]

The Chair: Thank you very much, Ms. Jack.

I'll now turn it over to you, Ms. Baird. We were waiting to get your written speaking notes to assist the interpreters. That's why you've been called after Ms. Jack.

You have a maximum of 10 minutes.

● (1645)

[*English*]

Ms. Kim Baird (Former Chief, Tsawwassen First Nation, As an Individual): Thanks, everyone. Thanks to the committee for having me, and thank you for your work on such a serious and important matter.

Please bear with me. I'm going to give you a little bit of background about Tsawwassen, because I believe it's good context for my perspective.

I was chief for 13 years and on council for 6 years at Tsawwassen. I negotiated and implemented our treaty, which came into effect four years ago. It's a modern land claim and self-government agreement. We successfully removed the Indian Act from our community. We've replaced it with our own legislation and institutions that were created in our constitution. Our community built our constitution at the grassroots, and while it took 16 years to negotiate and have it come into effect, we made good use of that time by engaging as a community to sort out what our vision was for our future and how we might achieve that.

I took community consultation and engagement very seriously, and I think the participation level in the ratification of our treaty demonstrates this. About 95% of our members voted, and of those, 70% approved the treaty and the new government structures, which include a legislature, an executive council, a judicial council, and an advisory council. We have also established an economic development corporation and a provincial prosecutor to deal with enforcing Tsawwassen laws in the provincial court system.

My perspective is one of having directly experienced the Indian Act, of trying to improve the Indian Act through the First Nations Land Management Act or other sectoral initiatives, and of moving to self-government, which is based on the inherent right policy. This provides for some unique insight.

In the Tsawwassen treaty, our model of governance is that we've agreed to integrate with provincial and federal laws. What this means is that Tsawwassen, British Columbia, and Canada can enact laws, and the treaty sets out whose laws are paramount if they conflict. In this concurrent model, it is impossible to have a gap now, and if we don't have the law, the relevant federal or provincial law will apply.

On matrimonial property, our treaty says that we have standing in any judicial proceedings that deal with Tsawwassen lands upon the breakdown of a marriage. The court will consider any evidence and representations in respect of our law, which may restrict the alienation of our lands to Tsawwassen members in addition to any other matters that are required by law to consider.

In the absence of a specific matrimonial law, the provincial law now applies in Tsawwassen. I think the real important element of the concurrent law model is that, unlike some may believe, it does not infringe on our inherent right of self-government. Instead, it provides a nation with the ability to choose whether to rely on the existing provincial law or exercise a law-making authority. This choice is not made through a delegated instrument; it's made pursuant to an agreement that was made on a government-to-government basis.

This background is important, but the main points I want to raise are from a pragmatic, on-the-ground perspective. Of course we want equality for our women, but we want it more than just in law and theory. We want substantive equality that we can actually implement. The law by itself won't do it. In my experience, you really need to focus on implementation.

On the issue of consultation, it's clear that this government has a different approach to consultation than first nations expect. It's entirely up to the Government of Canada to manage its own legal risk. A top-down approach in addressing a complex issue such as this is ill-advised, in my opinion. It's unfortunate that the focus on the process takes away from the focus or even the legitimacy of the product that's being advanced. The lack of collaboration, let alone adequate consultation, as defined by the courts, removes a lot of opportunity to really get at solving some fundamental and legitimate underlying concerns on the implementation of this bill.

First, we're dealing with particular jurisdictional issues in the absence of dealing with the broader context. First nations councils are inundated with the impacts of colonization and the impacts of the Indian Act. Picking at this one strand in isolation of the broader systemic challenges that first nations face is frustrating to many, I believe.

● (1650)

I think you need to reconcile many jurisdictional issues to support the development of a matrimonial law. We continue to run up against the problem of the square peg in the round hole when comparing first nations traditional values, including the concept of communal lands and interests, the current reality of the Indian Act, and the values of the provincial legal regime if they are forced on first nations.

Not only is there a jurisdictional gap, but there's a fundamental incongruency between the traditional first nations Indian Act and federal and provincial regimes. In Tsawwassen's case, we're testing integration with provincial regimes, but this is only by our choice. As well, it was facilitated through complex tripartite negotiated arrangements to try to ensure that our unique rights and interests as a first nation were respected and accommodated in those provincial systems.

Our approach is very controversial among other first nations. I cannot stress enough that we needed to choose this model ourselves. It would never have worked if it had been imposed on us. In our case, self-government has provided us with the legal and political regime to support matrimonial law development.

We have 23 laws to replace the Indian Act. We control who can own Tsawwassen lands. We control who Tsawwassen members are and what rights they have versus non-members. This requires considerable capacity from our legal regime to our consultative and engagement practices within our communities. We have standing in judicial proceedings because of our community-based jurisdiction. We need to be involved in those processes, and our treaty recognizes that.

I don't want to discourage the committee about the intent of this bill, but I want to stress the importance, in my view, of the whole gamut of first nations governance, which needs to be resolved for any particular bill to work. If we want these things to be more than aspirational, I think we need to think about Indian Act reform or replacement strategically in partnership with first nations who have little time to respond to federal priorities that are imposed on them.

There are likely some first nations that refuse to evolve outside of the Indian Act system, and maybe something more prescriptive will be necessary for those unwilling to meet their citizens' demands for equality and accountability—the Indian Act is a good shield for those and for that inertia—but I don't think a collaborative approach has truly been attempted, and I think that represents a huge missed opportunity.

I haven't said anything about what it takes internally for communities to rise to the challenge to do internal reform. The work is considerable but transformative. This is really what we should be focusing on, giving first nations the tools to solve their own problems and recognizing first nations' inherent jurisdiction, rather than defining and delegating the extent of it. Many first nations are willing to do this and have many ideas on how to achieve this.

The top-down approach on this bill and others like it detracts from an opportunity for transformational and real reform, which almost everyone recognizes and is prepared to admit is required for first nations, especially when you have progressive first nations that want to move down this track. At a minimum, Canada should be supporting and working with this willingness.

Should there be equality for women? Yes. I'm sure this committee has heard innumerable horror stories about how vulnerable some first nations women and children are due to this issue. l appreciate the intent to help some of our most vulnerable members of society. I'm encouraged that the Government of Canada wants to act on some of these issues. l just think there's a better way to approach these incredibly complex issues that have plagued first nations for many generations.

Thank you for listening to my perspective, and thank you for your work.

Hay ch qa.

The Chair: Thank you, Madame Baird.

We will now start our round with Madame Ambler. You have seven minutes.

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

Thank you very much to both of our guests today for being here this afternoon.

I want to ask you, Chief Baird, about the process you went through in negotiating the treaty. I might just start with a very simple question. Are matrimonial property rights included in it, or are you abiding by a provincial law at this time?

● (1655)

Ms. Kim Baird: We have jurisdiction within the treaty, but we haven't enacted it yet, so provincial law applies.

Mrs. Stella Ambler: The provincial law applies, and there is a provincial matrimonial property rights law in B.C. that would cover —

Ms. Kim Baird: The common law would apply in the absence of us writing a law.

Mrs. Stella Ambler: And this is unique to your first nation?

Ms. Kim Baird: Yes, because we are one of the only modern treaties settled in B.C. through the B.C. treaty process. There are about five or six now out of 200 first nations.

Mrs. Stella Ambler: I must say I was very impressed by your CV and by your determination. I mean, 16 years, that's a long time.

Ms. Kim Baird: It is.

Mrs. Stella Ambler: So on this whole issue of improving the Indian Act and moving towards self-government, do you feel that...? As a member of the aboriginal affairs committee, I agree. I think that's great, and I know there are a number of first nations that are following the same path.

That's why I'm a little bit confused about the pushback we're getting in some corners on this legislation. Do you see Bill S-2 as paternalistic in any way? Do you see it as the federal government saying you have to give women equal rights to property on reserve? Or would you say this is the right thing to do?

Ms. Kim Baird: Well, it's so complicated, because you have a federal system that feels responsible to some of these citizens, rubbed up against a system of government that doesn't work. I have no straightforward answer for you. How there has been consultation on this bill has been an issue as well. The whole nature of relations between first nations in Canada and the federal government undermines the viability of bills like this, in my opinion.

Mrs. Stella Ambler: Right. You mentioned credibility in terms of the consultation process. I'm not sure if you were here for the first hour, when Ms. Tilly O'Neill Gordon talked about the consultation process. I suppose some people don't think it's enough, but it's been going on for—depending on how you look at it—somewhere between 10 and 25 years. There are some people who believe we should have consulted all 631 first nations in Canada. I don't believe that is realistic.

How do you feel we should have gone about that? Do you feel that all 631 first nations should have been consulted?

Ms. Kim Baird: I think in some ways if you are going to impact first nations legal rights and capacity—if you are infringing upon their rights in some capacity—you need to inform them, right?

Mrs. Stella Ambler: Do you think very many of those 631 would have disagreed with the concept and principle of extending equal rights to matrimonial property on reserves to women?

Ms. Kim Baird: I think they disagree with what priority the federal government is imposing on fixing the gamut of problems.

Mrs. Stella Ambler: Really? We're putting a high priority on this. They would disagree with that?

Ms. Kim Baird: Well, I can't speak on behalf of other first nations. I can tell you that—

Mrs. Stella Ambler: Would you disagree with the high priority we're putting on this?

Ms. Kim Baird: Everything is a high priority, obviously. But will it work in light of the other systemic issues that need to happen to provide better capacity in first nations governments to make this a reality? It's kind of chicken and egg stuff. As I said earlier, I don't necessarily think that equality for women is a bad principle, but if you are implementing it in a way that's not going to achieve the results you're looking for, it's wasted effort.

Mrs. Stella Ambler: How much time do I have left?

The Chair: You have one minute and a half.

I would ask, Madame Baird, if you could speak a bit louder.

Ms. Kim Baird: Sorry, I've got a low voice.

Mrs. Stella Ambler: Ms. Jack, I made a note that you talked a lot about housing. This is obviously an important issue.

Then you talked about healing and how couples want to heal. I guess my question to you is, if they want to do this, isn't it better for women to be able to do that in their own homes and not from a shelter, or running away or looking for shelter for themselves and their children? Isn't it better if they have the right to stay in their own home? Won't that make the healing process easier?

● (1700)

Mrs. Joan Jack: Not in a small community.

Domestic violence is a really complicated issue. When I was beaten up, I had to decide whether I was willing to live or die. That's the decision that women or men who are abused make. So the house is—

Mrs. Stella Ambler: I'm saying when they're at the point where they want to heal, the way you—

Mrs. Joan Jack: That's not going to work. How are they going to have access to the house?

There's no court in Berens River. Of those 631 communities, there's no court in about 600 of them. Once a month—

Mrs. Stella Ambler: But if they have the right to the home, then —

Mrs. Joan Jack: Who's going to enforce it?

Mrs. Stella Ambler: Who enforces it now? Who enforces the fact —

Mrs. Joan Jack: Well, we just got the RCMP in Berens River the other day.

Sorry, I shouldn't cut you off.

The Chair: I have to interrupt you anyway.

Your seven minutes is done.

[*Translation*]

I will now give the floor to Ms. Ashton.

You have seven minutes.

[*English*]

Ms. Niki Ashton: Thank you, Councillor Jack and former Chief Baird.

We really appreciate your coming, especially on short notice, given the time constrictions that have been applied to this very serious issue in this committee. We truly appreciate hearing from you.

Ms. Jack, I want to go back to the questioning from my colleague.

What is the reality in a community like Berens River? We're talking about this piece of legislation, and obviously there is a gap in terms of making sure that aboriginal women have their rights respected and acknowledged in the law.

What is the actual reality? Could you speak to the situation in terms of housing—perhaps how long the waiting list is—and in terms of policing and a women's shelter? I'll leave it at that for now.

Mrs. Joan Jack: The situation in terms of the actual violence is bad. We are struggling with our addictions as a consequence of colonization. I had a woman call me the other day because I'm on council. To cut a long story short, I asked where she was and she said she'd locked herself in her bedroom. I asked if she wanted me to come to the house, because that's what leaders in the communities do. The RCMP won't necessarily go to the house—it's all about risk management. I have opened up my own home, because the violence is bad.

As for the waiting list, we have about 2,500 to 3,000 people on reserve, in a fly-in community, and the average house has around 10 people in it. So I guess the waiting list is until your great-great-grandchildren.... There are three or four generations living in each house.

I forgot your third point.

Ms. Niki Ashton: It was about a women's shelter.

Mrs. Joan Jack: I guess it would be nice. I'd like to see more of a women's healing and training centre, where women could learn that they have a voice and learn ways to disagree with their violator so that he or she heals.

There are a lot of women who beat up the men at home too. The domestic violence is mostly against the women, but there are men who are abused as well.

I would like to see more capacity-building for my people, so they can understand that their behaviour is really not a solution. People don't want to leave. They don't want to leave each other, for the most part. They want to raise their babies and their grandbabies. But they don't know how to do anything other than what they've been doing. It's the same with alcoholism anywhere.

Ms. Niki Ashton: You spoke in your presentation about the programs that have been cut. I know the Aboriginal Healing Foundation was also involved in Berens River, as well as in other communities, at least across Manitoba, and of course Canada.

What is the situation in a community like Berens River, in terms of the treatment that victims and their abusers need to access in order to heal?

Mrs. Joan Jack: We have the standard NNADAP funding out of FNIHB, but that doesn't really work either. It works well for those who are trained in the NNADAP program. They become enlightened and empowered, and their particular families become empowered. We try to run the programs in the community with what limited resources we have. But people don't want to go to the health centre. They don't want to walk in there and say “Hi, I need help.” It's embarrassing.

I think a broader approach needs to be taken to the whole revitalization of our identity. There are still children in Berens River who don't realize they're Indians. They don't realize that they're Anishnabe. Even though they're speaking the language, they don't realize who they are because colonization is so strong.

We're so filled with cultural self-hatred that we don't even teach that Frontier School Division is not raising up a whole bunch of treaty-savvy Indians on the east side there. No. If you go around Berens River and ask anybody....

That's why when I said “matrimonial real property” the other day, they said, “Where are you going?” I said...well, how do you explain? I'm going to Ottawa to talk? If I even said the words “matrimonial real property in my community, people would be like “What?”

● (1705)

Ms. Niki Ashton: One of the messages we're hearing—and we're looking forward to hearing from the AFN, the Native Women's Association, the Assembly of Manitoba Chiefs, and others—is around the consultation process and the real problems there.

You're obviously a councillor—I know, Ms. Baird, you spoke to the situation earlier—but was Berens River consulted?

As a councillor, are you aware of consultations, or even concerns that other first nations have raised, in the context of Bill S-2?

Mrs. Joan Jack: Because I'm trained as a lawyer, and I'm supposed to be far more articulate and less brash than this, it's a very difficult situation when you actually go home and live in your community. You would think I would know, but nobody calls me—only the woman who's being abused, who I put in my loft.

I wanted to get a chance to answer. I didn't answer your question properly.

What we need to do is move to a land-based approach to healing, where we go out on our land and relearn who we are—to take responsibility for ourselves, to have pride, and to learn our language. Instead of sending our men to court, my husband said we should send them to the bush with the elders and they can't come out till they're fluent in their language. How about that for a sentence? Do you think that maybe while he's out there he might realize he shouldn't be beating up the woman he loves? It's wrong.

The solution to just pick up and leave—this legislation is promoting the further fracturing of our families. To pretend—to pretend—that we're doing something in Berens River about domestic violence, I don't think it will.

Ms. Niki Ashton: On the capacity of provincial courts to deal with land codes on first nations, do you think they have that capacity now?

Mrs. Joan Jack: No. We could. We're certainly intelligent enough. I did pass the bar. I can do it. But with what money? Where's the money? This is all good just on paper. It looks really good, and I got to fly to Ottawa, you know?

[*Translation*]

The Chair: Thank you, Ms. Jack.

[*English*]

Sorry to interrupt you.

[*Translation*]

I'll now turn it over to Ms. Crockatt.

[*English*]

You have seven minutes.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you very much.

First of all, I want to say to Joan Jack that I can hear the suffering and pain in what you're telling us today, and I appreciate that despite all your education and the fact that you've probably testified in many other circumstances, it still requires a lot of emotional reserves to come, and we appreciate hearing your stories.

I can take all the frustration you want to give, because you want to tell us how you've seen it, and we are attempting to hear you. So I do appreciate your coming and telling your stories.

You, too, as well, Chief Baird.

I want to talk about the fracturing of families.

Although this legislation is not a perfect panacea and it won't solve years of problems, we honestly believe that it will help to solve some problems with family abuse. I'm not saying it's going to be everything to all people, but right now the fracturing of families that we see...the women are being forced by band councils to leave the reserve when there's family abuse. They're the ones who are kicked out, who have to go the cities and find someone to live with, or stay in a shelter, and their lives are disrupted. We've heard over and over, through consultation with 103 communities and $8 million spend on consultation, that this is the best solution to the problem of housing that you talked about: give us a house. At least in this instance, the women and children would be able to stay in the house. It may not solve the fracturing of families, because the husband would have to leave, if he was the abuser in that case.

Do you really think it is better if the women and children have to leave the reserve and leave the house?

● (1710)

Mrs. Joan Jack: I don't know. Each case is different.

I appreciate your kind words, and I assume they are real, so thank you.

Ms. Joan Crockatt: They are.

Mrs. Joan Jack: Yes, I felt that.

Of course, who would not agree that the women and children should have the house? That's not the issue. The issue is that women and children—it's my opinion—who are suffering from alcoholism and addiction, which is the major cause of domestic violence, want to heal and want their family strengthened. If somebody had come and asked me what I would want to do, I would want to protect grandparents' rights to raise the children and have the house, because often three or four generations are living in the same house we're talking about, mould aside. It's really the parents, both of them, who should go and heal, sober up, and the grandparents should get the kids and the house while they're fixing their stuff, and then come home and raise their kids.

Ms. Joan Crockatt: I don't know if you've had a chance to see all the wrinkles in this bill—and it's fine if you haven't—but one of them is that if there is somebody else, like a grandparent or someone in the house for whom they are providing care, they will also have the protection under this law to be able to stay in the house.

To some degree, it might have addressed a little bit of what you're getting at.

Mrs. Joan Jack: For sure. I did a fast look-through, but really my point about section 35 remains.

When they did all that work, Wendy said “concurrent jurisdiction”, and I don't think she meant to implement it under 91(24). I think she meant what Chief Baird was able to do in British Columbia, where there is a model of concurrent jurisdiction, which her people are satisfied with, not this more fancy Indian Act stuff.

Ms. Joan Crockatt: Yes.

Maybe I'll just move over to you, Chief Baird. It sounds like you've done some really innovative things in Tsawwassen, and I appreciate the fact that you came forward to tell us about them.

You also mentioned that your approach is pretty controversial. I wonder if you think it would be an approach on which you could get consensus from all 631 bands in the country.

Ms. Kim Baird: I call consensus the “c” word. It's very hard to get in any one community, let alone across the country.

But to your point, perhaps there will be some first nations women who now have legal rights, who will be able to take advantage of them in certain circumstances. For those individuals, I think that will be an improvement in this particular bill. But I don't think it's going to have the reach to resolve in places that are more remote, and those kinds of things.

Again, while I appreciate the intent and the intention behind it, I just think it's a square peg in a round hole, and it's fraught with difficulties because of the myriad of interjurisdictional issues that need to be sorted out. In our case, we negotiated our way through those to have a system that would actually work, not for marital property, but for other things, including enforcing treaty laws in the provincial court system.

Ms. Joan Crockatt: May I then just ask you about the centre of excellence, because there has been $4.8 million set aside for a centre of excellence so that bands can actually take over and decide how they want these issues handled? Do you see that as having any potential for bands to actually utilize that? Is that a way of their actually taking responsibility and authority on this issue?

● (1715)

Ms. Kim Baird: Any resources that first nations can take advantage of would be helpful. It depends.

I have run a first nation with a small population. With the 300 competing priorities we have on law development, something that is obscure to the members of my community would be very challenging to put on the front burner, or even to ever get off the back burner. That's just the reality.

To build that capacity, to engage the community, and to make it their priority is going to be very, very challenging for many first nations.

Ms. Joan Crockatt: Okay.

Maybe if I can—

The Chair: I have to interrupt you.

Ms. Joan Crockatt: Okay.

Thank you both very much.

[*Translation*]

The Chair: We'll now give the floor to Ms. Bennett.

You have seven minutes.

[*English*]

Hon. Carolyn Bennett: Merci.

Thank you both for coming, because it's a tough issue. I think what you're hearing from the other side, and I quote, is, “We believe it will help.”

I think what we're hearing from you is that you're not so sure it's going to help in the same way that Wendy Grant-John said that a legislative tool on its own won't work, unless there are the non-legislative supports in place.

This government is saying it has consulted broadly. Could you tell the difference between consultation and an information session, in terms of listening?

Ms. Kim Baird: Our treaty consultation is a very formal process that's set out; it isn't just listening one way. It's taking concerns into account and modifying the approach to show that those concerns have been listened to. It's following through on why some concerns weren't followed through. It's a set process with timelines, with adequate information and adequate capacity to review the information.

Consultation with a capital “C” is a defined legal term in our treaty.

Hon. Carolyn Bennett: So for Bill S-2 as a product...what we're hearing is that it doesn't reflect what was heard, in that there have been a lot of concerns like yours expressed. I think the issue Councillor Jack put forward, the issue of what it is actually like in a remote community without access to a court, with maybe a protection order, where women still have to flee because they're not feeling safe or they don't have access to counselling...that this is not the way forward. Is that it?

Mrs. Joan Jack: Yes. As I said, I sat in the courtroom in Berens for four months. I watched our young men being hauled out of the community because of the process, because of the justice system, or the lack thereof.

This will just be another item that will cause the men to be taken out of Berens River, when really, as I said, the families need to be supported. That's a collective approach—not the best interests of the child and that whole regime of...that's the wrong solution, the wrong approach.

Hon. Carolyn Bennett: Could you just explain again what concurrent jurisdiction means? Will Bill S-2 apply at Tsawwassen First Nation?

Ms. Kim Baird: No, it won't. That's the short answer.

Hon. Carolyn Bennett: Because you already have—

Ms. Kim Baird: Because our treaty has set out all our jurisdictions. The inherent right is set out, our law-making powers, and the treaty sets out which laws apply if the laws conflict—

Hon. Carolyn Bennett: You already have that laid out, but in many—

Ms. Kim Baird: And that's protected in the Constitution.

Hon. Carolyn Bennett: Of your...?

Ms. Kim Baird: The Canadian Constitution.

Mrs. Joan Jack: It's through section 35.

Hon. Carolyn Bennett: Through section 35?

Mrs. Joan Jack: It's because they have a treaty, and section 35 says that Canada hereby recognizes and affirms "existing aboriginal and treaty rights". You can't argue that her treaty rights are not existing, because she spent 19 years negotiating them.

Voices: Oh, oh!

Mrs. Joan Jack: For my ancestors, on the other hand, the treaty party showed up in Berens River with a draft on September 20, 1876, with a "fill in the blanks". In nine hours they rolled through Berens River. Apparently it's a done deal.

● (1720)

Hon. Carolyn Bennett: So if concurrent jurisdiction is going to be honoured in legislation, what would it look like?

Mrs. Joan Jack: Well, we tried that after the aboriginal justice initiative, with the framework, trying to negotiate the implementation of self-government, so that we would have our laws flow out of section 35, which was argued for a lot, and hard. There are still some —there are always going to be some—indigenous people who don't agree with that, but Canada has shown us that they have a very big army. You pretty much have to agree or you get killed. That's how it goes.

I'm hoping we negotiate out of section 35 and not out of the 91 (24), and then when there's conflict we go to court and argue about that.

Hon. Carolyn Bennett: To answer Ms. Ambler's question in terms of where the pushback is coming from, it's that people feel they weren't listened to.

Mrs. Joan Jack: Well, yes. It reminded me of when my husband used to hit me. I'd say, "Stop, stop, stop." He never stopped. I finally left.

You can say that you talked to a million Indians, but if you don't do what we're saying, what's the point of the talking?

Hon. Carolyn Bennett: Obviously Wendy Grant-John talked to a lot of people—

Mrs. Joan Jack: Yes, and I quoted her.

Hon. Carolyn Bennett: —and came up with a report that is....

Mrs. Joan Jack: With a report that said, "Don't do this."

Hon. Carolyn Bennett: Which is exactly what the government is doing.

Mrs. Joan Jack: Pretty much.

Hon. Carolyn Bennett: At the time, the government was cautioned not to cherry-pick her report, that it had to do all of it.

Mrs. Joan Jack: Over the coming days, I think you'll hear from others far more articulate and diplomatic than I am who will make the same point I've made.

Hon. Carolyn Bennett: Tell me what a protection order would mean in your first nation.

Mrs. Joan Jack: If we had a protection order.... Well, first of all, we would have to determine who owns the house. We would have no idea, because some of them are so old and have transferred between hands so many times...and they may or may not have a mortgage.

Let's just assume that we can determine the legal standing of the house and that council has made a decision on who owns that house. Then I guess the RCMP would take that order, assuming you could get to a judge, because the judge only comes in once a month, and assuming that you could get on the docket.

I don't really know. You'd finally get it and they would have made up ten times and broken up ten times and then made up again.

That's not how domestic violence goes. The cycle of violence is a honeymoon until you can leave or make it up.

Hon. Carolyn Bennett: So without access to justice, this is all....

Mrs. Joan Jack: It just looks good. It looks really good.

They joke around in some Métis communities, asking “How is it going?”, and they say, “Ah, they're peace-bonding it again.”

The Chair: Thank you. I will have to interrupt you here.

Thank you, Madame Bennett.

[*Translation*]

We will now start our second round of questions.

Ms. Young, you have five minutes.

[*English*]

Ms. Wai Young: Thank you so much.

I want to second what my colleagues have said all around. I think we're very touched by your testimony, and very hopeful, too, particularly, Chief Baird, with the results of your treaty negotiations, and that you have, over 16 years, successfully negotiated a treaty.

We've been listening to testimony from numerous people, and we have heard some very startling things. We heard from women yesterday who went through the court system for 12 years and spent a lot of money, only to be told that there is no jurisdiction because they're on reserve lands.

We heard you today saying who wouldn't want to stay in their own home with their own children in their own community. I guess what we can do is go on about how much consultation was done: there was $8 million spent and 103 meetings.... We can go on about that. We can go on about the fact that there are billions of dollars spent, and whether it's for health, justice, or other programs and services throughout, we can say it will never be enough. We know that.

But having said all of that, what this bill tries to do is simply provide some jurisdictional legislation, so that the gap that has existed for 25 years.... For 25 years, if a woman experienced violence in the home on reserve, she had no right to stay in her own home with her own children, to be in her own community; she had to leave—and has been leaving, which has resulted in the host of other issues and problems you talked about. Many of us have worked in the downtown eastside, or in the cities, in shelters, etc.

The issue at hand is that we know no legislation is perfect—that was testimony we heard—and we know that protection orders save children's and women's lives. We also know that this is not an imposition of an act. It is to say that this should happen and that the first nations can develop their own acts within a certain timeframe, and that if they do not do so, this will be the concurrent act in place until they do so.

Here is my question to Chief Baird. You have negotiated over 16 years a treaty under which you now have concurrent jurisdiction. In your concurrent jurisdiction, you actually have matrimonial property rights, because you've accepted for now the provincial family act.

Why was that important you to?

● (1725)

Ms. Kim Baird: First of all, I have to say I'm not a chief anymore. A lot of people still call me that.

Secondly, it's not a matter of actively accepting the provincial matrimonial act. We were busy passing 23 other laws. Those 23 other laws were more important, because they dealt with property ownership, with who were entitled to be Tsawwassen members, who were entitled to own Tsawwassen property. If you don't have that sorted out, if you don't have that regime, it's really hard to deal with matrimonial property.

Ms. Wai Young: And we will take another 25 years and have women and children die because we're waiting for all those other things to be negotiated—because they will take time. It took you 16 years.

Ms. Kim Baird: There are plenty of other life-and-death issues in first nations communities. Is this the right life-and-death issue to choose at this point? I don't know. In some ways, I'm relieved that the Tsawwassen community is beyond this, because we have replaced the Indian Act.

Ms. Wai Young: Because you have the protection that we are offering now to these different communities across Canada.

Ms. Kim Baird: That's a consequence of the treaty, but we have the treaty not because of matrimonial property; we have the treaty because we needed to replace the Indian Act. We're integrating into the provincial system, but it doesn't get much more complicated than these types of arrangements.

Ms. Wai Young: That's exactly why I'm asking this question: we all know how complicated it will be to develop an alternative to the Indian Act. It could take 100 years; we don't know. The point is that it will take time.

Meanwhile, we have heard testimony from police officers and from women themselves who have been through this—just like you yourself, Ms. Jack—who have said “We want and need this act now”—

The Chair: Thank you, Madame Wai.

Ms. Wai Young: —and “we want to be protected.”

Thank you.

The Chair: Thank you.

We still have two minutes in front of us. I'm looking to Madame Crowder.

Ms. Jean Crowder: Thank you. I'll try to be brief. I think the human rights commissioner pointed out that if the legislation doesn't provide fair access to justice and the women aren't able to access their rights in a safe way, a question is left about the viability of the act.

Ms. Jack, I want to thank you for pointing out that this is an issue that involves more than women; it's about the family—the whole family structure.

I've had an e-mail from a first nations man saying that he's getting tired of having all men be painted as violent spouses upon marriage breakups. I think of your comments around this as a healing process for the whole family with all the resources and supports there. Women are actually going to be sold a bill of goods—that this piece of legislation will actually make them safer. It will not, without those other supports.

Ms. Jack, I want to give you a moment to respond to that.

Ms. Baird, you mentioned that we're not dealing with the factors around implementation of this piece of legislation.

Could you comment on those two pieces?

Mrs. Joan Jack: I want to say that we have two RCMP in Berens River, and there are gaps in the RCMP service. This bill will not stop the women and children from dying in Berens River. I go to those funerals, and it's serious.

This bill is not going to stop anybody dying in Berens River. If a man decides to pick up a knife and in a drunken stupor stab somebody he loves, he's going to do that, because we only have two RCMP in Berens River. This legislation is not going to stop anything like that. It's a much bigger problem, a much bigger issue, and if you've worked on the east side, you would know that.

So it's not going to help anybody not die in Berens River. Unfortunately, it's people like me who are going to go to the house of the man who's beating up the woman and say, “Stop that; that's not the Indian way.” That's what's going to change it, and we need to empower our own community, instead of thinking that some kind of legislation from outside is going to make me safe in my community.

● (1730)

The Chair: Thank you, Councillor Jack.

I have to interrupt the meeting because it is about to end.

Once again, Former Chief Baird, Councillor Jack, thank you very much for appearing before this committee today.

[*Translation*]

Before concluding the meeting, I would like to remind everyone that tomorrow's meeting will be held at 1 Wellington Street. I would also like to remind the members that they have received an updated calendar with the replies of the witnesses who will be appearing before the committee in the coming days.

The meeting is adjourned.