



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO



NUMBER 076



1st SESSION



41st PARLIAMENT

EVIDENCE

Wednesday, May 8, 2013



Chair

Ms. Lysane Blanchette-Lamothe

Standing Committee on the Status of Women

Wednesday, May 8, 2013

• (1615)

[Translation]

The Chair (Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP)): Welcome to the 76th hearing of the Standing Committee on the Status of Women.

First I want to apologize to all of our witnesses. Because of the votes that are a part of life for members of Parliament, we have to change our schedule completely.

If the members of the committee are in agreement, we will now hear all of our witnesses. We expect the bells for the vote to begin to ring at 4:30 p.m. I'm asking for the unanimous consent of the committee so that we may continue to sit during the first 10 minutes after the bells begin to ring. We've made sure that we have shuttle buses waiting to take the members to the House. By doing that, we will be able to prolong the meeting until 4:40 p.m., which will give us enough time to hear all of our witnesses' opening statements.

If the representatives of the Native Women's Association of Canada can make their presentation in eight minutes, and if the other witnesses can make theirs in four minutes, we will have enough time to hear all of our witnesses.

You may also table your written documents with the committee, if the translation can be done fairly quickly.

Seeing no objections, I am going to yield the floor to our esteemed guests.

We will begin with the Native Women's Association of Canada. We welcome Michèle Audette, President, and Teresa Edwards, Director of International Affairs and Human Rights.

You have eight minutes. You have the floor.

Ms. Michèle Audette (President, Native Women's Association of Canada): Thank you very much, Madam Chair.

I must begin by greeting the Anishinabe Nation and thanking them for welcoming us on this magnificent site. We must remember that a lot of moccasins have walked on Parliament Hill to remind the government of the importance of its territorial and fiduciary responsibilities.

That said, I thank you for having invited our organization to share some of its concerns with you regarding this bill.

Quite recently, through the media and debates in the House, we noted that family violence and the protection of children were being raised, quite specifically. The Native Women's Association of Canada agrees with that wholeheartedly. There is zero tolerance in

our communities for family violence and spousal abuse, and we all subscribe fully to the need for child protection.

However, we have to take the time to breathe and analyze things carefully. As early as 2003, when I was president of the Quebec Native Women's association, I put forward the same message as did my predecessor Ms. Ellen Gabriel, as well as Ms. Beverley Jacobs and Ms. Jeannette Corbiere Lavell, two former presidents of the Native Women's Association of Canada. We think, indeed, that we have to eliminate the legal vacuum in our communities regarding the division of matrimonial assets, but not in this way.

I am going to try to be positive and constructive by simply suggesting that you take a step back. Certain legal decisions have reminded the government of the importance of consulting native peoples. The Supreme Court of Canada, the highest court in the land, has said that it is necessary to consult aboriginal peoples. You have had the opportunity to do so, with our communities, as well as with the Native Women's Association of Canada, an organization that is dear to my heart. Since it has been in existence since 1974, it has extraordinary expertise in these areas.

As for the other concerns raised by this bill, I can understand the 60 recommendations made by Ms. Wendy Grant-John, who was the minister's special representative on this file in 2006-2007. It is sad to see that the recommendations did not bear fruit, were not implemented. You have there a very good document, which was a stepping stone for consultation. I think it would be appropriate to review it and ensure that most of the recommendations be implemented, if not all of them.

I will soon be giving the floor to my colleague, who is also a lawyer with the Native Women's Association of Canada.

When we travel, I have the opportunity of meeting women, families, men, leaders and elders, and I feel spoiled in this regard. I am really a field person. I am also very accessible through social media. That is extremely important to me.

The concerns of women are both legislative and non-legislative. Regarding the legislative ones, they have the impression that the bill is a new way of doing things that does not take into consideration the cultural aspect, nor the socio-economic aspect, nor the way in which we manage our affairs in our communities. As for the non-legislative aspect, the communities are being given the delegated power to introduce legislation, regulations or rules regarding the division of assets following death, divorce or separation, but there is no funding attached to these powers—zero dollars.

I do not think that you would omit to provide an action plan or financial resources for the implementation of any other law, be it at the municipal, provincial, territorial or federal level. Our communities, which are already chronically and severely underfunded, are going to have to find experts who are capable of drafting legal texts—not a commonplace skill—and of telling our women, children and men how things are going to be done.

The fact is that access to justice is a major issue for all Canadian women; that is a reality. Canadian women find it difficult to access justice because of the high costs involved, or, in the case of those who live in remote areas, because of the long distances to be travelled. So, imagine what it is like for women in our aboriginal communities. It is even worse.

I think that we could sit down together and do things differently. If you really want to pass this bill, you need to work in concert with the communities and groups, among them the Native Women's Association of Canada, to ensure that you will not simply be transferring legal responsibilities to the provinces. Indeed, it would be difficult for a woman who lives in a remote community such as Attawapiskat or in other communities in other provinces, such as in Quebec, to find a lawyer who knows family law and the Indian Act.

The Indian Act is complex. Superior Court judges—such as the ones in Quebec I have met—are not familiar with the Indian Act. Given that fact, how can they deal with the complexities of that act, and how can we ensure that women will be well represented? Access to justice is an extremely important and sensitive issue. If you are doing clause-by-clause consideration of the bill tomorrow, I urge you to think about the financial and human resources our communities will require, and of the need to train people there. We need that expertise. But, just as for any other government, there are costs involved.

Three special rapporteurs are going to come. The circumstances are thus going to be very favourable and very interesting. This could be a very good opportunity to demonstrate to the special rapporteurs that when it comes to the rights of aboriginal peoples, human rights and the status of women, you intend to do things differently by ensuring that access to justice will be taken into account, and that our communities will have the necessary human resources and expertise to deal with this reality.

• (1620)

Personally, I see this in a much broader context than that of family violence and the protection of children. I see this situation as a great opportunity for you to take a step in the right direction and work in cooperation with the Native Women's Association of Canada.

The Chair: Thank you.

Ms. Edwards, I am sorry, but the eight minutes are already up.

I will now give the floor to Ms. Janice Makokis, who represents the organization Idle No More.

Ms. Makokis, you have four minutes.

[English]

Ms. Janice Makokis (Organizer, Idle No More): Thank you.

[Witness speaks in Cree]

Good morning, my friends and relatives. My name is Janice Makokis. Thank you for welcoming me here and giving me this opportunity to speak to you today.

I was taught to introduce myself in my language to acknowledge who I am, where I come from, and the responsibilities I have as a Cree woman to the Naheo Cree laws and nation I've been born into. This action is a part of acknowledging our Naheo Cree laws, practising self-determination, and exercising our sovereignty when we belong to a nation.

Another part of exercising indigenous sovereignty is acknowledging the lands we are on when we travel to another nation's territory. I'd like to acknowledge the unseated Algonquin lands we are on today and thank them for allowing me to be on their lands to speak to you.

In my Cree language I said I'm a member of the Bear clan, and I'm from the Saddle Lake Cree Nation located in Treaty 6 territory. I am a treaty person, and I'm a descendant of Treaty No. 6, where my ancestors entered into treaty with the crown of Great Britain in 1876.

I'm an Idle No More organizer and have been invited to speak as a person involved in this movement from the beginning. I am also a treaty educator and a sessional instructor of Blue Quills First Nations College. I exercised my treaty right to education and the promises given to my people during treaty. I obtained several degrees: a bachelor's, a master's, and a law degree.

Idle No More was initiated by women and originated as a grassroots movement in response to the current suite of legislation that directly affects the lives of indigenous peoples. Specifically, the suite of legislation attacks and undermines indigenous peoples' treaties, the treaty relationship, indigenous sovereignty, indigenous title, and inherent rights that have existed from time immemorial. Indigenous peoples across Canada have gathered through various peaceful activities, such as community teachings, public rallies, and peaceful roadblocks, to make statements of opposition to this legislation.

When our nations are under threat and our traditional governance structures, indigenous laws, and ways of life are being undermined by outside forces, in this case Canada, the women have a responsibility to take a stand and do something. This is one of the reasons why Idle No More began with women.

In Cree we have a law called, *e na tah maw was sow in*, which means we are to defend the children and generations. In times of crisis, this law is invoked by the women, and Idle No More is a response to that because a threat against our people's children and all of creation is imminent and very real.

One of the bills that is included within the suite of legislation that Idle No More has a response to is Bill S-2, which I'm here to speak briefly about. I'm not going to go into detail about the technicalities. My friends here have spoken to that or will speak to that.

I want to focus my comments on how this bill is in violation of our treaties and the treaty relationship. This bill undermines indigenous laws and the inherent rights we have. Finally, this bill further oppresses the roles of indigenous women within our nations.

When my ancestors entered into treaty, we were sovereign nations, and the treaty process acknowledged that. We had established governments to govern ourselves. As a treaty person, I find it arrogant that Canada thinks it can draft a piece of legislation that dictates the division of marital property on reserve lands I live on. Nowhere in the treaties did we ever say we would give up our ability to govern ourselves and practise our own laws. To have provincial laws imposed on our—

• (1625)

The Chair: Madame Makokis, I'm sorry I have to interrupt you. Four minutes is over, but as I said, if you have written opening remarks, you will be able to give them to the clerk. We will make sure we distribute them to all members of Parliament on this committee.

[Translation]

I will now give the floor to Ms. Mary Eberts, who will be testifying as an individual.

You have four minutes, Ms. Eberts.

[English]

Ms. Mary Eberts (As an Individual): Thank you.

Members of the committee, I would like to draw your attention, in my four minutes, to two major things this legislation has totally overlooked.

The first is the history of the Indian Act. I agree with my friend that legislation like the Indian Act demeans and devalues the treaty relationship. The Indian Act has never acknowledged the treaties. There are nations now that have law-making power and can exercise that law-making power because of treaties and because of unceded land. Those nations do not need clause 7 of this legislation. It is a mistake for Canada to think that it is bestowing legislative jurisdiction on these nations.

The other part of the Indian Act that this legislation ignores is the way the Indian Act created vulnerability in aboriginal women. It took away their families. It took away their home places, and if they married and went to another community, they were stuck there. They were said to be of that community, and they had no family and no connections to help them out if things got tough and if violence was perpetrated. The Indian Act did that. It enhanced the vulnerability of indigenous women.

The other thing the Indian Act did was ensure that indigenous people subject to the Indian Act would remain in poverty perpetually. One of the reasons that the housing provisions of this act are so important is that there is not enough housing on Indian reserves. Never mind violence, there isn't enough housing. People who are separating fight over housing because there isn't enough for the families who aren't separated, never mind creating more and more units. We know that, and yet this government does nothing.

The second thing this legislation has ignored is the experience of non-indigenous women or women living off reserve with family violence. This legislation puts in place a whole lot of legal terms that try to be just like the legal terms that a woman living in Barrie or Thunder Bay or Saskatoon or Bamfield, B.C., would be able to use in a family violence situation. But what this legislation does not

acknowledge is that women, because of the absence of legal aid in this country, do not have lawyers to help them access the legislation, and when and if they do get these protective awards, the police don't enforce them, and there's nothing the women can do about that. That is because there is an imperfect consciousness on the part of police that these orders have to be enforced and a drastically imperfect legal system when it comes to giving women access to justice. I totally agree with Madame Audette when she says that the situation of women living on reserve is, if anything, much worse in terms of access to justice and access to police protection than that of people living off reserve.

So please remember those two things when you consider this legislation.

• (1630)

[Translation]

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

I now yield the floor to

[English]

Chief Lloyd Phillips, from the Mohawk Council of Kahnawà:ke. You have four minutes, sir.

Chief Lloyd Phillips (Chief, Mohawk Council of Kahnawake): Thank you very much to the committee members.

I have to condense my presentation very quickly here.

My name is Lloyd Phillips. I've been a chief for over 14 years in the Mohawk community of Kahnawà:ke, one of the larger first nations communities in Canada, with approximately 8,000 people living on reserve and another 4,000 living off.

Our reality is much different. We are located 15 minutes from downtown Montreal, so issues of poverty, lack of housing, and access to resources are not our main issues. Our issues are jurisdiction and the respect for our treaties and inherent rights, which we never surrendered.

It was presented yesterday here at the committee, from the Iroquois caucus as well as a couple of my fellow Mohawk communities, the way Bill S-2 continues to violate our original treaty relationship with the Two Row Wampum and the way it ignores our constitutionally protected and inherent right to self-determination. The Mohawk Council of Kahnawà:ke certainly endorses and supports these principles. We also heard many technical and legal representations from Madame Audette and many others in the past few days, and again we agree with many.

The fundamental problem here is the way in which this law is once again being imposed upon our people, without respect for our history, for the treaties that existed, for the fact that we never surrendered our rights, that we never surrendered the right to self-determination, as an overriding importance. It's the continual, paternalistic approach of government, where the Indian Act mentality going back to the 1800s, and even the mentality going beyond the 1800s, into the 1600s and 1700s, continues, despite issues that have been raised over and over again.

Our council was very hesitant to actually have me come here today, because to a certain extent we felt, what's the point? No matter what we say here, this government, the Conservative government, is going to continue on its way and pass laws the way it chooses to pass laws. Its track record speaks for itself. It's the continual way in which this government has been acting, and it's the policies, not just of the Conservative government, which is currently in power, but the Canadian system as a whole. You have policies that ignore jurisdiction. Any jurisdiction discussed between first nations and Canada is based on a policy or it's based on a surrender of your rights if you want to have a land claim settlement. These are fundamentally wrong. Canada is ignoring our constitutional rights in ignoring the treaties, and ignoring them on a moral level as well.

There's a long history out there, a proud history that the Mohawks and other first nations have. They actually helped defend what is now Canada from the invading people, the Americans. Without the allies of first nations such as the Mohawks, Canada might not exist today. The respect we get in return is almost nil.

Kahnawà:ke has a long history of making laws; we will continue to make laws. We have laws that are recognized internationally, recognized by the business community, recognized in our community. What's lacking, for the most part, is recognition from the federal authorities. We pass a law in our community and it's deemed not to be an official law unless it's stamped by Canada. This must change.

Canada has to come to terms with the fact that first nations are here to stay. Mohawks are here to stay. If you want to continue to live in peaceful coexistence, we are willing, but it takes two to peacefully coexist.

Nia:wen Ko:wa.

• (1635)

The Chair: Thank you very much for this.

Time has expired.

I'm now turning to our witness who is with us by video conference, Mr. Brian Pallister, member of the Legislative Assembly of Manitoba.

Mr. Pallister, you have the floor for four minutes.

Mr. Brian Pallister (Member of the Legislative Assembly, Legislative Assembly of Manitoba): Merci, Madame.

Hello to everyone on the committee and to the two other witnesses today.

Respectfully, I would like to offer our support, with all due respect to the testimony from other witnesses. The legislature here in Manitoba has unanimously adopted a resolution in support of this piece of legislation. I want to go on record as just giving you a quick summary of it, and I can make it available to the committee members thereafter if they wish.

With respect to the matrimonial property rights issue, it reads simply:

WHEREAS the Aboriginal population in Manitoba is 15.9 per cent of the total provincial population; and

WHEREAS Aboriginal women make up 7.7 per cent of Manitoba's total population which is projected to increase by 24 per cent by 2017; and

WHEREAS the Manitoba Department of Aboriginal and Northern Affairs states their vision is "an improved quality of life and opportunities for Manitoba's Aboriginal and northern people"; and

WHEREAS the Indian Act does not protect the property rights of Aboriginal women living on reserves; and

WHEREAS there have been many cases where Aboriginal women and children living on reserves have been forced into homelessness or insecurity following the death of a spouse or the breakdown of a relationship; and

WHEREAS Manitoba's Aboriginal Justice Inquiry recommended action on this issue in 1988, along with the Royal Commission on Aboriginal Peoples in 1997 and the United Nations Committee on Economic, Social and Cultural Rights in 1998.

THEREFORE BE IT RESOLVED that the Legislative Assembly of Manitoba urge the federal government to pass Bill S-2: Family Homes on Reserves and Matrimonial Interests or Rights Act.

THEREFORE BE IT FURTHER RESOLVED that a copy of this resolution be sent by the Speaker to the federal minister of aboriginal and northern affairs.

This has been done.

I should point out to members of the committee that our province, as you may be aware, has the highest percentage of aboriginal first nations residents on and off reserve in the country, and it is the fastest growing component of our population. This problem will not go away, and it will continue to be of serious impact if unaddressed.

I should also point out that we have over 100,000 first nations residents in our province. Saskatchewan, second to us, has also offered its support. I have a letter of support for this legislation from Premier Brad Wall as well, if committee members are interested in receiving this.

I will simply say that my interest or awareness of this issue began as a consequence of one woman's plight. She came to me asking for help, and I, frankly, am ashamed to say that I did not believe her when she told me that the law did not protect her, that the RCMP would not help her. When she told me that she had lost access to her own children on reserve, I felt that something needed to be done.

Others, of course, are aware that this is not an isolated incident. It doesn't affect one person; it affects many, many people—men and women on reserves. The fact of the matter is that the no man's land that we put aboriginal women and aboriginal people into, with respect to the silence of the Indian Act and the irrelevance of any provincial jurisdictional authority, means that the strong tend to survive, as opposed to fairness existing with respect to matrimonial property rights.

Some have argued that support for this bill is paternalistic. I should mention that several members of our legislature are themselves first nations residents, and they certainly have wholeheartedly supported this bill's enactment. I should also mention that I believe that paternalism is in fact, in many examples—too many that have been brought to my attention—the cause of the problem, and certainly it is far more of a problem in its impact on aboriginal women on reserve and their real lives than is the paternalism that has been attached to this bill itself.

I would say the status quo is not acceptable.

Thank you very much.

• (1640)

The Chair: Thank you, Mr. Pallister. I have to interrupt you.

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

Ms. Niki Ashton (Churchill, NDP): We have an important point, Madam Chair—

The Chair: I need to adjourn the meeting.

[*Translation*]

We can hear the bells already.

Once again, I thank the witnesses who appeared today. I am really sorry to have to interrupt the meeting, and I apologize.

[*English*]

Hon. Carolyn Bennett (St. Paul's, Lib.): Madam Chair—

[*Translation*]

The Chair: Since the bells are now ringing, it is my duty to adjourn the meeting.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>