HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO • NUMBER 077 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, May 9, 2013

Chair

Ms. Lysane Blanchette-Lamothe

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● (1100)

[*Translation*]

The Chair (Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP)): I would like to call the 77th meeting of the Standing Committee on the Status of Women to order.

I see Ms. Ashton has her hand up. Go ahead.

[*English*]

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

I'd like to start off by making a motion that we reconsider what happened at yesterday's committee meeting, which unfortunately ended up shutting down the voices of important aboriginal women who have something to say about this bill.

We saw that they left in very frustrating circumstances. They felt disrespected, and I would like to ask this committee—and I appeal to the government members who have certainly shown that they wanted to hear from these witnesses—to consider a motion that we have these witnesses back so that we can let them finish their testimony, so that we can ask them questions. I specifically refer to the Native Women's Association president, Michèle Audette, Ms. Teresa Edwards, Chief Phillips, Ms. Janice Makokis, and others who did not have a chance to be heard.

I appeal to the other side because I feel that this has certainly shown a great deal of disrespect to witnesses, including national aboriginal organizations, and in that I also include the Assembly of First Nations, which also felt it was shut down in this debate.

Madam Chair, I believe that, if we do not do this, it contradicts our duty to pass due diligence on such important bills, but also, as members of Parliament, to show the utmost respect to rights holders in this debate, which in this case are first nations people, the very people who this committee—and through the government's wishes to limit the debate—are being silenced as a result.

Certainly our side, the NDP, will not stand for this kind of utmost disrespect, for the silencing of these voices, and we would appeal to all members of the committee to refrain from going on with this bill unless we hear from these critical witnesses, who have everything to say about this bill, before we can engage in these deliberations.

[*Translation*]

The Chair: So you are introducing a motion, Ms. Ashton. Is it an official motion? If so, I will turn to the clerk to find out if she has the wording of the motion.

[*English*]

Ms. Niki Ashton: Yes, it is an official motion.

[*Translation*]

The Chair: The clerk has the wording of the motion. So I am going to read it. Ms. Ashton can confirm it.

The motion reads as follows:

[*English*]

That the committee invite the witnesses scheduled for the meeting of May 8, 2013 to return before it to answer questions—

Ms. Niki Ashton: That's before we enter into the clause-by-clause.

The Chair: —before the committee enters the study of clause-by-clause.

Is that clear to everyone now?

The motion is in front of us now. We will now debate that motion. I have a speakers list.

Madam Crowder.

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

Of course, I'm looking at some of the media coverage of the committee yesterday, and here's a headline: Status of Women committee shuts down testimony on controversial First Nations bill.

This is on iPolitics.

I'm not clear, Madam Chair, that this is the kind of reputation that the status of women committee would like to have.

What we have before us is a bill that will have far-reaching impacts on first nation men, women, and children, and part of our responsibility as members of Parliament is to exercise, as Ms. Ashton referred to, due diligence. It's our responsibility to ensure that we give a thorough review of a piece of legislation.

I might point out to committee members that this is the first time that matrimonial real property has been before a parliamentary committee. It has been before the Senate, absolutely, but it has not been before a parliamentary committee. It's our responsibility to ensure that we thoroughly review the bill and that we ensure that we have had sufficient testimony in order for us to make sure that the bill is achieving the aims it is purported to achieve.

What we had yesterday, unfortunately, is something that I have not seen in my entire career here in Parliament. We had key witnesses on the piece of legislation who were not allotted what is customary time to present their point of view, and there was no time at all for the members to pose questions to these witnesses.

I would argue that delaying the clause-by-clause consideration in order for us to make sure that we've covered all the bases is something that, as responsible parliamentarians, we should undertake. So I am supporting Ms. Ashton's motion and I would urge all members to support this so that we can demonstrate, as a committee, that we understand our responsibilities and that we are respectful of the witnesses who have made the effort to come before us.

● (1105)

[*Translation*]

The Chair: Thank you, Ms. Crowder.

[*English*]

Madam Truppe, you have the floor.

Mrs. Susan Truppe (London North Centre, CPC): Thank you, Madam Chair, and would we go in camera?

The Chair: It's a non-debatable motion, so we'll proceed to a vote.

An hon. member: A recorded vote.

The Chair: Sorry, a recorded vote. Madam Clerk....

(Motion agreed to [See *Minutes of Proceedings*])

[*Translation*]

The Chair: Since the motion was carried, we will continue the meeting in camera. I will ask all those who cannot be here to leave the room.

[*Proceedings continue in camera*]

● (1105)

(Pause)

● (1120)

[*Public proceedings resume*]

The Chair: Before we continue with the topic on our agenda, I would simply like to introduce three guests. I took the liberty to invite them so that they answer any questions we may have.

Please briefly tell us your names and your roles, so that we know who you are and what types of questions you can answer for our committee today.

Mr. Karl Jacques (Senior Counsel, Operations and Programs, Department of Justice): I am Karl Jacques, from legal services.

[*English*]

Mr. Andrew Beynon (Director General, Strategic Planning, Policy and Research, Department of Indian Affairs and Northern Development): I am Andrew Beynon, Department of Aboriginal Affairs and Northern Development.

Ms. Jo-Ann Greene (Senior Policy Advisor, Lands Modernization Directorate, Department of Indian Affairs and Northern Development): I am Jo-Ann Greene, Aboriginal Affairs and Northern Development Canada.

[*Translation*]

The Chair: Thank you very much for accepting the invitation and for being here with us.

Let me repeat that these people are here with us to answer any questions we may have, in order to make the committee's work easier today.

Pursuant to the Order of Reference of Wednesday, April 17, 2013, we will be conducting a clause-by-clause study 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.

Pursuant to Standing Order 75(1), consideration of the Preamble and Clause 1, Short Title, is postponed. We will look at them after we study the bill.

(Clause 2—*Definitions*)

The Chair: Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: Thank you, Madam Chair.

I want to speak to a couple of items in clause 2.

When we heard the acting chief commissioner of the Human Rights Commission, at the end of his testimony he posed three questions that the committee should consider. He said:

> First, will the proposed legislation provide women with fair access to justice? Second, will the proposed legislation ensure 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'm going to start with the last point. What we consistently heard from witness testimony is that first nation communities do not have the capacity because they simply do not have the resources. It takes a significant amount of resources to be able to develop matrimonial real property. Certainly, a number of us have had emails from Chief Shining Turtle, who had been attempting to work with the government for a number of years in order to have his nation's matrimonial real property code passed. After seven or eight years it still hasn't been passed.

It speaks to not only the first nation's capacity, but questionably.... We didn't hear testimony to this effect, but it would have been interesting to pose to the department its capacity to work with first nations that were developing a matrimonial real property code.

There are two other points I want to touch on with regard to the Canadian Human Rights Commission. Fair access to justice, again, is an issue around resources. When I'm looking at the interpretation in clause 2, it's about a family home. Of course, one thing we did hear in testimony from witnesses was around the fact that many nations have a severe shortage of housing.

When you're talking about remedies, it doesn't appear possible that a first nation community would be able to accommodate the family. If the goal is to ensure that when a couple splits up, one person of the couple ends up with the matrimonial home, presumably the other half of the couple could stay within the community in order to have the family continue to try to work around parenting and support.

The other issue around housing, of course, is that there are multi-generations living in some houses sometimes. We hear stories about 10, 15, sometimes even 20 people living in a house. You could have grandparents, siblings, aunts and uncles, all living in the same house. So if a court order comes down and only one part of the couple ends up staying in the house, what happens if the in-laws are living in the house? That's a question we've never been able to resolve. Do the grandparents have to move out because they would have, perhaps, access when the other family member would want to continue to visit? We haven't dealt with any of those questions.

Madam Chair, I think it's troubling that we're being asked to consider a piece of legislation when we don't have a full analysis of the impact on the ground if this legislation moves forward.

Thank you.

● (1125)

The Chair: Thank you, Madame Crowder.

Madame Crockatt.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you, Madam Chair.

I just wanted to point out that we did also hear from the Haida. They said they had their own matrimonial property legislation and that they were happy to share that with other reserves. I think it's interesting to remind the committee that we did hear from them on that point.

Thank you.

The Chair: Thank you, Madame Crockatt.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I am a visitor to this particular issue and this committee, but I'm very interested in this issue and that's why in part I'm here.

I'm just curious as to why Ms. Crowder would say that. With the application of matrimonial property law on reserves it's going to mean the judicial community has the right to decide what happens with other people within that home. It applies in essence the laws of this country for the last 200 years and before that Great Britain for many years. It applies the common law terms to the matrimonial property decision by the judge. The judge has a tremendous amount of leeway to decide what would happen in a particular home based upon the particular factual circumstances. That's my understanding of the matrimonial law.

What it would do in essence is reverse the decision of Derrickson v. Derrickson, or at least reverse it by way of legislation to allow the 1986 decision, to allow the courts to then be able to have jurisdiction on reserves. They do this every day in divorce courts and in provincial courts for matrimonial property acts right across this country already, and they've done it for a long time. So their ability to do so would be guided by the principles that they've already used for hundreds of years.

I don't understand what Ms. Crowder is suggesting in that there would have to be new fact situations or something special for this. This is Canadian law that has happened for hundreds of years and will continue to be applied by judges. It's just that now the court will have the opportunity to have jurisdiction on reserves and treat them exactly the same as all other Canadian women have had the right to be treated for many years. It seems absolutely ludicrous to suggest that it would go any other way.

The Chair: Thank you, Mr. Jean.

Madame Crowder, you have a bit more than a minute.

Ms. Jean Crowder: Thank you, Madam Chair.

Through you, Madam Chair, of course we're past debate, but what I would argue is that the situation on reserves is very different from that in most communities off reserve. We've had a consistent number of reports that have come before the aboriginal affairs committee, and the House as a matter of fact, that continue to point to the severe shortage of housing.

Most communities off reserve do not have those kinds of overcrowded situations and multi-generational families. There are circumstances where that does happen, but that's not the norm. So when you're dealing with situations on reserve, I'm sure provincial judges are very learned but their knowledge of the different kinds of land codes on reserves is limited. It's a very different situation, so you can't unilaterally just impose provincial law on reserve lands without the consideration of the different factors.

Thank you, Madam Chair.

● (1130)

The Chair: Thank you, Madame Crowder.

[*Translation*]

Seeing that there are no other speakers, I will call for the vote on clause 2.

(Clause 2 agreed to)

(Clause 3 agreed to)

(Clause 4—*Purpose*)

The Chair: We will now move to clause 4.

Ms. Ashton, you have the floor.

[*English*]

Ms. Niki Ashton: I'd like to speak to clause 4, under "Purpose and Application". Obviously, this is one of the problematic clauses that purport that what is being done here is okay. This is clearly not the case, as we've heard from many witnesses. It's clear that this government is not listening to first nations on a nation-to-nation basis. The Assembly of First Nations and the Native Women's Association of Canada, and many nations across the country who oppose this bill, have spoken directly to the lack of nation-to-nation consultation. Certain first nations have been heard by the ministerial representative, but as has been the case previously, their concerns have not been incorporated into this iteration of the bill, and there are certainly some key concerns.

I want to read into the record a press release from the Native Women's Association of Canada when Bill S-2 was presented.

> The Native Women's Association of Canada...express their concerns with Bill S-2.... NWAC is not confident that the legislation will solve the problems associated with Matrimonial...Property [rights] on reserve; and that the current Bill fails to address many of the recommendations repeatedly raised each time this legislation has been brought forward.

Obviously, one of the real concerns here is that this is an imposition by the federal government on first nations. Janice Makokis yesterday was quoted as saying, "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."

This bill does not solve the problems that it seeks to address and certainly some of the problems that this government has raised. We've heard this from women, communities, and families who will be affected. This government has said that the purpose of this bill was to end violence against aboriginal women. This bill has nothing to do with ending violence against aboriginal women as it provides no effective, timely access to remedy. It does not involve a national action plan. It does not address the housing crisis on reserves. It does not make any reference to funding for women's shelters. As we know, for 663 first nations, there are only 40 women's shelters. It does not allow for better access to justice, including increased funding to legal aid, especially for remote communities. It does not include financial resources to support first nation governments to actually implement the law. It does not allow access to alternative dispute resolution mechanisms which, as we know from witnesses who have brought this forward, are often critical to resolving the situation during marital breakdown.

I'd also like to read into the record, as I believe it certainly speaks to the opposition to clause 4, the statement by

[*Translation*]

Quebec Native Women:

> Quebec Native Women would like to reiterate its opposition to Bill S-2...
>
> ... Bill S-2, in its present form, does not take into account the jurisdiction of First Nations over reserve property by granting jurisdiction to the provincial courts for enforcement and will not provide funding or resources to First Nations to access these provincial courts which would therefore be too costly or complex for them to use. The unilateral approach taken by the government to resolve this issue through legislation will also fail to address systemic problems such as lack of housing and violence against women in the communities.

● (1135)

[*English*]

Finally, I would like to indicate that clause 4 sets the tone and certainly makes clear the plan of this bill and obviously, the plan of this government, to impose legislation on first nations regardless of their opposition, regardless of the indication that first nations must be consulted according to section 35 and according to the United Nations Declaration on the Rights of Indigenous Peoples to which Canada is a signatory.

Therefore, we stand with the many voices of first nations, first nation organizations, and first nation women who have come out and spoken against Bill S-2, including clause 4.

[*Translation*]

The Chair: Thank you, Ms. Ashton.

Ms. Sgro, go ahead.

[*English*]

Hon. Judy Sgro (York West, Lib.): I have similar issues with clause 4. I don't think the government realizes that if they just followed what Wendy Grant-John, the ministerial representative, had suggested, we probably would all be on one side on this bill, which means supporting it.

The fact that there isn't the support for mediation and the assistance is very much misleading people to think that they have the support out there that they clearly don't have, because they're only going forward with a part of this whole issue. They're not going through with the whole package of making sure that you have the mediation, the funding for the centre of excellence, and the other issues that are important.

The Liberals will not be supporting clause 4.

[*Translation*]

The Chair: Thank you, Ms. Sgro.

Since no one else wants to speak, I will call for the vote on clause 4.

(Clause 4 agreed to)

(Clause 5 agreed to)

The Chair: Before we move to clause 6, we have amendment LIB-1, which proposes that clause 5.1 be added.

Ms. Sgro, would you like to propose this amendment?

[*English*]

Hon. Judy Sgro: Yes, I would like to move that amendment.

[*Translation*]

The Chair: One moment, Ms. Sgro. Some members of the committee are asking whether there is a paper version of the amendments. You must have received the email asking you to print copies. However, we can check to see if there is a way to do it.

An hon. member: We have extra copies.

The Chair: We have extra copies. So, if you would like a copy of the proposed amendments, please raise your hand and someone will provide you with a copy in the language of your choice.

Ms. Sgro, go ahead. You can now talk about amendment LIB-1.

[*English*]

Hon. Judy Sgro: Currently, there's a great deal of mistrust—I think that would be agreed by everybody—among first nations regarding the government's agenda and what it will mean for first nations' rights.

Also, a number of concerns were raised, through the testimony we heard, about the consultation managed on the bill, and the amendment now is meant to help reassure first nations that this bill will not interfere with aboriginal rights guaranteed under the Constitution.

[*Translation*]

The Chair: Thank you, Ms. Sgro.

Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: The NDP will be supporting that motion. I want to quote from the "Report of the Ministerial Representative: Matrimonial Real Property Issues on Reserves". It says: I have taken note of the following statement of the Chief Justice of the Supreme Court in *R.* v. *Adams* and which has been quoted subsequently by the Supreme Court in *Haida* and *Mitchell*.

> *In light of the Crown's unique fiduciary obligations towards aboriginal peoples, Parliament may not simply adopt an unstructured discretionary administrative regime which risks infringing aboriginal rights in a substantial number of applications in the absence of some explicit guidance.*

It goes on to say that there is a need to "seek to accommodate the existence of aboriginal rights".

It's very important that this amendment be included in the legislation.

● (1140)

[*Translation*]

The Chair: Thank you, Ms. Crowder.

Mr. Jean, you have the floor.

[*English*]

Mr. Brian Jean: I was wondering if this particular amendment is valid. Is it in order? It seems to be outside of the scope.

The Chair: The amendment is in order, according to the chair.

[*Translation*]

No one else seems to have anything else to say about the amendment.

(Amendment LIB-1 negatived)

The Chair: We have another amendment from the Liberals, amendment LIB-2.

Ms. Sgro, would you like to propose this amendment?

[*English*]

Hon. Judy Sgro: Well, thank you very much, Madam Chair.

Again, it was an attempt to clarify the issue of first nations' inherent jurisdiction over these matters. We again heard from a variety of witnesses who would like clarification in the legislation that first nations do have jurisdiction over these matters and that it's not simply a matter of delegating the authority of the federal government.

[*Translation*]

The Chair: Thank you, Ms. Sgro.

It is the chair's decision that this amendment is out of order, because it goes beyond the scope of the bill. It seeks to define the right of self-government, whereas the preamble of the bill states that "this Act is not intended to define the nature and scope of any right of self-government". As a result, the chair rules against this amendment, because it is out of order.

We will now move to clause 6.

(Clause 6 agreed to)

(Clause 7—*Power to enact First Nation laws*)

The Chair: Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: We defeated the amendment, but did we actually vote on clause 5?

The Chair: Yes, we did before we went to the amendment.

Ms. Jean Crowder: It was before the amendment?

The Chair: Yes, the amendment suggested a new clause, clause 5.1, so we voted on clause 5 and then we went to the amendment. Okay?

[*Translation*]

We are now dealing with clause 7 and we have an amendment.

I will give the floor to Ms. Sgro.

[*English*]

Hon. Judy Sgro: This is an attempt to clarify that, once a first nation adopts its own matrimonial property laws through the process set out in S-2, they will have the option, but not the requirement, to use the provincial court system as an enforcement mechanism for those laws.

[*Translation*]

The Chair: Thank you, Ms. Sgro.

The chair thinks this amendment is in order.

Seeing that no one else wants to speak, I will put the question now on amendment.

[*English*]

Mrs. Susan Truppe: When we did clause 5, we voted on it and then we did the amendments, but we didn't vote on clause 7 yet. Are we doing that after the amendment?

The Chair: Yes.

Mrs. Susan Truppe: Okay, I just wanted to make sure I didn't miss anything. Thanks.

The Chair: No problem.

Those who are in favour of the amendment LIB-3, please indicate.

[*Translation*]

(Amendment LIB-3 negatived)

The Chair: Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: Madam Chair, I think the power to enact first nation laws is important. However, we did hear some testimony that the government can't grant that power to first nations, because in a nation-to-nation relationship, first nations already occupy that territory. The reason I wanted to speak to this particular clause, though, is that it's an issue of resources. When the acting Human Rights Commissioner came before the committee, there was a reference to a tool kit that has been developed by the Canadian Human Rights Commission. There were resources allocated to that tool kit and a number of nations were involved in developing it.

There is no such support for first nations. I know the members opposite will talk about the centre of excellence for matrimonial real property, but if this act remains unamended, it will go into force within a year. For any nations currently interested in developing matrimonial real property codes that they hope to have in place prior to that one-year transition period, it's not feasible without additional resources. It's fine to have it in the legislation that there is a power to enact. But there is no support for doing that, and it takes time. It takes time to do an appropriate community process. It takes time to develop those laws. It takes time for the community to approve them. Without those resources, it doesn't seem very realistic.

● (1145)

[*Translation*]

The Chair: Thank you, Ms. Crowder.

(Clause 7 agreed to)

The Chair: Before we continue, I have a suggestion that the committee can accept or refuse.

Since I received no amendments for the subsequent clauses, up to clause 55, I suggest that we group clauses 8 to 54 together and deal with them as a whole.

An hon. member: No.

The Chair: I see that not everyone agrees.

[*English*]

Mr. Mike Wallace (Burlington, CPC): That's a great idea though, Madam Chair.

[*Translation*]

The Chair: Since that is what the committee wishes, we will continue the clause-by-clause study of the bill.

(Clause 8—*Submission to members*)

The Chair: Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: Madam Chair, with your permission I'd like to clarify something with our witnesses. In clause 8, it indicates that every person who is 18 years of age or over and a member of the first nations, whether or not resident on a reserve of the first nation, is eligible to vote. Then later on it says that at least 25% of eligible voters must participate. I'm reading this to say that, if the 25% threshold is not met for voters on and off reserve, the first nations will not be able to enact their MRP codes. Is that correct?

Mr. Andrew Beynon: Yes, I think you're reading that right. All of the section covered by clause 8 has to be read together, so it's 25% of the eligible voters, and then you look back to subclause 8(2) in terms of age requirements. It is possible to have one vote, and if it's defeated the first nation could also, at a later time, propose a slightly different MRP law and move to another vote as well.

Ms. Jean Crowder: I have another point for clarification, Madam Chair.

Is this a standard clause in any bylaw or code that a first nation passes?

Mr. Karl Jacques: Usually there are such requirements for FNLMA bands for first nation land management. They also have the requirement to have a community vote with members on and off reserve. The threshold in that case is 50%, so depending on the type of.... If it's an agreement, a supplementary agreement, the threshold could be higher or lower, depending on the circumstances. This is basically a standard process, but the percentage could vary, depending on the type of—

Ms. Jean Crowder: So the 25% threshold was deemed appropriate in this particular case.

Thank you, Madam Chair.

The reason I raised that was because, of course, we heard from the Iroquois Caucus that there were some concerns raised because this is dealing with matrimonial real property on reserve. They said there may be challenges with having off-reserve members who have no interest in the property, although sometimes off-reserve members do still have certificates of possession. Because of the complexity of the land claim, they may not occupy the land but still have that certification of possession. There were concerns raised with that threshold on the eligibility, so I wanted to clarify that.

Thank you, Madam Chair.

[*Translation*]

The Chair: Thank you, Ms. Crowder.

[*English*]

(Clause 8 agreed to)

(Clauses 9 to 11 inclusive agreed to)

(On clause 12—*First Nations with reserve lands*)

The Chair: Ms. Crowder.

● (1150)

Ms. Jean Crowder: I have a point on the First Nations Land Management Act.

There is a recognition under the legislation that the FNLMA is in a different category, but again, we heard a couple of things from witnesses who were currently operating under the FNLMA. One was that there is a significant number of nations interested in participating in the FNLMA, which would then put them in a different category when it comes to matrimonial real property. It's a thread throughout this piece of legislation that there simply aren't the resources available in order to do the work.

I think it's an important piece, because on the one hand people are being told that this legislation in and of itself is going to provide protection and rights that many other witnesses have disputed on the grounds that without the adequate resources, that simply won't play out.

I wanted to raise the issue, and I will deal with it later, but it's important to point out that there is a different transition period for the FNLMA. My understanding from the witnesses is that the three-year transition for the FNLMA, to allow them that three-year period of time to put their codes in place, is an important recognition that it does take time to develop these codes.

Thank you, Madam Chair.

[*Translation*]

The Chair: Thank you, Ms. Crowder.

(Clause 12 agreed to)

(Clauses 13 and 14 agreed to)

[*English*]

(On clause 15—*Consent of spouse or common-law partner*)

The Chair: We have a speaker on clause 15.

Madame Day.

[*Translation*]

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

We know that Quebec's unique characteristics are not taken into consideration in this bill. A lawyer from Dionne Schulze said that, under the Civil Code, common-law partners do not have a right to property in Quebec; that is well known.

I have some serious concerns about this clause. When we heard from the witnesses, I specifically asked the representatives from Quebec Native Women to tell us more about the potential lack of legal clarity and the gaps that would result from implementing Bill S-2 in Quebec. We know that Quebec uses civil law, not common law. Their testimony is clear and should be reflected in this bill. Among other things, Viviane Michel said:

> A number of Aboriginal women are also in common-law relationships with non-Aboriginal partners. If this law is enforced and a verdict is reached, given all the problems facing our communities, including high rates of alcohol and drug abuse, and if a woman experiences those problems and her partner is a Quebecker, he will have the right to live in the house.

So the Quebec man would get the house and the children. The woman would lose her children and live in a community. Do you see how that could be a threat to Aboriginal communities? Those are the facts.

And I am not just talking about Quebeckers. It could involve people of other origins. In fact, women are more and more frequently in common-law relationships with partners of different origins.

So that can lead to gaps in our communities. Women can lose as much as their homes and even their children. The differences between the Civil Code and common law are particularly worrisome for Aboriginal women in Quebec, since Quebec's Civil Code does not give common-law partners the same rights as it gives people who are legally married.

It is said that the bill will not be consistent with Quebec's Civil Code for spouses in terms of the division of matrimonial property in the case of separation or death. Since 40% of women are in common-law relationships in Quebec, implementing this bill could create a lot of problems.

● (1155)

The Chair: Thank you, Mrs. Day.

Since no one else seems to want the floor, I call the question on clause 15.

(Clause 15 agreed to)

(Clause 16—*Order of designated judge*)

The Chair: Ms. Ashton, you have the floor.

[*English*]

Ms. Niki Ashton: I'd like to speak to clause 16 on emergency protection orders. This is obviously a very important issue but unfortunately one that the government side has used to mislead the public, certainly, when it comes to this bill.

Many witnesses, and certainly those who have spoken out outside of this committee, have raised real concern regarding general enforcement of this bill, but even more specifically on emergency protection orders. We've heard repeated references to the lack of police and policing capacity that exists on first nations, and policing capacity that is able to cover first nations as well if they're not based on them.

We also know that emergency shelters are involved in emergency protection orders and certainly link women and men who are fleeing abuse to access these orders. However, as we do know, only 40 first nations out of 663 have a shelter on reserve that could help access this service. I want to indicate that subclauses 16(3), 16(5), 16(7) and 16(8) in clause 16 refer to a peace officer and the work that a peace officer would do.

As we do know, in many first nations there is not only a lack of police officers, but the band constable programs have been cut by this federal government. Certainly partnering with first nations in the provinces around policing capacity on reserve has been reduced by this federal government, meaning that access to peace officers who could actually implement all of these sections is not just tenuous but often impossible.

I want to read some analysis from the Ontario Women's Justice Network, which has done some excellent work on emergency protection orders. They indicate that: The short-term orders are emergency orders that can be obtained 24 hours a day, by telephone or by appointment, from a trained Justice of the Peace. In most cases, the police or Victim Services workers are the ones who seek these orders on behalf of the victim.

As well, in first nations communities:The First Nations' community case workers, for example, can apply for protection orders by calling the police on behalf of a survivor.

Madam Chair, we have heard very clearly from a number of witnesses that there is no trained justice of the peace on reserve in many cases, that there are no victim services workers on reserve in many cases, that there are no police on reserve in many cases, and this idea of a first nations case worker begs the question of who exactly that is, when we know that community after community after community has no person who could handle the capacity that already exists in the community, let alone deal with the aftermath of Bill S-2 in this case.

This is not to say that emergency protection orders are not important. They clearly are. But why is the government skirting the issue of enforcement? It's fine on paper, but as we've heard, if there is no enforcement of emergency protection orders, and there is no police officer, justice of the peace, victim services worker or a first nations community case worker, as exists in the rest of the country—excluding the community case worker, off reserve—then these are just words on a paper that will stay words on a paper.

I also want to indicate that the Ontario Women's Justice Network indicates, in the context of speaking to the provinces: It is also crucial that new legislation be followed by extensive training of enforcement bodies, lawyers and judges, and increased resources and access to legal representation and social services.

Madam Chair, I want to be clear. This is not in reference to Bill S-2, but what we've heard from many witnesses is that Bill S-2 involves no inclusion of non-legislative measures. It certainly provides no resources to provincial bodies, to legal aid, and certainly something could be given to the provinces to be then given to legal aid or to first nations to be able to implement this.

Protection orders that are not adequately enforced have the effect of providing a false sense of security instead of much-needed prevention and protection against violence. More women would likely seek protection orders if they could do so through community-based services such as women's shelters and not just through the police.

Again, Madam Chair, this is in reference to provincial legislation, but it is very clear that if we apply this to Bill S-2 without enforcement and without the resources, emergency protection orders remain three words on a paper and a lot of misleading rhetoric from this government that this will actually protect women from violence.

● (1200)

Thank you.

[*Translation*]

The Chair: Thank you, Ms. Ashton.

I see that Mr. Jean wants the floor.

Go ahead.

[*English*]

Mr. Brian Jean: Thank you, Madam Chair.

I would just like to say, as a lawyer who practised in this area in one of the roughest towns in Canada—Fort McMurray during the 1990s—I saw it first-hand. I have many aboriginal family members up there—many who live on reserve, many who are treaty—and I've dealt with those family members as well as many others.

What shocked me, bluntly, was to see that somebody could send an aboriginal to jail but they couldn't protect them on reserve. What was happening was that women and children were fleeing reserves, leaving everything they had. They needed protection, but they couldn't get it from the courts. I clearly saw that on a continuous basis.

I find it shocking and astonishing to see so many groups come forward and identify that there's a problem, but see no real suggestions of solutions by the opposition—or in fact the Liberal government for the 13 years before, when they were in power.

In fact, aboriginals have the highest incarceration rate among all Canadians, and disproportionately fill our jails. We have a situation where they have marital breakdowns and serious forms of abuse on reserves, and yet here we are, talking about....

Everybody knows there's a problem, and yet the only people coming forward with a practical solution that I think, bluntly, after practising in the area, will work, is the Conservative government.

All they seem to do is oppose. I'm suggesting to Ms. Ashton and the rest to come forward with some positive suggestions in relation to this instead of trying to just block it and stand up for the people they are. Instead, they should stand up for the people who are the most vulnerable in this country, the aboriginal women and children who need the protection of this country and this government.

[*Translation*]

The Chair: Thank you, Mr. Jean.

I would imagine that the members of the opposition would like to respond to your comments, but, unfortunately, according to the motion before us that dictates the order of speaking, they will not be able to take the floor again.

Ms. Sgro, you have the floor.

[*English*]

Hon. Judy Sgro: To Mr. Jean's comments, all of us would like to see this passed. We'd like to see the changes go forward for people who are on reserve. But I think it might have been helpful if the committee had gone and visited a few of the reserves, and talked to some of the people on the reserves, and looked at really where some of them are situated.

I think Ms. Ashton's comments are very valid. As I read this, it would be fine in the city of Toronto. It would be fine in our cities, because there are lots of resources. But some of these reserves are very remote, and they don't have any of this help. I don't want to mislead women into thinking that they have enforcement mechanisms out there, and giving them a false sense of security, when there isn't anybody out there to help them.

Bill S-2 is going to help, but it's only going to help a bit. It needed to go the rest of the way. That is exactly what Wendy Grant-John said, that you can't cherry-pick. That's the problem. Otherwise, you know what? We'd all support this gladly and get it through. But it needs the other things. It needs the access to shelters. It needs the resources. That's what's missing in the bill.

In her report, Wendy Grant-John said that they needed the financial resources to be made available for implementation of non-legislative measures such as programs to address land registry issues, mediation and other court related programs, and so on and so forth. You all know what it says.

What you've done, as the government, is you've chosen to just cherry-pick certain parts that sound really good but aren't doing the job that needs to be done. There are no resources being put here. You are, I believe, misleading people to have a false sense of security.

I'm going to support clause 16, all right? We're going to support this. But again, you're fixing half of a problem and misleading people. I'd like to have gone further—I think we all would have—and seen that there were the resources to back up Bill S-2.

Put the money into it, have it happen within 36 months, and give the kind of support that those women are looking for us to deliver.

Thank you.

[*Translation*]

The Chair: Thank you, Ms. Sgro.

I will now turn to Ms. Crockatt.

You have a maximum of three and a half minutes.

[*English*]

Ms. Joan Crockatt: Thank you very much.

I just wanted to point out that we heard in testimony, and I found it very persuasive, that the place that women and children want to be is in their homes—they would not want to be in shelters, taken out of their community—and that this will actually provide them with the opportunity to stay in their homes. That is the best place for those women and children...and with their family supports around them, and with their native community, and with their culture.

So the talk about building more shelters is not to the optimum that these women want.

Thank you.

● (1205)

The Chair: Madam Crockatt, thank you.

Do I see anyone else who wants the floor?

(Clause 16 agreed to)

(Clauses 17 to 19 inclusive agreed to)

(On clause 20—*Court order*)

The Chair: Madam Ashton, you have the floor.

Ms. Niki Ashton: Yes, I'd like to speak to clause 20, which is on the exclusive occupation order. We'd like to note that the government has made misleading statements throughout the examination of this bill, indicating that it would lead to one of the partners having ownership of the home. As we see in this clause, this is not the case, as we are talking about exclusive occupation. The exclusive occupation order is extremely problematic for us. Based on the testimony we've heard, it leaves many questions unanswered. It also speaks to the essence of this bill.

I want to read into the record what Chief Maracle of the Tyendinaga Mohawk Council wrote:

> Bill S-2 is paternalistic. It delegates authority to the First Nation to develop a law respecting the use, occupation and possession of family homes and land on reserve when a relationship breaks down or upon the death of a spouse. It does not [recognize] that family law is and should be First Nations jurisdiction.

I would like to indicate that it poses a number of questions that remain throughout the bill in respect of reaching an agreement between partners on payouts or financial arrangements. Obviously, the question that will be asked is this. Will the woman—if it is the woman who will have occupation of the home—be able to be part of a financial arrangement with her partner to split what this bill says they own and to pay out to the partner the share agreed upon through the courts?

There's also the question of defining the value of the home and the property. Real questions exist regarding assessing value of property on reserve. It is something that is very problematic. As we know, various first nations—

The Chair: Madam Ashton, I need to interrupt you. I'll stop your time.

I see a point of order from Mr. Jean. You have the floor.

Mr. Brian Jean: Yes, sorry to interrupt Ms. Ashton, but are we on clause 20?

An hon. member: Yes.

Mr. Brian Jean: I didn't see any of the things she's referring to. I'm not sure how any of what she said has to do with this clause. It talks about how the best interests of the children would be the primary consideration under paragraph 20(3)(a), including “any children who habitually reside in the family home”, and 20(3)(b), “the terms of any agreement between the spouses or common-law partners”.

This is in relation to an exclusive occupation order. I'm not sure what it has to do with the valuation of property. I wasn't sure if she was on the right clause or not. I just wanted to point that out. Maybe she could make it relevant.

[*Translation*]

The Chair: Thank you. That is actually a valid point of order. The debate must be related to the clause.

Ms. Ashton, you still have two and a half minutes left. If you use them, you can probably quickly manage to link your comments to clause 20.

[*English*]

Ms. Niki Ashton: I want to add that there are repeated references, as we know from our witnesses, regarding the availability of other suitable accommodations situated on reserve, regarding the lack of housing.

It was noted in the testimony that in Sagkeeng First Nation in Manitoba, for example, there's a shortage of around 500 houses—not people on a waiting list but actual houses that are needed for families. We heard from Deputy Grand Chief Fiddler regarding the lack of housing in the NAN territories, which is in the thousands overall.

If these occupation orders are imposed, where will people go?

My colleague referenced the multiple generations that are often in houses—sometimes by choice, sometimes because people simply have nowhere else to go with such housing shortages.

I'd also like to add that there have been repeated references to the lack of access to courts and legal services, which are obviously involved in applying occupation orders. That's something that is not addressed by clause 20, this bill, or anything that this government has said on Bill S-2.

● (1210)

[*Translation*]

The Chair: Thank you, Ms. Ashton. Your argument was in fact related to clause 20.

No one else seems to want to speak.

(Clause 20 agreed to)

(Clause 21—*Order after death*)

The Chair: Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: Thank you, Madam Chair.

There are a couple of points I want to make on this, and for Mr. Jean's benefit I'll be referencing section 21(3)(b) in particular, and 21(3)(g). One of the challenges is that we will be asking provincial courts to take a look at the exclusive occupation order after death. We just had a bill before the aboriginal affairs committee where the section dealing with wills and estates was withdrawn from the bill because of the complexity of the situation and the fact that you can't just take wills and estates and refer it over to the provincial courts to interpret. That would include things like an exclusive occupation order, because of the complexity of the land codes. I just want to touch on a couple.

One is that the family home could be a variety of different things. It could be capital housing, which is housing paid for by the band members. It could be social housing, which is housing owned by the band. It could be a band-owned rental. It could be a certificate of possession. It could be a custom allotment. So when you're talking about exclusive occupation and interpreting the terms of the wills, the question becomes whether or not there will be the ability to actually interpret that.

The second piece I wanted to touch on was paragraph 21(3)(g), the fact that the family home is the only property of significant value in the estate. In this particular piece, again, there could be challenges in terms of valuing the family home because the conditions for the evaluation are quite different on reserve from what they are off reserve. Again, provincial courts will be in a position to have to interpret these particular sections and whether or not they have the resources and the tools and the capacity to do that.

The other issue that came up around wills and estates—because it does talk about the collective interest, and it also talks about the best interests of the child—was the fact that some provinces don't recognize custom adoption. If we have an order that's looking at an exclusive occupation order and it's in a province that does not recognize custom adoption, one wonders how they're going to look at the best interests of the child. Again, what kinds of resources are going to be provided to the provincial courts to interpret these different customs? I want to just turn briefly, again, to the acting Canadian Human Rights Commissioner. In the tool kit that he referenced, they actually put in a section here—it's article 34 of the United Nations Declaration on the Rights of Indigenous Peoples, which says:

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

The issue around custom adoptions would fall within that jurisdiction that first nations recognizes but provincial jurisdictions may not.

Thank you, Madam Chair.

● (1215)

The Chair: Thank you, Madam Crowder.

Mr. Jean.

Mr. Brian Jean: I was looking through my list of amendments and I was going to raise a point of order. But I don't see any proposed amendment or practical positive proposal from either the Liberals or the NDP on this particular clause and I'm wondering, since they're evidently going to vote against it, maybe they could, next time they've had seven years to do it, come forward with a proposal on different legislation.

I would like to say very quickly, in regard to Ms. Crowder's point, the courts recognize *in loco parentis*, which is standing in the place of a parent. So as far as custom adoptions go, they look at the evidence in relation to *in loco parentis* and whether a person has stood in the place of a parent. I know wills and estates is an issue because it can unilaterally be changed by an individual and that's one of the reasons it should be put in there. I just wanted to point that out.

These are all the amendments that have come forward from the other parties? There are no amendments in relation to section 21?

[*Translation*]

The Chair: For the time being, there is no amendment to that clause. Members have the right to comment on and debate each clause, if they so wish.

[*English*]

Mr. Brian Jean: Absolutely. I just thought since they have had seven years before—

[*Translation*]

The Chair: No, there is no amendment to clause 21.

Ms. Crowder, you have the floor.

[*English*]

Ms. Jean Crowder: How much time do I have left?

The Chair: You still have one minute left.

Ms. Jean Crowder: Thank you.

With regard to the amendments, I appreciate Mr. Jean's comment. However, an amendment to this bill to reflect what we heard from witness testimony would have been ruled out of order by our distinguished chair because it would have required the government to spend money.

I can assure you that any of the amendments I would have proposed would have been determined as outside the scope of the bill. Those amendments would have included things like funding for legal aid, funding for additional housing on reserve, funding for counselling, funding for addictions treatment, funding for developing alternative dispute resolutions, and funding for the first nations in order to develop their own matrimonial real property codes.

There were a number of amendments that I would have been pleased...but I'm sure the government would have opposed every single one of them.

The Chair: Thank you, Madam Crowder.

[*Translation*]

(Clause 21 agreed to)

[*English*]

(On clause 22—*Family violence)*

The Chair: Madam Day.

[*Translation*]

Mrs. Anne-Marie Day: Madam Chair, we have some concerns about this clause in relation to family violence issues.

Mr. Jean spoke earlier as a white person, a father of two or three children who each have their own room perhaps, in a big house. I understand that Mr. Jean is not a regular member on this committee. But we are talking about families that include both sets of grandparents, the parents-in-law and the children. In some cases, 14, 15 or 16 people live together in a very small house with one or two rooms. That is not the same thing at all. Many witnesses told the committee on a number of occasions that the bill was not dealing with domestic violence, which is the substance of this clause. We are talking about family violence in Aboriginal communities.

This bill will not necessarily prevent family violence, particularly in cases where so many people live under the same roof.

As Quebec Native Women and the Native Women's Association of Canada mentioned, this legislation cannot be enforced properly if the legislative measures are not accompanied by non-legislative measures. That is what almost all the witnesses are asking for.

Yesterday, witnesses from First Nations, just like other witnesses before them, confirmed that this bill should provide for financial resources so that the law can be enforced properly and so that it can be said that it has a real impact on the safety of Aboriginal families. The simple fact that there are not enough transition houses to ensure the safety of women is one example. That is also an issue that a number of witnesses have brought up.

In the event of an emergency, where are the judges, the lawyers and all those others who will be able to help Aboriginal peoples?

The Chair: Thank you, Mrs. Day.

Ms. James, you have the floor.

[*English*]

Ms. Roxanne James (Scarborough Centre, CPC): Thank you.

I don't know whether I just need a point of clarification or whether there is a problem with the translation, but the translation came through that Ms. Anne-Marie Day had said that my colleague, Mr. Jean, “spoke as a white person”. Although that comment was not made directly to me, I find it very offensive, and I'm not sure what exactly it means.

I don't know whether it was a problem with the translation or whether that was really said, but I would like to understand what it means to speak as a white person. I find that very offensive in this committee.

Thank you.

● (1220)

[*Translation*]

The Chair: Thank you, Ms. James.

[*English*]

Madam James, was that a direct question to Madam Day, or just a comment?

Ms. Roxanne James: It was a point of clarification. Is that exactly what was said? Because the translation came through as that, and I find it unacceptable. I can imagine if it had been said about any other colour of skin what would have happened in this committee. I find that very offensive and inexcusable.

Thank you.

The Chair: There's no point of clarification, but if you ask a direct question, I can ask Madam Day to answer.

Ms. Roxanne James: Yes, Madam Chair, I would like an answer to that, please.

The Chair: So the question is whether that is what she said?

Ms. Roxanne James: Yes.

The Chair: Madam Day.

[*Translation*]

Mrs. Anne-Marie Day: I apologize if Mr. Jean was shocked.

But my argument is that we live in big comfortable houses, with one or two children, maybe three, whereas Aboriginal peoples, whose colour I shall not mention, have 12, 13 or 15 people living in one small house. Those conditions are significantly harsher.

The Chair: Thank you for clarifying your comment, Mrs. Day.

Mr. Jean, you have the floor.

[*English*]

Mr. Brian Jean: I'm not insulted at all. I'm quite proud of my aboriginal family.

She may not know this, but my riding is 20% aboriginal, in which there are seven or eight bands and reserves. In fact, I am very proud to say that I've seen tremendous success in northern Alberta with the aboriginals that are tied in with revenue from the natural resource sector.

But I would advise her, just so she knows, that I have been called a "backwards apple" many times, and I think she can figure out what that means. I have a trapline up in northern Alberta and I'm very proud of my aboriginal family. I've seen many of them on the reserves and have seen this particular plight affect them. That's why I am here today, to fight for them, for the aboriginal people who can't fight for themselves.

But the Conservative government is here for the same thing. We're fighting for aboriginal women and children on reserve who don't have the rights that you have and that many other white people across this country have. It's not correct. It's not right, and it has to end.

An hon. member: [*Inaudible—Editor*]

Mr. Brian Jean: We did get the resources.

The Chair: Thank you.

I see no other speakers.

[*Translation*]

(Clause 22 agreed to)

The Chair: Before we move on, let me remind all the members of the committee that, if you have something to say, say it to me, not directly to another member of the committee, in order to avoid...

Do we still have problems with the interpretation? Let me check. The interpreters do not seem to be able to hear what I am saying.

[*English*]

Ms. Roxanne James: Sorry—

A voice: We can hear, but I think it's hers—

Ms. Roxanne James: —I'll put it in the front piece because sometimes this cuts in and out.

Thanks.

[*Translation*]

The Chair: Okay. If there are any other problems, do not hesitate to let me know.

I just wanted to remind all the members of the committee to address the chair in order to avoid any unfortunate exchanges.

(Clause 23—*Interest or right not affected*)

The Chair: Ms. Ashton, you have the floor.

[*English*]

Ms. Niki Ashton: Thank you, Chair.

I would like to speak to clause 23, which leaves many questions unanswered. Obviously, we're once again talking about the decisions that the justice system will have to make, and it again involves the imposition of this bill, this legislation, on first nations. Given that the justice system, or the body that will enforce this clause in particular, is here, it begs the question: does the provincial system have the ability to handle this bill in general but also the question around occupation of the home?

I just want to read into the record the answers to our questions, in writing, from the Justice and Aboriginal Affairs officials. We asked, "Has there been an analysis of the cost that will be incurred by provincial governments?"

The answer was that "An analysis of the implementation costs for provinces and territories is not available." It said, "Bill S-2 provides for provincial courts to hear issues relating to matrimonial real property at the same time as other court proceedings such as divorce or child custody."

The issue here is fundamentally one of capacity, because the courts will have to deal with complex land codes. As we know, various first nations across the country have various land code arrangements. We heard it from former chief Baird. We heard it from Councillor Joan Jack. You have first nations that have just signed treaties in recent years. You have others that have treaties from the late 1800s.

We need to be clear here. The justice systems of our various provinces and territories need the ability to handle not just this bill, but to have an understanding of these land codes. We're very concerned that an analysis of the implementation costs is not available when it comes to the provinces and their ability to administer justice regarding this bill. We find it extremely problematic.

I would also add, again, that there is the issue of accurately assessing the value of homes on reserve. Obviously, there is an indication here of naming beneficiaries and the property being transferred to others. We feel that's a gap here. Unfortunately, although it's something that we've heard referenced by witnesses, due to this government's steadfast interest in limiting debate and not hearing from witnesses who are most impacted, we haven't had a chance to delve into the real gaps regarding accurately assessing values of homes on reserve and understanding the challenges that exist with regard to that.

I would also once again reiterate our concern about the provincial ability to handle what clause 23 is referring to—and Bill S-2 overall —without the kind of time allocation and without the capacity that are necessary to apply this legislation properly and in a way that could actually serve justice.

● (1225)

[*Translation*]

The Chair: Thank you, Ms. Ashton.

[*English*]

(Clause 23 agreed to)

(Clauses 24 to 27 inclusive agreed to)

(On clause 28—*Division of value*)

The Chair: Madam Crowder, do you want to speak to clause 28?

Ms. Jean Crowder: Yes, Madam Chair.

This one is the division of the value of matrimonial interests or rights. There are a couple of pieces I want to touch on in this clause.

One is that the technical briefing notes say there was a gender-based analysis conducted on this piece of legislation. One thing pointed out was that women could be impacted differently from men. The notes indicate that according to the 2006 census, women headed up 74% of the lone-parent families on reserve and that because they were more likely to be the caregivers than men, they were more likely to retain occupation of the family home. As a result, more women than men may be required to financially compensate their spouse or common law partner for their share of the family home.

We have heard—it was in Wendy Grant-John's report—other testimony about making funds available for women so that either they can borrow money or there would be some sort of compensation fund, because many women are underemployed or have been working-from-home mothers and so will not necessarily have the financial capacity to compensate their spouse. That's a significant part in terms of looking at the division of the value of matrimonial rights and interests.

The other piece of it is one we have raised a number of times, about looking at the application of provincial law to reserves, where housing situations are quite different. The technical briefing document said that housing on reserves varies among first nations in policies, rules and customs. Housing may be divided into two broad categories, including “band-owned” housing, which consists of an estimated two-thirds to three-quarters of all housing on reserves. So that's band-owned housing. The question then becomes how the valuation happens on that. The balance is individually-owned housing.

The technical briefing document went on to say that many first nation families rent homes on reserves from their first nation or from another first nation member. The interests or rights of individuals renting on reserves are not as clear as those off reserves, nor are the regulatory powers of band councils that rent housing, because provincial tenancy statutes likely do not apply.

So we have this complex situation wherein again we're going to be asking provincial courts to step into a field in which they don't have the background and the expertise. We're just pointing this out in terms of the challenges that could present themselves when we are looking at the division of matrimonial property and evaluating the interests.

Thank you.

● (1230)

The Chair: Thank you, Madam Crowder.

[*Translation*]

(Clause 28 agreed to)

(Clause 29—*Variation of amount*)

[*English*]

Madame Day wants to speak to it.

[*Translation*]

Mrs. Anne-Marie Day: Madam Chair, once again, this clause is problematic in relation to the Civil Code of Quebec. Women in common-law relationships do not have the same rights as married women. On this issue, Quebec Native Women said:

> ...the proposed Bill will be incompatible with the Civil Code of Quebec concerning the distribution of matrimonial property in case of separation or death for common-law partners.

Have the witnesses considered this aspect of the bill?

Mr. Karl Jacques: Madam Chair, I can answer that question.

As mentioned previously, the bill in a way represents a middle ground between all the systems that exist in Canada. Incorporation by reference was rejected by a number of provinces. So as soon as you depart from provincial law in the 13 provinces and territories, you are applying rules that would be in conflict.

Quebec is not the only place where common-law relationships are not recognized. The same is true in Nova Scotia. That can indeed create distinctions. But, in terms of property, of rights to the family home and matrimonial assets, the bill gives more rights to Aboriginal women living on reserves than to those living off reserves.

The Chair: Thank you, Mr. Jacques and Mrs. Day.

Mr. Jean, you have the floor.

[*English*]

Mr. Brian Jean: I'm curious.

Could I ask the official whether the law of equity applies in the Civil Code of Québec?

Mr. Karl Jacques: No, not as—

Mr. Brian Jean: Not strictly as a law of equity.

Thank you. That was my only question.

The Chair: Thank you, Mr. Jean.

[*Translation*]

I see no one else who wishes to speak.

(Clause 29 agreed to)

(Clauses 30 to 32 agreed to)

[*English*]

(On clause 33—*Enforcement of agreements*)

The Chair: Madame Ashton, you wanted to talk about clause 33 when we were at clause 33, so you have the floor.

Ms. Niki Ashton: Perfect.

Mr. Brian Jean: Madam Chair, I have a point of order, please.

● (1235)

The Chair: Mr. Jean.

Mr. Brian Jean: This has happened quite a few times. Once you call the question, my understanding is that the question is put and the vote is taken. I know there is a lot of latitude allowed in this case because she wants to bring it up. But I just thought I would mention that the rules of procedure, as far as I'm aware, say that when you put the question, the question is answered, the people vote, and then we move on from the decision.

This time, and you've done it several times, you've put the question and they voted, and then they asked to speak on it after they voted. I just wanted to point out that as far as procedure goes. Once you put the question, my understanding is that the question is put.

The Chair: Let's just make sure we're on the same page here.

We voted on clause 32. Then the vote was done.

We were at clause 33. We didn't start the vote. Madam Ashton asked for the floor.

I can go very slowly and say where we're at—

Mr. Brian Jean: If I may, Madam Chair, I'm just pointing it out.

I know there's a lot of latitude here because everybody has a right to say what they want to say, and I think that's important. But I'm getting confused because I feel sometimes you have put the vote already. I'm voting on it, and then they're speaking on the one I have already decided to vote on.

I just—

The Chair: Yes. Thank you for bringing up that point of order.

You're right, there's a little confusion. Let's make it clear. I will name the clause we are at. I will look around and then ask, “Shall the clause be adopted?” Then we will take the vote.

If you raise your hand when I'm naming the clause that we're at, you're not raising your hand at the right moment. If everything is clear, the point of order is done.

We are at clause 33. I have a speakers list.

Madame Ashton.

There is a point of order from Madam Day.

[*Translation*]

I am listening, Mrs. Day.

Mrs. Anne-Marie Day: Could you please ask us if we want to speak in a systematic way, before people put their hands up? Then we could indicate our intention of speaking to a clause.

The Chair: Yes. As I have just said, I announce the clause that we have reached, then I look to see if anyone's hand is up to indicate that they want to speak to it. If no hands are raised, I ask if the clause shall carry, and then we move to the vote.

Does that answer your question?

Mrs. Anne-Marie Day: So, as I understand it, Madam Chair, if four people on the other side raise their hands, you consider that they have done so in order to speak, not to vote.

The Chair: When I announce the clause, if someone raises their hand, I let them speak.

Mrs. Anne-Marie Day: Thank you.

The Chair: Ms. Ashton, you have the floor.

[*English*]

Ms. Niki Ashton: Thank you, Madam Chair.

Clause 33 once again, as we see here, indicates:

> If spouses or common-law partners enter into a written agreement, after they cease to cohabit, that sets out the amount to which each is entitled and how to settle the amount payable....

Obviously, as we've put forward here today and as we've heard from witnesses, the question of assessing the value of the home remains. As we know, first nation women are often more marginalized than are men, and certainly indicators of poverty show that. The question is how the value could be assessed and how the female spouse could be part of settling the amount payable.

I want to just speak in terms of logistics. People love talking about the first nations they've been to and they've spent time on, and all of that stuff. I would assume they know that in many first nations people do not have collateral. People do not have banking institutions to go to. In many first nations, certainly the ones that I represent, any financial transactions that happen actually happen at the store where they also buy groceries. It's not a banking scenario. While I appreciate the creation of legislation that seems to think all people are equal in terms of the services they can access, this is simply not the case for so many first nations, in terms of both their socio-economic status and the kinds of services they have, not to mention their lack of access to legal services, legal aid, to legal advice.

It again speaks to the fact that these are words on a paper. There's the assumption that it's a fair playing field. It is disingenuous of the government to indicate that is in fact the case when they know it is not. Certainly indicators in terms of quality of life on reserve show that clearly. We find it extremely problematic that these real questions are being overlooked and that the government wants to speed this bill through without actually delving into these important issues.

I also want to speak, as we've heard from a number of witnesses, including Councillor Joan Jack, to the desire of people who are suffering from marital breakdown to access counselling services or healing services. In fact we even heard from Mr. David Langtry about the importance of alternative dispute resolution mechanisms, which often don't exist on first nations.

We're dealing with a clause that speaks to agreements that common law partners have to engage in, when in fact services around conflict resolution, services to gain advice to make these decisions, are not available. These are critical services and services that are available to people living off reserve who are in the same situation. It's extremely unfair and entirely misleading for the government to indicate that first nations somehow now have the same access that all other people off reserve have, when they know that's simply not the case.

● (1240)

The Chair: Thank you, Madame Ashton.

[*Translation*]

(Clause 33 agreed to)

(Clause 34—*Entitlement of survivor*)

The Chair: Does anyone want to speak to this clause?

Go ahead, Ms. Crowder.

[*English*]

Ms. Jean Crowder: I won't belabour the point, Madam Chair. It's the same issue around asking provinces to take a look at issues where they have not in the past had that kind of exposure. The Assembly of First Nations did a briefing back when the ministerial representative Wendy Grant-John was putting together a report, and in their briefing they said that the legal reality is that provincial and territorial laws governing the division of real property do not apply on reserve. They go on to talk about the provincial court's authorities. They indicated that there's good reason why provincial laws do not apply.

The federal crown has exclusive jurisdiction over Indians and lands reserved for Indians pursuant to section 91(24) of the Constitution Act, 1867. Of course, what we've also seen recently is a court decision under section 91(24) that extended that jurisdiction to Metis and non-status first nations.

Again, the whole issue around provincial courts being asked to interpret complex land codes on reserve seems to be an unreasonable request.

[*Translation*]

The Chair: Thank you, Ms. Crowder.

I see that no one else wants to speak to clause 34.

(Clause 34 agreed to)

(Clause 35—*Variation of amount*)

The Chair: Does anyone want to speak to clause 35?

Go ahead, Mrs. Day.

Mrs. Anne-Marie Day: Thank you.

Madam Chair, this is the same problem as the one we had with clauses 15, 4 and 29. There is a lack of legal clarity between Bill S-2 and the Civil Code of Québec. This is how clause 35 reads:

> On application by an executor of a will or an administrator of an estate, a court may, by order, vary the amount owed to the survivor under section 34 if the spouses or common-law partners had previously resolved the consequences of the breakdown of the conjugal relationship by agreement or judicial decision, or if that amount would be unconscionable, having regard to, among other things, the fact that any children of the deceased individual would not be adequately provided for.

As several witnesses have indicated, in Quebec specifically, common-law spouses do not have the same rights as married ones. What about those 40% of Quebec women who are in a common-law relationship?

Given the way in which the Civil Code of Québec is applied, there is a striking difference between the status of a married woman and one living in a common-law relationship. Rights and obligations are often different, especially in terms of household expenses, the consolidation of debts, the family home, family assets, the rights of children, and so on. As one of the witnesses mentioned, an Aboriginal woman in a common-law relationship could find herself with her access to the family home blocked.

There must be better harmonization between Bill S-2 and the Civil Code of Québec.

Thank you.

● (1245)

The Chair: Thank you, Mrs. Day.

No one else seems to want to speak.

(Clause 35 agreed to)

(Clauses 36 to 39 agreed to)

(Clause 40—*Enforcement of agreements*)

The Chair: Ms. Ashton, you have the floor.

[*English*]

Ms. Niki Ashton: Thank you, Chair.

I would like to speak to clause 40. I believe it once again misses the point entirely, and it speaks to the deficiency of this bill when clauses like this exist without the commitment to non-legislative measures, which we know are absolutely critical in addressing the decisions that happen after a marital breakup.

I want to read into the record the message from Ms. Ellen Gabriel, who indicated that:

> High unemployment rates, lack of sufficient housing, a growing population, dispossession of our lands and resources, the imposition of paternalistic values and processes, outdated funding formulas, poverty, and social ills rooted in colonialism have for generations affected indigenous women's ability to enjoy their fundamental human rights.

The government is indicating this is for the well-being of aboriginal women, a statement that is paternalistic to the maximum, in part, because it misses entirely all of these points that Ms. Gabriel raises, which indicate the socio-economic conditions in which first nations live, the crushing poverty, a poverty that first nations refer to on a regular basis as being third world.

I've been to houses in northern Manitoba where there's black mould on the walls, but people have nowhere to go. I've been to houses where there is no sink in the kitchen because there is no running water. People have to go out in -35 degree weather with a pail to get water from a well. I've been to houses where is no bathroom inside the house. I remember an elder in St. Theresa Point who had diabetes, who had to trudge through the snow to go to the bathroom outside. I've been to communities where they received slop pails from the federal government because after H1N1 it was clearly indicated that water and sewer conditions in the community were unacceptable. To add insult to injury, this federal government sent slop pails into the community.

Madam Chair, what members across, and certainly their government, are steadfastly ignoring are these living conditions, which first nations put up with because they are first nations people. The paternalistic, colonialist approach up to now clearly hasn't worked if you look at the quality of life these people lead.

Unfortunately, instead of changing course, this government has chosen, through clause 40 and through the entirety of Bill S-2, to impose legislation that completely discounts these living conditions —third world living conditions, as many first nations indicate—and seems to profess that this somehow is going to end violence, and is going to end the problematic situations that women face on reserve.

I would point them back to what Ms. Gabriel has indicated and how, through Bill S-2, this government is ignoring the very indicators that lead to the turmoil, that lead to social tension and violence, and to the fact that this government is continuing a paternalistic and colonial approach when it comes to first nations people.

● (1250)

[*Translation*]

The Chair: Thank you, Ms. Ashton.

Does anyone else wish to speak?

Go ahead, Ms. Crockatt.

[*English*]

Ms. Joan Crockatt: I just wanted to respond to that by saying this bill is intended to save lives. It will save lives, and one life saved is definitely worth this bill being passed, and the NDP and the Liberals supporting it.

[*Translation*]

The Chair: Thank you, Ms. Crockatt.

(Clause 40 agreed to)

(Clause 41—*Notice of application*)

The Chair: Go ahead, Ms. Crowder.

[*English*]

Ms. Jean Crowder: Thank you, Madam Chair.

This particular clause is dealing with notice to councils and views of councils. It certainly is important to note that this will provide that the applicant send a copy of an application made under the act to the council of the first nation on whose reserve the family home or other matrimonial interests or rights are situated, except in the case of emergency protection orders, and that the council will be able to make representations. The provision requires the courts to take representations with respect to the cultural, social, and legal context, and the views of the council with respect to the granting of the order, into consideration when making orders.

There are a couple of points about this particular section. Certainly the question becomes whether councils will have the resources to actually intervene at the courts. Again, it's an ongoing issue that continues to arise throughout this piece of legislation.

I'll refer back to Wendy Grant-John's report again. One of the sections dealt with the fact of:

> Ensuring resources are in place for the capacity building and institution building that are prerequisites for a functioning and comprehensive matrimonial real property regime (for lawmaking, land management, land and housing registries and dispute resolution mechanisms and processes).

The report, in its conclusions and recommendations, also pointed out that by putting this piece of legislation in place without those kinds of resources, “First Nations would be placed in a catch-22 situation—they would be held to the same standard as provincial governments but not have the resources and capacity to achieve it.”

As well, Madam Chair, it is important to note that the courts will be asked to take note of the cultural, social, and legal context. I referenced the UN Declaration on the Rights of Indigenous Peoples earlier, which pointed out that, under the UN declaration, “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs”, and it goes on to also point out the judicial systems or customs.

In the tool kit that was provided, which the Canadian Human Rights Commission has developed in conjunction with first nations, it's interesting to note that one very important thing in this tool kit on dispute resolution is that they point out the four stages. Of course, this bill doesn't deal with these four stages. It points out that the four stages in developing a process are leadership values and principles; capacity building for development and engaging your community; developing your community's dispute resolution model; and implementation, monitoring, and continuous improvement.

The chiefs and councils will be able to make representations to the courts if they have the resources to do it. It would be interesting if they were able to actually go to the courts with a dispute resolution model that had been developed in conjunction with the community and present that as an option the courts might want to consider with regard to looking at the matrimonial breakdown and the division of property and whatever assets there might be.

Again, it's worrying that first nations simply may not have the resources, chiefs and councils may not have the resources, to undertake either that kind of intervention or the development of those alternative dispute resolution mechanisms.

Thank you, Madam Chair.

● (1255)

The Chair: Thank you, Madame Crowder.

I see Mr. Jean wants to intervene.

Mr. Brian Jean: I'm just wondering if Ms. Crowder and the NDP are against notifying chiefs and councils in relation to something that might be going on with their bands. Is that her point? I understand the resource issue, but I'm just wondering if she's against this particular clause or if she's for this particular clause. Maybe she could clarify that.

The Chair: You're asking a question.

Madame Crowder, you still have a minute.

Ms. Jean Crowder: Thank you.

Yes. I'm sorry, I wasn't clear. We will be supporting this particular clause. I think it's very important that band councils are notified. Again, the clause rightly points out that this would not happen in the cases of emergency protection orders because of the confidentiality issues and whatnot.

But we will be supporting this particular clause. My only hope is that first nations will actually have the resources to do that kind of intervention so that it's an opportunity to educate the courts around the different situations on reserves. There isn't another provision to do that.

The Chair: Thank you, Madame Crowder.

Madame Sgro, you have the floor.

Hon. Judy Sgro: Thank you, Madam Chair.

I just would like to get clarification from our officials.

In clause 41 it reads, “without delay”. What if they do delay? Where is the mechanism to follow through there? I'm not sure if “enforcement” is the right word. Where are the mechanisms that follow up if they don't do this? It reads, “without delay”. What if they don't? What happens?

Mr. Andrew Beynon: I would just offer the comment that it's a bit of a signal to the applicant for an order that they have to do so in a timely manner. The court has to deal with the situation that's in front of them and you can't send a notice to the band council six months or a year after the events that you're trying to deal with in the application. So it's just a signal that you need to do that without delay and the expectation is that it will be done in that timeframe.

If an individual fails to do that, then they won't have complied with this particular section, and the court would have some difficulty looking at the entire set of circumstances.

But one of the things that's likely to happen is that the court itself in the application will ask if a notice was provided to the council. So it's one of the steps that one needs to go through as an applicant before the court.

Hon. Judy Sgro: Thank you.

Thank you, Madam Chair.

The Chair: Thank you, Madam Sgro.

Is there anyone else who wants to speak on this clause?

(Clause 41 agreed to)

[*Translation*]

The Chair: That ends our meeting. We will resume the clause-by-clause study of Bill S-2 at our next meeting.

My thanks to the committee for the work it has done today.

On behalf of our committee, I would once more like to thank the witnesses for appearing today. We will certainly send them an invitation to come to our next meeting as well.

The meeting is adjourned.