THE
SENATE

LE
SÉNAT

A HARD BED TO LIE IN:

MATRIMONIAL REAL PROPERTY ON RESERVE

Interim Report of the Standing Senate Committee
on
Human Rights

Chair
The Honourable Shirley Maheu

Vice-Chair
The Honourable Eileen Rossiter

November 2003

A HARD BED TO LIE IN:

MATRIMONIAL REAL PROPERTY ON RESERVE

I believe that one of the basic rights we should be able to enjoy is the right to call a place, a community or a structure ``home.'' Home is a place where we are safe and protected by family and friends. It is our private spot, where we can lock out the cares of the world and enjoy one another. It is also the place where, as a couple, when we plan a family, we know that this is the place where they will be safe, protected and loved. As a couple, you take a structure, and with personal touches from each of you, you make this your private world. You open your private world to family and friends, making them feel welcome when they visit you. However, make no mistake, this place is your private world.

Imagine the stress on a woman who knows that, if this loving relationship ends, then her world will crumble. Imagine the stress when this woman has children, and she knows, that not only she but also her children will soon have to leave the place she and they call home, and in some cases, must leave the community.

It is not an easy choice to decide that a relationship is not working and that the relationship must end. Normally, while there is a certain degree of animosity, most couples know that they must work out a mutually agreed upon arrangement for the disposition of property, including the home.

This would not appear to be the case for on-reserve women, as they hold no interest in the family home. There is no choice as to who has to move. It is the woman and, in most cases, it is the woman and her children. What a choice: be homeless or be in a loveless relationship, maybe an abusive relationship. Is that what Aboriginal women deserve? No, it is not. Is it humane? It is definitely not.

MEMBERSHIP

The Honourable Shirley Maheu, *Chair*

The Honourable Eileen Rossiter, *Vice-Chair*

and

The Honourable Senators:

Gérald A. Beaudoin
*Sharon Carstairs, P.C. (or Fernand Robichaud, P.C.)
Thelma Chalifoux
Marisa Ferretti Barth
Mobina Jaffer
Serge Joyal, P.C.
Laurier LaPierre
* John Lynch-Staunton (or Noel Kinsella)
Jean-Claude Rivest

* Ex-officio members

In addition, the Honourable Senators Maria Chaput and Vivienne Poy were members of the Committee at various times during this study and participated in its work.

From the Parliamentary Research Branch of the Library of Parliament:
Carol Hilling, Research Analyst.

Line Gravel
Clerk of the Committee

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Wednesday, June 4, 2003:

Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Bacon:

That the Standing Senate Committee on Human Rights be authorized to examine and report upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or common law relationship and the policy context in which they are situated.

In particular, the Committee shall be authorized to examine:

- The interplay between provincial and federal laws in addressing the division of matrimonial property (both personal and real) on reserve and, in particular, enforcement of court decisions;

- The practice of land allotment on reserve, in particular with respect to custom land allotment;

- In a case of marriage or common-law relationships, the status of spouses and how real property is divided on the breakdown of the relationship; and

- Possible solutions that would balance individual and community interest.

That the Committee report to the Senate no later than June 27, 2003,

And on the motion in amendment of the Honourable Senator Carney, P.C., seconded by the Honourable Senator Keon, that the motion be amended in the first paragraph thereof by replacing the words ``Standing Senate Committee on Human Rights'' by the words ``Standing Senate Committee on Aboriginal Peoples''; and

That the reporting date be no later than March 31, 2004, rather than June 27, 2003.

After debate,

The question being put on the motion in amendment, it was negatived on division. The question then being put on the main motion, it adopted on division.

Paul C. Bélisle
Clerk of the Senate

TABLE OF CONTENTS

FOREWORD

When the Standing Senate Committee on Human Rights was mandated by the Senate to undertake a study on the issue of division of real matrimonial property on reserve, it realized that this was a pressing human rights issue that called for immediate attention. It is unfortunate that several delays prevented the Committee from beginning its study until late June. The testimony heard by the Committee made it very clear that the family well-being is at stake.

Aboriginal women living on reserves do not have the same rights as other women in Canada, Aboriginal and non-Aboriginal, living off reserve. They face unfair and unconstitutional discrimination in the exercise of a right which has profound effects on every day life; the right to a fair share of the matrimonial property on the break-up of their marriage or common law relationship.

While for any woman, leaving the family home is very painful, for Aboriginal women on reserve, it all too often means leaving their community and trying to start over in a non-Aboriginal environment. In essence, they face a situation similar to that of a woman who would be forced to leave the country and to rebuild her life in a foreign environment. While other women may go before the courts to have their rights protected, Aboriginal women on reserve do not even have that option with respect to the family home. In addition, even if they theoretically can turn to the courts for their share of the couple's personal property (cash, vehicles, household goods, pension funds, etc.), the Committee has learned that in practice, it is very difficult for Aboriginal women on reserve to have court orders enforced. The Committee heard heart wrenching stories about women simply thrown out of the family home with only the clothes on their backs, women forced to leave the reserve with their children, women who could not see any light at the end of the tunnel and took their own lives.

This situation can no longer be tolerated in Canada. It is morally wrong. It contravenes the equality rights guaranteed to everyone in Canada under the Charter of rights and

freedoms. In the opinion of the Committee, it contravenes the rights guaranteed under section 35 of the Constitution Act of 1982. Furthermore, United Nations treaty bodies have told Canada that it is incompatible with its international obligations.

Aboriginal women have been fighting a long time for the recognition of their rights and immediate action is long overdue. This prompted the Committee to draft an interim report with recommendations to be implemented without delay. However, the Committee is well aware that it has barely scratched the surface of a very complex issue. There are still many witnesses to hear from and many aspects of the issue to study further. In addition, the Committee is aware that the immediate action recommended will still leave a number of Aboriginal women without protection. Thus it is important to understand that the present interim report is only a first step in a study that must continue and will continue.

On behalf of the Committee, I thank the Senate for entrusting us with this important study. I thank the Minister of Indian and Northern Affairs for asking us to assist the government of Canada in its search for solutions.

I also wish to thank Senator Gérald A. Beaudoin, Senator Marisa Ferretti Barth, Senator Thelma Chalifoux, Senator Maria Chaput, Senator Mobina S.B Jaffer, Senator Serge Joyal, Senator Laurier L. Lapierre, Senator Vivienne Poy, and Senator Eileen Rossiter for their participation and contribution to this study.

Finally, I would like to thank our staff whose work made this study possible. Mrs. Carol Hilling, our analyst from the Library of Parliament, has been an exceptional support in these consultations, as well as Mrs. Line Gravel, our clerk.

Shirley Maheu

Chair

SUMMARY OF PRELIMINARY RECOMMENDATIONS

The Committee believes that the absence of legislation protecting the rights of Aboriginal women on reserve with respect to their matrimonial property as well as the difficulties they face both in their exercise of the available judicial remedies and in the execution of court orders with respect to matrimonial property are incompatible with the *Canadian Charter of Rights and Freedoms*. The lack of legal protection of their rights with respect to real matrimonial property is also inconsistent with the provisions of Sub-section 35(4) of the *Constitution Act of 1982*. Consequently, the Committee recommends that the Federal Government adopt as soon as possible adequate measures to end the discrimination endured by First Nations women on reserve with respect to the division of matrimonial property and ensure that they enjoy the same rights as other women in Canada.

1. With respect to immediate action to be taken, the Committee recommends that the *Indian Act* be amended so that provincial/territorial laws with respect to the division of both personal and real matrimonial property can apply. As stated in the present report, this is only a partial solution. The Committee will make further recommendations in its final report as to measures to be implemented so as to avoid the distinctions provided in provincial legislation, *inter alia* those based on marital status.
2. The Committee recommends that the amendments to the *Indian Act* take into account the fact that some First Nations already have measures in place with respect to the division of matrimonial property and that they should be able to continue to follow their own rules so long as they afford protection at least equivalent to that offered by provincial legislation.
3. The Committee recommends that the amendments to the *Indian Act* take into account the rights of children, including their right to continue to live in their community. The Committee will make more precise recommendations in its final report.

4. The Committee recommends that the *Indian Act* be amended so as to recognize a right of occupancy of a residence to protect those whose name does not appear on the Certificate of Possession, or when the Certificate of Possession is held by a third party.
5. The Committee recommends that it be made possible to register on-reserve family homes so as to protect the rights of spouses.
6. Inasmuch as access to reserve lands is tied to Indian status and Band membership, the Committee recommends that the *Indian Act* be amended so that not only the women who lost their status prior to 1985, but also their children and their grand-children may have status and membership, and so that women who upon marriage lost their membership in the First Nation into which they were born would automatically regain it should their marriage break down, should they so wish.
7. With respect to immediate action to be taken, the Committee also recommends that the issue of division of matrimonial property be expressly addressed in any self-government negotiations and that specific provisions on this issue be included in any agreement-in-principle and final agreement.
8. For the longer term, the Committee recommends that appropriate funding be given to national, provincial/territorial and regional Aboriginal women's associations so that they can undertake thorough consultations with First Nations women on the issue of division of matrimonial property on reserve. These consultations should be the first step in a larger consultation process with First Nations governments and Band councils with a view to finding permanent solutions which would be culturally sensitive, with the unequivocal understanding that there can be no cultural justification for violations of human rights protected under the Canadian Charter and international law.

A HARD BED TO LIE IN: MATRIMONIAL REAL PROPERTY ON RESERVE

Great victories come not through ease but by fighting valiantly and meeting hardships bravely.

I. Introduction

On 4 June 2003, the Standing Senate Committee on Human Rights was mandated by the Senate to undertake a "study upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or common-law relationship and the policy context in which they are situated". The purpose of the study is to make recommendations as to possible solutions to protect the rights of Aboriginal women on reserve to their share of real matrimonial property. Presently, when their marriage or common law relationship breaks up, women on reserves do not enjoy the same rights as other women in Canada. They are left without any protection because the *Indian Act* is silent on this issue, provincial laws cannot apply to the division of real property, and there is no other legislation to fill the gap. Consequently, Aboriginal women on reserves are all too often forced to leave the family home along with their children and even leave the reserve. In addition, even if provincial laws can apply to the division of personal property, in practice, they are of little help to Aboriginal women on reserve.

The Committee began hearings in June 2003 and resumed them in September 2003. This initial series of hearings has enabled the Committee to grasp the scope and complexity both of the differing situations on reserves across Canada and of the possible solutions**.** It has also enabled the Committee to understand the devastating effects on the lives on Aboriginal women and their children on reserve of a situation that is unacceptable in Canadian society. It is imperative that the federal government act immediately to restore not only the rights of Aboriginal women with respect to matrimonial real property, but also the full exercise of those rights. It is a matter of

compatibility with the Canadian Charter of rights and freedoms, with Canada's international human rights obligations, and it is a matter of honour and dignity. In the words of one witness:

> It is incumbent on the committee to bring justice to the lives of all First Nations women who face these devastating barriers to equality as swiftly as possible before more lives are lost or ruined through the despair of having such limited access to human rights in a society that is otherwise a leader in human rights. The situation is simply unacceptable.[1]

The Committee has therefore decided to begin by drafting an interim report with recommendations for immediate action.

The issue of the division of on-reserve matrimonial real property is closely linked to that of land management. Three broad categories of First Nation land can be distinguished: those where land management is regulated entirely by the *Indian Act*; those where a First Nation has assumed control of the reserve's land management by voluntarily adhering to the *First Nations Land Management Act*; and those where a First Nation has concluded an agreement on self-government or a comprehensive land claim agreement that includes provisions for self-government. While the Committee has divided its study along these lines, it should be noted with respect to the first of these categories that some First Nations whose land management is in principle entirely regulated by the *Indian Act* in fact allocate land according to traditional custom, in a manner that at present is outside the control of the Department of Indian Affairs, or according to a hybrid method made up of both custom and the rules of the *Indian Act*.

The Committee's study cannot however be limited to identifying the various problems linked to the management of reserve land. It is already clear, in light of the evidence heard so far, that there are a number of other elements involved that increase the complexity of the issue and especially of the possible solutions.

[1] Evidence before the Committee, 15 September 2003 (Sherry Lewis, Native Women's Association of Canada).

In a legal context where the allotment of land on a reserve is tied to membership in a First Nation, careful attention must be given to the fact that not all Aboriginal people living on a reserve necessarily have the same status or the same rights under the *Indian Act*.

The paternalistic nature of the *Indian Act* has over the years had very negative effects on the band councils created by the Act, and in general on the position of women living on reserve and their role within the First Nations. Several witnesses stated that the *Indian Act*, passed at a time when women in Canada generally did not enjoy the full exercise of their civil and political rights, imposed a discriminatory regime that in particular put an end to the matriarchal system characteristic of many First Nations.[2]

For all practical purposes, Aboriginal women lost any ability to influence politics on reserves.

> What you have now is a population of women who have been excluded from governance, from decision-making, from voting for governance and decision making. The location ticket system, the land holding system created in 1869, even excluded them from land holding. [3]

The Committee learned that Aboriginal women have been trying for some 20 years to find solutions to the discrimination they experience.[4] While nowadays increasing numbers of women are obtaining positions as band councillors and chiefs, their absolute number remains low. Women living on reserve are often not aware of their rights. There has been some progress in this regard in the First Nations that have chosen

---

[2] Evidence before the Committee, 15 September 2003 (Sherry Lewis, Native Women's Association of Canada; Pam Paul, National Aboriginal women's Association). Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec; Dorothy George, Newfoundland Native Women's Association); Gina Dolphus, Native Women's Association of the North-West Territories) Evidence before the Committee, 6 October 2003 (Bev Jacobs, co-author, *Matrimonial Property on Reserve*). See also W. Cornet and A. Lendor, *Matrimonial Real Property on Reserve*, discussion paper prepared for the Women's Issues and Gender Equality Directorate of the Department of Indian Affairs and Northern Development, 28 November 2002, pp. 10 et seq. Document on line (DIAND web site): http://www.ainc-inac.gc.ca/pr/pub/matr/index_e.html.

[3] Evidence before the Committee, 6 October 2003 (Mary Eberts, co-author, "Matrimonial Property on Reserve".

[4] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec).

to adhere to the *First Nations Land Management Act*, because they must set up a process for consulting the community when it comes to adopting rules regulating the division of family assets. However, according to the information available to the Committee at the time of drafting, only 14 First Nations are subject to the Act[5] at the present time.

Even when they are aware of their rights, women encounter difficulties in seeking legal recourse. Some of them have tried to contest the discriminatory effects of the *Indian Act*, but their financial resources run out before the case is heard.[6] Moreover, even if they could appeal to the courts to obtain their share of matrimonial real property, legal aid is not generally available for questions involving property, because it is presumed that the parties have assets to pay for legal counsel. This can be problematic for women on reserve because, as pointed out by one witness:

> Often, the only valuable asset is the family property on reserve, and under the Indian Act there is no clear remedy for seizure or execution of a judgment. Section 29 states that reserve lands are not subject to seizure, and section 89 states that seizure may take place between members.[7]

The problem of family violence was raised a number of times during the hearings. The Committee is aware of the seriousness of this problem and of the fact that it is often the reason why Aboriginal women and their children leave the reserve, for their own safety. As summarized by one of the witnesses who raised this issue:

> Other problems are Aboriginal spouses, most often older women who have abusive and addicted spouses who hold the lawful possession to the family home. These women fear for their physical safety and are often advised to leave their homes. At this stage of their life, a lengthy and acrimonious court battle for compensation may not be an option, or advisable for health reasons. Leaving the home may not even be an option in some cases due to the

[5] On 31 March 2003, the Minister of Indian Affairs announced that 17 other First Nations had signed the *Framework Agreement on First Nation Land Management*, the first step toward adhering to the Act.
[6] Evidence before the Committee, 29 September 2003 (Sharon McIvor).
[7] Evidence before the Committee, 15 September 2003 (Pam Paul, National Aboriginal Women's Association).

> housing shortage, lack of financial resources, and isolation of Aboriginal communities.[8]

The Committee believes that it is vitally important to introduce structures and measures to protect these women and their children. However, given its mandate, the Committee will not be going into the cause of divorce and the breakdown of common-law relationships on reserves in any detail in this preliminary report.

Other issues raised by the witness are directly linked to the issue of division of matrimonial real property on reserve, but should not have any bearing on the recognition and the legal confirmation of the equality of rights of Aboriginal women in this respect:

- Housing shortages on reserves.
- Unfair and discriminatory housing policies.
- Level of education and linguistic barriers which make access to information even more difficult.
- Lack of social and health services and infrastructures.
- poverty

It became obvious to the Committee that not all First Nations are in the same situation. In addition to demographic, geographic, economic, social and political differences, some First Nations already have measures in place to address issues related to a divorce or the break-up of a common law relationship,[9] while in others the situation may range from total ignorance of women's rights in the event of divorce or the breakdown of a common-law relationship to an active search for solutions that will take children's interests into account[10], in collaboration with all members of the family and

---

[8] Evidence before the Committee, 15 September 2003 (Pam Paul, National Aboriginal women's Association)

[9] Evidence before the Committee, 15 September 2003 (Tiffany Smith, Assembly of First Nations). The Committee has asked the AFN to provide further information about this issue. Evidence before the Committee, 22 September 2003 (Marilyn Sark, Aboriginal Women's Association of Prince Edward Island). Evidence before the Committee, 29 September 2003 (Irene Morin, Enoch First Nation). Mississauga First Nation (Blind River, Ontario) has indicated to the Committee that its housing policy includes rules pertaining to the use of the family home in the case of a break-down of "a union of two people recognized by law as a partnership". Letter to the Committee.

[10] Several First Nations indicated that the use of the family home is usually retained by the parent who has custody of the children: Chemawawin Cree Nation (Manitoba), letter to the Committee, 15 September

even of the community. Several First Nations have indicated that the absence of clear rules pertaining to the division of matrimonial property in cases of divorce or break-up of common law relationships is a source of difficulties.[11]

These are just some examples of the factors that must be taken into consideration when seeking solutions. While some are questions of fact, others are points of law. Furthermore, any discussion of the issue of the division of on-reserve matrimonial property must be placed in the context of Canada's Constitution, which protects the rights of Aboriginal peoples.

II. The legal context

A. The status of reserve land and the applicable law

The situation was summed up as follows by a representative of the Department of Indian Affairs and Northern Development:

> Off-reserve, the provincial/territorial government has jurisdiction over matrimonial property, both real and personal. On-reserve, however, jurisdiction in regard to matrimonial property involves interaction between two main heads of power, which are included in the Constitution: one is provincial, section 92(13); the other is federal, section 91(24).[12]

The land on reserves consists of "Lands reserved for the Indians" within the meaning of subsection 91(24) of the *Constitution Act, 1867*, and it falls under exclusive federal jurisdiction. However, reserves are not federal enclaves. Under section 88 of the *Indian Act*, subject to treaties concluded by First Nations with the Crown, and to federal

---

2003; Heiltsuk First Nation (British Columbia), if the loan given by the Band Council for the construction of the house is not yet repaid in full, letter to the Committee, 2 October 2003; Old Masset Village Council (British Columbia), letter to the Committee, 2 October 2003; Mississauga First Nation (Blind River, Ontario) as long as the children are registered as members of the First Nation, letter to the Committee; Shubenacadie First Nation (Indian Brook, Nova Scotia), e-mail to the Committee.

[11] Chamewawin First Nation, *supra*, Heiltsuk First Nation, *supra*, Kitigan Zibi Anishinabeg (Maniwaki, Québec), letter to the Committee, 16 September 2003; Magnetawan First Nation (Britt, Ontario), letter to the Committee, 17 September 2003.

[12] Evidence before the Committee, 15 September 2003 (Sandra Ginnish, Department of Indian Affairs and Northern Development).

laws, “Indians” are subject to all provincial laws of general application, except to the extent that such laws are inconsistent or overlap with the *Indian Act*.

Property and civil rights in a province, a heading which encompasses the bulk of family law matters, including matrimonial property, come under provincial jurisdiction by virtue of subsection 92(13) of the *Constitution Act, 1867*. As a result, the division of family assets on reserve might appear to be regulated by provincial laws of general application. However, because of the legal status of Indian reserves, a distinction must be made between personal property and real property.

Theoretically, provincial laws apply to the division of personal property in the event of marriage breakdown on a reserve, that is to say assets such as furniture, appliances, cars, personal effects, etc. In fact, however, there appear to be at least two levels of difficulty in applying provincial law.

The Committee learned that often, pressure is exercised on women not to go to court:

> Every aspect of the lives of the people and the lives of the Indian women, in particular, on reserve is governed by the chief in council, for example social assistance, education and housing. They govern access to any program on reserve. I have had women call me who have tried to protest. They are going into a human rights arena to try to get some fair treatment and they have had their children's education allowance cut off. They do not say, “Well, if you are going to take the human rights route, we are going to take the money.” They say, "You know, we are really having a budget shortfall here and we have to cut some people off. I think maybe your child, who's half-way through the semester, will not have a living allowance and will not have tuition come January." Not surprisingly, the women back off. [13]

Moreover, even if a woman succeeds in obtaining a court order to stay in the matrimonial home, she may still have difficulty getting it executed. As a result, even

[13] Evidence before the Committee, 29 September 2003 (Sharon McIvor).

though provincial laws are technically applicable to the division of personal property in the event of marriage breakdown on a reserve, in practice they are of little help to Aboriginal women.

In the event of the breakdown of a common-law relationship, Aboriginal women on reserves may find themselves in the same situation as women living in provinces that do not recognize the same rights to partners in a common-law relationship as they do to wives. A study done in collaboration with the Women's Issues and Gender Equality Directorate of the Department of Indian Affairs and Northern Development has found that on British Columbia reserves, for example, there are likely to be more common-law relationships than marriages.[14] The Committee does not have data on the percentage of common-law relationships on reserves across Canada, and draws no conclusions from the example cited; it is however entirely possible that the same situation exists on reserves in other parts of Canada.

The issue of the rights of Aboriginal women in a common law relationship is one that the Committee needs to study further. The legal protection of common law spouses seems to vary greatly but provincial legislation with respect to their matrimonial property rights is evolving. This issue will be addressed in the Committee's final report.

As far as the division of personal property is concerned, then, it would seem that the main problem involves the application of existing laws and the enforcement of court orders on reserve. For married women, and presumably, at least some women in common law relationships, at any event, there is no legislative vacuum.

The situation is quite different when it comes to the division of real property such as the family home. The *Indian Act* and the federal jurisdiction over reserve land are obstacles to the application of provincial laws concerning the division of matrimonial

[14] Karen Abbott, *Urban Aboriginal women in British Columbia and the Impacts of the Matrimonial Real Property Regime*, published with the authorization of the Department of Indian Affairs and Northern Development, Ottawa, 2003. A majority (52%) of participants responded that they were living common-law.

property, but there is no other legislation that deals with this area. This deprives Aboriginal women living on reserve of any protection at all in the event of divorce or the breakdown of a common-law relationship. In particular, it deprives them of legal means to stay in the family home with their children.

Provincial laws cannot be applied to the division of real property because it affects "Lands reserved for the Indians", which are a matter of exclusive federal jurisdiction. The Supreme Court's benchmark decision in this regard, *Derrickson v. Derrickson*[15], held that the possession of land on reserves and the transfer of a right of possession are governed by the provisions of the *Indian Act* subject to the approval of the Minister of Indian Affairs, in the exercise of the exclusive federal jurisdiction with regard to "Lands reserved for the Indians". As a result, the courts cannot base themselves on provincial law to order the division of matrimonial real property on reserve. In its decision in *Paul*, handed down the same year[16], the Supreme Court ruled that the same principles apply to an application under provincial law for interim occupancy of the family home. It should be noted that even if a court could order the division of real property, section 29 of the *Indian Act* provides that reserve land is exempt from seizure.

B. Land management

1. The *Indian Act*

Reserve land is not "owned" in usual meaning of the word: underlying title is held by the Crown. As section 18 of the *Indian Act* says, "Reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart." Aboriginal people can obtain possession of land on which they will be able to erect buildings, and the buildings will belong to them, but they will never have full (fee simple) ownership of the land itself.[17]

---

[15] [1986] 1 S.C.R. 285.
[16] *Paul v. Paul*, [1986] 1 S.C.R. 306.
[17] Evidence before the Committee, 29 September 2003 (Irene Morin, Enoch First Nation).

Possession of reserve land is governed by sections 20 to 29 of the *Indian Act*: land is allotted by the Band Council with the approval of the Minister of Indian Affairs, who issues a Certificate of Possession or a Certificate of Occupation.[18] There is no legal reason why women should not hold Certificates of Possession, though historically these were allotted mainly to men. Increasingly women are obtaining them,[19] and increasingly certificates are joint.[20] According to the Department of Indian Affairs, "Of the 40,520-plus reported active Certificates of Possession we currently have, over half, 54 per cent, belong to male possessors; 46 per cent are in the name of the female. As well, many of them are in joint tenancy."[21] However, a joint certificate is not necessarily very useful in the event of legal recourse, because the Supreme Court has held in the *Derrickson* case that courts cannot intervene to change possession of reserve land established. As stated by a witness: "joint possession by spouses does not assist in family disputes as the court cannot order forced partition due to the lack of provisions for this remedy under the Indian Act."[22]

Moreover, some witnesses said that in provinces such as British Columbia and Manitoba, Certificates of Possession are no longer being issued even though, in principle, reserve land continues to be managed under the *Indian Act*.[23] It appears that in some cases the distribution of land is entirely at the discretion of the Band Council.

Different categories of land can exist on the same reserve. In addition to those allotted under the *Indian Act*, for example, families can possess traditional lands not allotted by the Band Council. Other factors can come into play. The family home can

---

[18] Section 20 of the *Indian Act*.

[19] This is the case, for instance, for the Première nation huronne-wendat (Wendake, Québec), letter to the Committee and Housing Policy, 10 September 2003, and of Odanak First Nation (Québec), letter to the Committee, 9 September 2003.

[20] Old Masset Village Council (British Columbia) for instance, has informed the Committee that joint certificates of possession were issued (letter to the Committee, 24 September 2003), as well as Odanak First Nation (Quebec), letter to the Committee, 9 September, 2003.

[21] Evidence before the Committee, 15 September 2003 (Kerry Kipping, Acting Director General, Lands and Environment Branch, Department of Indian Affairs and Northern Development).

[22] Evidence before the Committee, 15 September 2003 (Pam Paul, National Native Women's Association).

[23] Evidence before the Committee, 22 September 2003 (Teressa Nahanee, British Columbia Native Women's Society).

belong to the occupants or be leased to them by the Band Council.[24] It can also happen that the Band Council lends the money necessary to build a house and keeps the Certificate of Possession until the loan has been fully repaid.[25] There are thus a number of factors that can affect an Aboriginal woman's ability to retain the family home should her marriage or common-law relationship break down.

2. Custom land allotment

According to the information provided to the Committee by the Department of Indian Affairs and Northern Development, five Ontario First Nations and two First Nations in Alberta allocate reserve land according to their custom. Thirty-three other First Nations in Ontario, one in Alberta and two in Saskatchewan have a hybrid system which combines Indian Act Certificates of Possession and custom allotment. The Committee has no information about the situation in other provinces and in the Territories at this time.[26]

A number of witnesses referred to the fact that some First Nations allocate reserve land according to traditional custom, following rules that are usually unwritten.[27] There is no register of which First Nations allot land on their reserve in this way. As a result, although the Committee was told about this method in the evidence that it has heard, it has no exact data on it, and at the time this preliminary report was drafted it had not heard any direct evidence from the First Nations concerned. According to the brief submitted

---

[24] See W. Cornet and A. Lendor, *supra*, pp.48-49.

[25] *Successful Housing in First Nation Communities – A Report on Case Studies*, Daniel J. Brant, Senior Adviser, Special Projects, Socio-Economic Programs and Policies, Department of Indian Affairs and Northern Development, October 2000, p.16. On line: http://www.ainc-inac.gc.ca/ps/hsg/cih/hs/shf_e.pdf.

[26] Letter to the Committee, October 24, 2003 (Rhonda Howes). Custom allotment: Magnetawan Mississauga Band, Moose Deer Point, Temagami and Zhlibaahaasing First Nations (Ontario); Siksika and Blood First Nations (Alberta). CPs and custom allotment: Aundeck-Omnikaning, Betchawana, Dokis, Gerden River, Henvey Inlet, M'Chigeeng, Oneida, Sagamok Anishnawbek, Serpent River, Shawanaga, Shegulandah, Sheshegwaning, Thessalon, Wahnapitae, Wasauksing, Whitefish Lake, Whitefish River First Nations and Wikwemjikkong unceded Indian Reserve (Ontario); Bonaparte, Cowichan, Kisplox, Kwicksutaineuk-qwe-qwa-a-mish (Guilford Island), Moricetown, Nak'azdli, Neskonlith, North Thompson, Opetchesaht, Panelakut, Skeetchestn, Spallumcheen, Squamish, Tsawataineuk, and Whispering Pines First Nations (British Columbia); Samson First Nation (Alberta); Beardy's and Okemasis and Sturgeon Lake First Nations (Saskatchewan).

[27] Evidence before the Committee, 22 September 2003 (Elizabeth Fleming, Provincial Council of Women of Manitoba).

by the Provincial Council of Women of Manitoba, most First Nations in that province use custom land allotment on their reserves.[28] According to the Department of Indian Affairs, it is not known exactly how these First Nations allot land.[29] One witness said that in some cases land is distributed on the basis of a system combining Certificates of Possession with traditional custom.[30]

This method of allotting reserve land is not recognized by the Department of Indian Affairs and creates no legal interest in the land. The fact that land allotted according to custom confers no legal rights on the person who occupies it was confirmed by the Supreme Court of British Columbia in *Lower Nicola Indian Band*.[31] The Court did however add that the Band Council has a fiduciary duty toward all band members, which requires that decisions on land usage must be in the best interests of all members. An equitable procedure must be set up that takes diverging interests into account.[32]

A number of witnesses voiced concern over custom land allotment, which can sometimes, it appears, be used by Band Councils as a pretext for flouting the provisions of the *Indian Act* and retaining wide discretion on deciding who can occupy reserve land; this can lead to abuses:

> If a chief and council want your custom land allotment, he has merely to pass a band council resolution to give it to themselves. If the chief wants your custom land, he just has to describe your land and pass a band council resolution, register it with the minister and the minister will recognize his title. There are many native people who are fighting their own chief and council who have taken away their custom land allotments. Because the chief and council is a delegated government they know that your custom land

---

[28] Brief, p.4.
[29] Evidence before the Committee, 15 September 2003 (Kerry Kipping, Acting Director General, Lands and Environment Branch, Department of Indian Affairs and Northern Development).
[30] Indigenous Bar Association, brief, p.5.
[31] *Lower Nicola Indian Band v. Trans-Canada Displays Ltd.*, [2000] 4 Canadian Native Law Reporter 185, 2000 BCSC 1209 (B.C.S.C.).
[32] See in particular W. Cornet and A. Lendor, *supra*, pp.28-30.

> allotment is worth nothing in court. If it is worth nothing in court, it is not worth anything anywhere.[33]

3. The *First Nations Land Management Act*

In February 1996, the government of Canada and 13 First Nations in British Columbia[34], Alberta[35], Saskatchewan[36], Manitoba[37], and Ontario[38] signed the *Framework Agreement on First Nation Land Management*. A fourteenth First Nation from New Brunswick signed the Agreement two years later.[39] Under the terms of the Framework Agreement, the First Nations can choose not to be subject to the *Indian Act*'s provisions on management of reserve land, but rather can establish their own systems and draw up their own codes. In March 2003, the Minister of Indian Affairs announced that 17 other First Nations had signed the Framework Agreement.[40]

The Framework Agreement was ratified and implemented by the *First Nations Land Management Act*[41] in June 1999. The Act in no way changes the legal status of reserve land, whose underlying title remains vested in the Crown, but it does transfer management of those lands to the First Nations by empowering them to replace the provisions of the *Indian Act* with their own systems, on terms and conditions set out in the Act. In particular the new Act replaces sections 20 and 22 to 28 of the *Indian Act*.

The First Nations concerned must adopt a land code, which in addition to general rules and procedures applicable to the use and occupancy of the reserve's land must contain provisions concerning a "community consultation process for the development of

---

[33] Evidence before the Committee, 22 September 2003 (Teressa Nahanee, British Columbia's Native Women Society). Evidence before the Committee, 29 September 2003 (Sharon McIvor, Irene Morin).
[34] Westbank, Musqueam, Lheidli T'enneh, N'Quatqua and Squamish.
[35] Siksika First Nation.
[36] Muskoday, Cowessess.
[37] Opaskwayak Cree First Nation.
[38] Nipissing, Mississaugas of Scugog Island, Chippewas of Georgina Island, Chippewas of Mnjikaning.
[39] Saint Mary's.
[40] In British Columbia, the Beecher Bay, Tsawout, Songhees, Pavilion, Burrard, Sliammon, Kitselas and Skeetchesn; in Saskatchewan, the Kinistin and Whitecap Dakota Sioux; in Ontario, the Garden River, Mississauga, Whitefish Lake, Dokis, Kettle and Stony Point; and Moose Deer Point; and in New Brunswick, the Kingsclear First Nation.
[41] S.C. 1999, c. 24.

general rules and procedures respecting, in cases of breakdown of marriage, the use, occupation and possession of first nation land and the division of interests in first nation land".[42] These rules must be adopted within 12 months of the coming into force of the land code[43] and under the terms of the Framework Agreement they must not discriminate on the basis of sex.[44] However, the *First Nations Land Management Act* does not define the term "marriage"; as a result, it is not certain whether common-law relationships are included.

The Act was described by a number of witnesses as a step in the right direction, insofar as it requires the introduction of written rules.[45] It appears, however, that only eight of the 14 First Nations subject to the *First Nations Land Management Act* have adopted land codes, and that only four of them have adopted rules on matrimonial property.[46]

4. Agreements on self-government

The Committee has not yet heard evidence on the question of matrimonial property on First Nations land that have a self-government agreement, or a land claim agreement containing provisions regarding the lawmaking powers of the First Nation concerned. It has asked the Department of Indian Affairs to identify the agreements that contain such provisions.[47] In the meantime, for purposes of this preliminary report, the Committee studied the discussion paper prepared by the Women's Issues and Gender Equality Directorate of the Department of Indian Affairs.[48] It also studied the Nisga'a treaty and summarily reviewed recent agreements and agreements-in-principle to determine whether they contain provisions on matrimonial property.

---

[42] *First Nations Land Management Act*, para. 6(1)f.
[43] *Id.*, section 17.
[44] *Framework Agreement on First Nation Land Management*, art. 5.4.
[45] Evidence before the Committee, 15 September 2003 (Pam Paul, National Aboriginal women's Association); 29 September 2003 (Irene Morin).
[46] Mississaugas of Scugog Island, Muskoday First Nation, Georgina Island First Nation and Lheidi T'enneh First Nation.
[47] Transcripts of Proceedings, 15 September 2003.
[48] W. Cornet and A. Lendor, *supra*.

According to the departmental discussion paper, not all self-government agreements contain specific provisions on matrimonial property, although in all cases land management would be assumed by the First Nation.[49] "It appears that where self-government agreements recognize First Nation jurisdiction over reserve land or settlement land, the ability to make laws with respect to matrimonial real property is presumed. Sectoral self-government agreements (agreements that deal with specific subject matters such as education alone) do not deal with real or personal property at all, including matrimonial property."[50]

Apart from the Meadowlake (Saskatchewan) First Nation Agreement-in-Principle mentioned in the discussion paper[51], which gives this First Nation lawmaking authority over the division of the assets of married or common law couples, the Nisga'a Final Agreement is at the time of writing the only one of which the Committee is aware that deals with the issue, not directly since it does not contain any express provision on that subject, but through the application of provincial laws in the absence of Nisga'a law. The summary review of recent agreements did not reveal any express provisions concerning the division of matrimonial property.

This part of the Committee's study is not yet complete. According to the departmental document quoted above, "The Aboriginal Self-Government policy adopted by the federal government in 1995 includes lawmaking authority over 'marriage', and over property rights on reserve, among subjects that may be included in a self-government agreement. 'Divorce' is one of several areas identified as an area that would remain primarily with the federal government but also where the federal government is willing to negotiate some measure of Aboriginal authority or jurisdiction. Under this policy, federal divorce legislation would prevail in the event of a conflict with First Nation divorce legislation."

---

[49] *Id.*, pp.58-61.
[50] *Id.*, p. 59.
[51] *Id.*, p.61.

The Committee notes that the federal policy on self-government calls for the application of the Charter:

> The Government is committed to the principle that the *Canadian Charter of Rights and Freedoms* should bind all governments in Canada, so that Aboriginal peoples and non-Aboriginal Canadians alike may continue to enjoy equally the rights and freedoms guaranteed by the Charter. Self-government agreements, including treaties, will, therefore, have to provide that the *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and institutions in relation to all matters within their respective jurisdictions and authorities.[52]

The Committee believes that in addition, the issue of division of matrimonial property must, starting now, be explicitly dealt with in the framework of any negotiation on self-government, and specific provisions in this regard must be included in any agreement-in-principle or final agreement. In this regard, the Committee supports the recommendation made by the Native Women's Association of Canada:

> NWAC recommends that self-government agreements continue to be negotiated on the understanding that Charter rights, such as the equality provision, continue to apply to First Nations under self-government regimes. This requirement must lead to the formal inclusion of matrimonial property rights in the development of self-government agreements.[53]

C. Constitutional provisions

The Committee believes that the absence of legislative provisions protecting the rights of Aboriginal women on reserves to a fair share of matrimonial property is inconsistent with section 15 of the Canadian Charter. According to officials of the Department of Indian Affairs, while the *Indian Act* was amended in 1985 to ensure the consistency of its provisions with the Charter, it would appear that the question of on-

[52] *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*.. On line: http://www.ainc- inac.gc.ca/pr/pub/sg/plcy_e.html
[53] Evidence before the Committee, 15 September 2003.

reserve matrimonial property was not dealt with at that time, given the absence of any provisions in the Act governing this matter.[54]

However, the search for solutions to rectify this inconsistency must also take into account other constitutional provisions concerning Aboriginal peoples in Canada. Section 25 of the Charter provides that the Charter may not be construed or applied in such a way "as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada". This includes the rights protected under subsection 35(1) of the *Constitution Act, 1982*. Self-government has been recognized by the government of Canada as a constitutional right of the Aboriginal peoples.[55] It could be argued that the imposition of rules regarding division of matrimonial property, whether by stand-alone federal legislation, or by an amendment to the *Indian Act* imposing such a duty on band councils or providing for the application of provincial laws, would contravene the right of self-government.

The aboriginal rights protected by section 35 are not however absolute. As noted by the Supreme Court of Canada on the very first occasion that it had to interpret subsection 35(1) of the *Constitution Act, 1982*, "Federal legislative powers continue, including, of course, the right to legislate with respect to Indians pursuant to s. 91(24) of the *Constitution Act, 1867*."[56] These legislative powers are limited, in that the government is obliged to justify any restrictions on the constitutional rights of Aboriginal peoples.

While the government must justify any law that would infringe a right protected by subsection 35(1), infringement itself must be proven: is the limitation unreasonable? Does the regulation impose undue hardship?[57] If infringement is proven, the government's action can still be justified if there is a valid legislative objective and if it is

---

[54] Evidence before the Committee, 15 September 2003 (Sandra Ginnish).
[55] Federal Policy Guide, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Self-Government*, document of the Department of Indian Affairs and Northern Development, 1995. On-line document: http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html .
[56] *R. v. Sparrow*, [1990] 1 S.C.R. 1075, p.1109.
[57] *Id* , p.1112.

consistent with the government's responsibility to Canada's Aboriginal peoples.[58] The question must further be put, has there been as little infringement as possible in order to effect the desired result?[59]

Subsection 35(4), which was added to the *Constitution Act, 1982* at the express request of Aboriginal women in 1983[60], states: "Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons." Some witnesses raised the possibility that a right to reserve land might be an aboriginal right within the meaning of subsection 35(1) of the Act. The jurisprudence of the Supreme Court of Canada tells us that an interest in reserve land is of the same nature as an interest in land held pursuant to an aboriginal title, recognized as an aboriginal right within the meaning of section 35(1).[61] In the opinion of the Committee, the right to live in a reserve is an interest in reserve land that must be guaranteed equally to Aboriginal men and Aboriginal women.

D. The Crown's fiduciary responsibility

In *Sparrow*, the Supreme Court of Canada confirmed that the provisions of subsection 35(1), and in particular the expression "recognized and affirmed", embody the government's responsibility to act as a trustee for the Aboriginal peoples. The Court identified the following general guiding principle for interpreting subsection 35(1): "The Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship."[62]

---

[58] *Id.*, p.1114.
[59] *Id.*, p.1119.
[60] Evidence before the Committee. 29 September 2003 (Sharon McIvor). See also Renée Dupuis, *Le statut juridique des peuples autochtones en droit canadien* (Carswell, 1999), pp.1119-1121.
[61] *Guerin* v *The Queen*, [1984] 2 S.C.R. 335. *Delgamuukw* v. *British Colombia* [1997] 3 S.C.R. 1010.
[62] *R. v. Sparrow*, *supra*, p.1108.

In *Guérin* (1984)[63], the Court ruled that the Crown has a fiduciary duty to Aboriginal peoples with regard to their land, a duty based on both "the sui generis nature of Indian title, and the historic powers and responsibility assumed by the Crown", and that this duty is legal in nature.[64]

More recently, in *Wewaykum*, the Court stated, "The content of the Crown's fiduciary duty towards aboriginal peoples varies with the nature and importance of the interest sought to be protected. It does not provide a general indemnity."[65]

The full scope of the fiduciary duty remains to be determined. According to the Supreme Court, it does not apply to all aspects of Crown's relations with Aboriginal peoples.[66]

However this may be, as long as the Crown, through the Department of Indian Affairs, controls the management of reserve land and in so doing allows a system that discriminates against women to endure, the honour of the Crown is at issue:

> As long as there is section 91.24, the federal government has the ultimate responsibility and fiduciary duty to make sure that we are not raped, killed and thrown off the reserves, unless it is allowed to happen to all of the other women in Canada, too.[67]

E. International law

The absence of legislative provisions protecting the right of Aboriginal women living on reserves to their share of family assets is inconsistent with Canada's international obligations, according to the United Nations' Committees on Human Rights,

---

[63] *Guérin v. The Queen*, [1984] 2 S.C.R. 335. Cited in *R. v. Sparrow*, p.1108.
[64] R. Dupuis, *supra*, p.148.
[65] *Wewaykum Indian Band v. Canada*, [2002] S.C.R. 79, para. 86.
[66] *Id.*, para. 81. Evidence before the Committee, 6 October 2003 (Mary Eberts).
[67] Evidence before the Committee, 29 September 2003 (Sharon McIvor).

Economic, Social and Cultural Rights, the Elimination of Racial Discrimination, and the Elimination of Discrimination against Women.[68]

Canada is a party to the *International Covenant on Civil and Political Rights*. As such, it has a duty to guarantee the equal right of men and women to enjoy all the civil and political rights set out in the Covenant. The UN Human Rights Committee makes this very clear in its General Comment on article 3 of the Covenant, "Equality of Rights between Men and Women":

> States parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.[69]

Paragraph 4 of the Covenant's article 23 requires states that are parties to the Covenant to guarantee spouses' equality of rights during marriage and in the event of divorce:

> States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by General Comment 19 (1990).[…] To fulfill their obligations under article 23, paragraph 4, States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. **States should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary.**[70]

---

[68] Femmes autochtones du Québec, brief presented 22 September 2003, pp.4-6.
[69] *Equality of Rights between Men and Women (Art. 2)*, 29 March 2002, CCPR/C/21/Rev.1/Add.10, CCPR, General Comment 28, para. 3.
[70] *Id.*, paras. 23 and 25 (emphasis added).

The Committee's General Comment deals explicitly with equality of rights in the division of family assets:

> States must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, **as well as decisions with regard to property distribution,** alimony and the custody of children.[71]

The Committee stresses that women who are not legally married are also entitled to equal treatment.[72] The duty to protect the quality of spouses' rights during a marriage and at the time of its dissolution is discussed as well in the Human Rights Committee's General Comment on non-discrimination which describes it as a positive duty:

> The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as required by the Covenant.[73]

The lack of legislative provisions protecting the rights of on-reserve Aboriginal women should their marriages or common-law relationships break down is thus inconsistent with Canada's obligations under the *International Covenant on Civil and Political Rights*.

The United Nations Committee on Economic, Social and Cultural Rights also made some very specific recommendations on this subject in its third periodic report on Canada:

---

[71] *Id.*, para. 26 (emphasis added).
[72] *Id.*, para. 27.
[73] *Non-discrimination*, General Comment 18, 10 November 1989, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.5, 26 April 2001, p.134.

> 29. The Committee notes that Aboriginal women living on reserves do not enjoy the same right as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown.
>
> […]
>
> 47. The Committee calls upon the State party, in consultation with the communities concerned, to address the situation described in paragraph 29 with a view to ensuring full respect for human rights.[74]

Article 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* requires the states that are party to the Convention to "take all appropriate measures to … ensure, on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution". The UN Committee on the Elimination of Discrimination against Women has stipulated that "women living in [common-law] relationships should have their equality of status with men both in family life and in the division of income and assets protected by law."[75]

Canada submits periodic reports to this Committee, and at the conclusion of the study of the most recent periodic report, the Committee said that it was very concerned about the continuing discrimination faced by Aboriginal women. It also reproved Canada for not having dealt with the question of on-reserve matrimonial property in Bill C-7 (First Nations governance), and pointed out that several situations, including that of on-reserve matrimonial property, were inconsistent with the terms of the Convention.[76] The Committee called on Canada to step up its efforts to eliminate all forms of discrimination, whether *de jure* or *de facto*, against Aboriginal women in Canadian society generally as well as in their home communities.[77]

---

[74] *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*,, 10 December 1998, E/C.12/1/Add.31.

[75] *Equality in Marriage and Family Relationships*, General Recommendation 21 (1994), para. 18, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.5, 26 April 2001, p.228.

[76] Draft Report, *Consideration of Reports of States Parties: Canada*, CEDAW/C/2003/1/CRP.3/Add.5/Rev.1, 31 January 2003, para. 37.

[77] *Id.*, para. 38.

Witnesses pointed out that the lack of legislative provisions is also having negative consequences on children, which is contrary to the *Convention on the Rights of the Child* and particularly its article 30.

> What about the children affected by the breakdown of a marriage? Are these children afraid or stressed? As with any breakdown in any relationship, there are always difficult decisions to be made regarding the children. What happens to these children, who must leave the family home and, in some cases, the only community they have known? Are children aware of how their lives will be affected by the breakdown of their parents' relationships? I believe that children today are smarter and much more aware of the life situations and the effects that some of them will have on them personally. Some children are very smart and sensitive at an early age, but definitely by the age of five, most children are aware of what is happening around them and the possible consequences upon their lives.[78]

Article 30 stipulates: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

When children are forced to leave the reserve with their mother because she has had to leave the family home (to which she has no rights in the event of divorce or the breakdown of a common-law relationship) and cannot obtain other housing on the reserve, they are deprived of their right to participate in their community's cultural life. In addition, the situation amounts to making them suffer the same discrimination as their mother, which is contrary to the provisions of article 2 of the Convention.

It therefore appears that Canada is not living up to its international obligations with respect to Aboriginal women and children living on reserves.

---

[78] Evidence before the Committee, 22 September 2003 (Dorothy George, Newfoundland Native Women's Association).

III. Related problems raised by witnesses

Witnesses raised a number of problems, the importance of which the Committee does not wish to minimize, especially as they have direct consequences on the exercise of Aboriginal women's rights on reserve. However, none of these problems should affect the recognition and protection in law of the rights of these women and their children to matrimonial property. The problems are included in this preliminary report with a view to a more in-depth study on implementing those rights, which must be recognized.

A. Housing shortages and unfair housing policies

A number of witnesses pointed to the shortage of on-reserve housing as one of the factors forcing women to leave the reserve in the event of a marriage or relationship breakdown. The Department of Indian Affairs also said that certain housing policies were unfair. For example, in some First Nations a woman who must leave the family home in the event of divorce may be unable to obtain other accommodation, because of a policy under which only one house is allocated per family. The Department's representatives said that a study was underway and that they hoped a report would be available towards the middle of November.[79] The Provincial Council of Women of Manitoba said in its brief that housing policies were not always written down, which leaves band councils with a wide margin of manoeuvre:

> We are finding that our housing allocation on a number of reserves is decided and implemented solely by chief and council. Housing policy that would guide the allocation of housing and a set of criteria for tenancy agreements are not always written down, approved by or even shared with all band members. A band election can mean a change in chief and council and a change in housing policy overnight. There is, therefore, nothing to hang your hat on in respect of a housing policy where no governance is in place. It becomes arbitrary and political.[80]

[79] Evidence before the Committee, 15 September 2003 (Sandra Ginnish, DIAND).
[80] Evidence before the Committee, 22 September 2003 (Elizabeth Fleming, Provincial Council of Women, Manitoba).

The British Columbia Native Women's Society, however, suggested that the Committee not accord too much importance to the question of on-reserve housing shortages in the context of its study: this is a reality that should not affect the matrimonial rights of Aboriginal women living on reserve.[81]

The Committee agrees that while the shortage of housing may have a direct effect on the chances of women forced to leave the family home finding new on-reserve accommodation, it should have no bearing on the legal recognition and protection of women's rights to their share of matrimonial property.

B. Band membership

Representatives of the Department of Indian Affairs drew the Committee's attention to the possible differences in status, under the *Indian Act*, of individuals living on reserve: members of the same family may not have the same rights, in terms of either status or membership. This has consequences for the division of family assets.[82] Witnesses also raised this issue:

> I was a teenage bride and I got married properly. We fell under Bill C-31 at that time. My children have status, but my grandchildren are nothing. It is very sad to say that.[83]

Some Indian women lost their status when they married non-Indian men prior to 1985. They were able to regain their status when the *Indian Act* was amended, and to pass status onto their children. However, many of these women still face difficulty in being reinstated as Band members while others are unable to regain the property they would have inherited from their parents had they not lost their Indian status prior to 1985.[84] In addition, if these women had only one parent who was an "Indian" within the meaning of the Act, their children cannot pass status onto their own children if they too

---

[81] Brief, p.13.
[82] Evidence before the Committee, 15 September 2003 (Sandra Ginnish, DIAND).
[83] Evidence before the Committee, 22 September 2003 (Dorris Peters, British Columbia's Native Women Society).
[84] Wendy Lockharrt-Lunberg, Brief submitted to the Committee, October 15, 2003.

marry non-Aboriginals. Children who do not have Indian status may find themselves refused membership in their First Nation. This situation is a concern to the UN Human Rights Committee, which recommended that Canada take steps to deal with it:

> The Committee is concerned about ongoing discrimination against Aboriginal women. Following the adoption of the Committee's views in the Lovelace case in July 1981, amendments were introduced to the *Indian Act* in 1985. Although the Indian status of women who had lost status because of marriage was reinstituted, this amendment affects only the woman and her children, not subsequent generations, which may still be denied membership in the community. The Committee recommends that these issues be addressed by the State party.[85]

The so-called "second-generation cut-off" is the reason why Aboriginal women who have children outside marriage must name the father, so that the Department can assess any application to register the child on the Indian Register, as some witnesses pointed out.

The UN Committee for the Elimination of Racial Discrimination has looked into this issue, and formulated the following recommendations in its study of Canada's 13th and 14th periodic reports:

> The Committee is concerned that some aspects of the *Indian Act* may not be in conformity with rights protected under article 5 of the Convention, in particular the right to marry and to choose one's spouse, the right to own property and the right to inherit, with a specific impact on Aboriginal women and children. The Committee recommends that the State party examine those aspects, in consultation with Aboriginal peoples, and provide appropriate information on this matter in its next periodic report.[86]

---

[85] *Concluding Observations of the Human Rights Committee: Canada*, 7 April 1999, CCPR/C/79/Add.105, para. 19. Available on line at the Department of Canadian Heritage web site: http://www.pch.gc.ca/progs/pdp-hrp/docs/iccpr/session65_e.cfm .

[86] *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, 11 November 2002, A/57/18, paras. 315-343 (Concluding Observations/Comments), para. 332.

A number of witnesses recommended that the *Indian Act* be amended to eliminate the second-generation cut-off.[87] Such a step seems indicated if Canada is to live up to its international obligations.

Witnesses also raised the problem of the impossibility, for women who marry a member of a different First Nation from their own, of being entered on the list of band members. These women cannot acquire rights to land on a reserve where they are not members.[88] As a representative of the Department of Indian Affairs confirmed, "There are no certificates of possession allocated to non-band members or persons who are not members of that band."[89]

Witnesses indicated that the problem is even more acute for women who have had to renounce membership in their First Nation of birth in order to become members of their spouse's First Nation, and who then lose their new membership through divorce.[90]

Witnesses have recommended that the *Indian Act* be amended so that women who on marriage lost their membership in the First Nation into which they were born would automatically regain it should their marriage break down.[91] The Committee supports this suggestion and recommends that it be implemented.

C. Lack of information

As noted in the introduction to this report, women living on reserve are often not aware of their rights. While they may be more aware of them in the First Nations that

---

[87] Evidence before the Committee, 22 September 2003 (JoAnne Ahenakew, Alberta Aboriginal women's Society).

[88] Evidence before the Committee, 15 September 2003 (Kerry Kipping, Sandra Ginnish, Department of Indian Affairs and Northern Development; Pam Paul, National Native Women's Association); 22 September 2003 (Michèle Audette, Femmes autochtones du Québec; Dorothy George, Newfoundland Native Women's Association; JoAnne Ahenakew, Alberta Native Women's Society).

[89] Evidence before the Committee, 15 September 2003 (Kerry Kipping).

[90] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec; JoAnne Ahenakew, Alberta Aboriginal women's Society); 29 September 2003 (Irene Morin).

[91] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec).

have chosen to adhere to the *First Nations Land Management Act*, there are currently only 14 First Nations that have done so, out of more than 630.

Some witnesses recommended that intensive training in equality law be offered in the local communities.[92] While the publication of the Department's brochure, *After Marriage Breakdown: Information on the On-reserve Matrimonial Home*, is seen as a step in the right direction, it might be useful to distribute information of a less technical kind.[93]

D. Difficulties with legal recourse

As noted above, several witnesses said that Aboriginal women on reserve can experience a variety of difficulties in exercising legal recourse. These difficulties range from the inaccessibility of legal aid, lack of funds to see the case through the courts and intimidation and reprisals within their own community.[94]

Recognition of rights loses all meaning if the supposed beneficiaries of the rights are unable to assert them before the courts when necessary. Measures must be introduced to ensure that recognized rights can indeed be enforced.

E. Custom land allotment

Witnesses indicated that here is no control over custom land allotment. At this stage of its study, as noted earlier, the Committee has very little information about this method of distributing land. It is however emerging from the evidence that even members of First Nations may not know the rules followed in custom allotment, and this can result in abuses.

As pointed out by the British Columbia Native Women's Society, custom land allotment is not part of the existing legal regime for the possession and occupancy of

[92] Evidence before the Committee, 15 September 2003 (Larry Chartrand, Indigenous Bar Association).
[93] Evidence before the Committee, 22 September 2003 (Elizabeth Fleming).
[94] Evidence before the Committee, 22 September 2003 (Elizabeth Fleming); 29 September 2003 (Sharon McIvor).

reserve land, and should not influence the way in which Canada structures a legal regime governing family assets.

Nevertheless, it is essential that custom land allocation be made transparent. Some witnesses suggested that the First Nations that allot land in this way could enter such allotments in a registry, held by a central agency[95], but for this to be possible these First Nations would have to be identified. The information provided to the Committee by the Department of Indian Affairs and Northern Development only identifies First Nations in three provinces. This issue will be the object of further study.

F. Application of the Charter to Aboriginal governments

Within the framework of negotiating agreements on self-government, the First Nations are accepting the application of the Charter. Others argue, however, that the Charter applies only to the federal and provincial governments and not to Band councils.[96]

As various witnesses pointed out, everyone in Canada should be able to count on the Charter's protection.[97] While section 25 of the Charter provides that it "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights", the right of self-government must not be construed so as to authorize discrimination against Aboriginal women living on reserve. Such a construction would be incompatible with Canada's international obligations and the honour of the Crown. As stated by one witness:

> The Government of Canada is bound by the Constitution and by its international obligations. It cannot, under any circumstances, create enclaves within its borders where it allows daily violations of human rights. On the

[95] Evidence before the Committee, 15 September 2003 (Nancy Sandy, Indigenous Bar Association); 22 September (Elizabeth Fleming).
[96] Evidence before the Committee, 15 September 2003 (Larry Chartrand, Indigenous Bar Association). Note that the term "Band council" is used in reference to First Nations without self-government agreements.
[97] Evidence before the Committee, 15 September 2003 (Sherry Lewis, Native Women's Association of Canada); 22 September 2003 (Teressa Nahanee, British Columbia Native Women's Society).

> contrary, it must act to protect the rights of each and everyone within its borders, including Aboriginal women. [98]

The Committee also believes that Band Councils and Aboriginal governments must respect the provisions of Subsection 35(4) of the *Constitution Act, 1982*.[99] These provisions guarantee the aboriginal and treaty rights in subsection 35(1) "equally to male and female persons". As noted above, insofar as the Indian interest in reserve land is, according to the Supreme Court, of the same nature as in aboriginal title land[100], it should be guaranteed equally to men and women on reserve. As one witness pointed out[101], the provisions of subsection 35(4) have been accepted by Aboriginal leaders. They must now comply with them**.**

IV. Possible solutions

Recommendations have been made in the past, most notably by the Royal Commission on Aboriginal Peoples, which concluded that the First Nations had inherent jurisdiction over marriage and matrimonial property. The Commission also noted that many of the women who testified before it wanted residency rules to be reviewed in order to prevent injustice towards any particular group.[102]

In a report published in the fall of 1991, the Aboriginal Justice Inquiry of Manitoba recommended that the *Indian Act* be amended to provide for the equitable division of on-reserve matrimonial real property in the event of divorce.[103]

The Committee considers that no one immediate solution could rectify the situation to everyone's satisfaction. However, immediate action is imperative. The

---

[98] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec). Translation.

[99] The terms "Band Councils" applies to reserves under the *Indian Act*, but not to First Nations that have a self-government agreement.

[100] *Guérin v. The Queen*, *supra*; *Delgamuukw v. British Columbia*, *supra*.

[101] Evidence before the Committee, 15 September 2003 (Larry Chartrand, Indigenous Bar Association).

[102] Evidence before the Committee, 15 September 2003 (Sandra Ginnish, DIAND).

[103] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec).

urgency of remedial action was stressed repeatedly by the witnesses and the following excerpt is a sad reminded of the devastating effects on the lives of Aboriginal women on reserve of a situation we simply cannot allow to go on any longer:

> NWAC takes the position that effective remedies to address a lack of matrimonial property rights regimes on reserves must be implemented in all communities immediately, even if this is before the realization of self-government and even if this means legislative reform, due to the severity of its impacts on the lives of First Nations women and their children. This impact is captured in the following account.
>
> An Aboriginal woman committed suicide earlier this year after the authorities apprehended her children. The woman, who had five children, was forced to leave her reserve due to a chronic housing shortage. However, she could not find affordable housing off the reserve. Due to her financial situation she was forced to live in a rundown boarding house with five children. She sought assistance from the authorities to seek affordable housing for her and her children. The authorities responded by apprehending her children. At that point, the woman, sadly, lost all hope and took her life. [104]

As suggested by a number of witnesses, it would be appropriate to envisage the introduction, as rapidly as possible, of interim measures that would remain in force until definitive solutions could be found with the full collaboration of the First Nations, as recommended by the Assembly of First Nations.[105]

The witnesses were divided on the issue of jurisdiction over matrimonial property. Should it rest with the band councils or should the federal government legislate in this regard? The Committee considers that such jurisdiction should ultimately be exercised by the First Nations. However, not all First Nations are at the same stage in negotiating self-government, and many of them have not yet begun such negotiations. In the short

[104] Evidence before the Committee, 15 September 2003 (Sherry Lewis, Native Women's Association of Canada).
[105] Evidence before the Committee, 15 September 2003 (Tiffany Smith, Roger Jones, Assembly of First Nations).

term, therefore, the federal government must act and legislate to resolve this issue. One witness stated that:

> Without disrespecting the autonomy and the wholeness of the Aboriginal communities, looking for an interim solution is a course of action worth looking at, either through installing some machinery in the Indian Act itself or through adoption perhaps simply of provincial property law in the interim. However, as an interim solution, it should have a time limit on it. It should have a sunset, so that the presence of an interim solution does not relieve the federal government of the obligation, seriously, to be at the tables.[106]

The Committee agrees and recommends immediate action to implement an interim solution.

One witness expressed the view that band councils could use their by-law powers under section 81(1)(*p.*1) of the *Indian Act*, dealing with the residence of band members.[107] This possibility merits further study.

The Committee has also made note of the recommendation of the Assembly of First Nations to the effect that there could be solutions other than legislation that would merit being explored with the First Nations.[108] While the search for solutions must not be limited to the legislative area, the situation is urgent for First Nations women living on reserve, and steps must be taken as promptly as possible. This is why the Committee is recommending temporary legislative measures. They should not be an obstacle to seeking long-term solutions which could take some different form.

The Committee is aware that some First Nations have already started introducing measures for the use and occupancy of the family home in the event of the breakdown of

[106] Evidence before the Committee, 6 October 2003 (Mary Eberts).
[107] Evidence before the Committee, 29 September 2003 (Sharon McIvor).
[108] Evidence before the Committee, 15 September 2003 (Roger Jones, Assembly of First Nations).

a marriage or common-law relationship.[109] Any proposed legislative measure should provide that First Nations may adopt their own rules, as long as they meet minimum standards such as those of current provincial and territorial legislation.

A. Immediate and temporary legislative measures

Two types of legislative measure are possible: amending the *Indian Act*, which is the solution preferred by a number of witnesses, or passing a new act. The witnesses heard by the Committee made a number of recommendations, while pointing out that broader consultation was needed and that Aboriginal organizations would require adequate funding if they were to undertake such consultations.

The Committee realizes that some people will argue that either of these approaches would infringe on First Nations' inherent right of self-government and, as noted above, they would argue that self-government is protected under section 35(1) of the *Constitution Act of 1982*. According to the criteria established by the Supreme Court of Canada, the exercise of the federal legislative power with regard to "Indians and Lands reserved for the Indians" must be justifiable according to the criteria defined by the Court when it infringes constitutionally protected rights. One of these is consultation with the First Nations. Given their numbers, this consultation will be a lengthy process, and if nothing is done in the interim Aboriginal women on reserve will continue to suffer discrimination, contrary to the Charter, to s. 35(4) of the *Constitution Act of 1982*, and to Canada's international human rights obligations. For this reason the Committee recommends that the federal government adopt, as soon as possible, the appropriate legislative measures to correct the situation, these measures to be temporary while consultations are undertaken with the First Nations to implement permanent measures. As stated by one witness:

> With respect to amendments to the Indian Act, they should have been made 100 years ago. […] I want to be clear,

[109] Evidence before the Committee, 22 September 2003 (Marilyn Sark, Aboriginal women's Association, Prince Edward Island).

> the Indian Act must be changed. Do not give us legislation saying "here is self-government" when our First Nations are suffering. [...] I believe in it, I want to see it, but we are not there yet. The Indian Act must be amended.[110]

1. Amendments to the *Indian Act*

The witnesses suggested a number of amendments, including the following:

- That the *Indian Act* be amended so that provincial/territorial laws with respect to the division of both personal and real matrimonial property could apply.[111]

The Committee supports this suggestion and recommends that it be implemented. In doing so, the Committee is aware that the majority of provinces do not recognize equal rights for married and common law spouses, particularly with respect to matrimonial real property, and that a true solution to this situation would call for equal treatment of Aboriginal women, regardless of the Province or Territory where they live. However, we are faced with a situation that requires immediate action, and the recommended amendments to the *Indian* Act can be implemented rapidly. This is just a first step and in the course of its study, the Committee will have to look at appropriate measures to avoid the distinctions faced by Aboriginal women under current provincial legislation. The Committee will make recommendations on this issue in its final report.

- That the *Indian Act* be amended so that property acquired during a marriage or a common law relationship would be considered the joint property of both spouses and that the spouse with custody of the children would be allowed to continue living in the family home.[112]

---

[110] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec).

[111] Evidence before the Committee, 15 September 2003 (Sherry Lewis, Native Women's Association of Canada); 22 September 2003 (Teressa Nahanee, British Columbia Native Women's Society).

[112] Evidence before the Committee, 22 September 2003 (Michèle Audette, Femmes autochtones du Québec; JoAnne Ahenakew, Alberta Aboriginal women's Society).

While the Committee understands the intent of this suggestion, it has some concerns and is not ready to make a recommendation at this time.

- That the right of children to share in the family assets be taken into account.[113]

The Committee supports this suggestion. It will study it further and make recommendations in its final report.

- That a right of occupancy of a residence be recognized, to protect spouses whose name does not appear on the Certificate of Possession or when the Certificate of Possession is held by a third party.[114] The latter situation can arise when, for example, a band council has loaned the money to build the family home and is retaining the Certificate of Possession until the loan is fully repaid.

The Committee supports this suggestion and recommends that it be implemented.

- That it be made possible to register on-reserve family homes in order to protect the spouse without a Certificate of Possession.[115]

The Committee supports this suggestion and recommends that it be possible to register the family home so as to protect the rights of spouses.

- The Indigenous Bar Association recommends that adjudicators be appointed by band councils to solve problems with the help of elders and/or the community. This would be a short-term solution that the First Nations could implement immediately.[116]

[113] Evidence before the Committee, 15 September 2003 (Larry Chartrand, Indigenous Bar Association).
[114] Evidence before the Committee, 15 September 2003 (Pam Paul, National Native Women's Association).
[115] Evidence before the Committee, 15 September 2003 (Pam Paul, National Native Women's Association).
[116] Evidence before the Committee, 15 September 2003 (Nancy Sandy, Indigenous Bar Association).

This measure does not require any amendment to the *Indian Act*, therefore the Committee does not see the need to make any recommendations in this respect.

2. Passing a separate act

Another possibility would be the passage of an act governing division of on-reserve family assets, along the lines of the regulations adopted by the First Nations that have signed the *Framework Agreement on First Nation Land Management*.[117] However at this time, the Committee has not yet studied the *First Nations Land Management Act* in detail nor has it had an opportunity to look at the matrimonial rules and hear from the First Nations concerned.

3. Longer term solutions

In the opinion of the witnesses, the First Nations must participate in the search for long-term solutions that are appropriate for them. Issues relating to the family in general and the division of family assets in particular are considered matters that must come within the jurisdiction of the First Nations, in accordance with their inherent right of self-government.

The Committee recommends that appropriate funding be given to national, provincial/territorial and regional Aboriginal women's associations so that they can undertake thorough consultations with Aboriginal women on the issue of division of matrimonial property on reserve. These consultations should be the first step in a larger consultation process with First Nations governments and Band councils with a view to finding permanent solutions which would be culturally sensitive, with the unequivocal understanding that there can be no cultural justification for violations of human rights protected under the Canadian Charter and international law. In the words of one witness:

> It may be argued by the Aboriginal community that Canada has no right to tell another nation how to govern its

[117] Evidence before the Committee, 6 October 2003 (Margaret Panasse-Mayer, Nipissing First Nation).

> people. I would suggest to the honourable members of the committee this morning that, if this were the position of Canada, then this committee would not have been put in place to consult with the Aboriginal women of Canada regarding this matter.
>
> Is any nation today free from the scrutiny of other nations who feel that an injustice is being done to its citizens? Human rights are a priority not only for Canada but also for many nations, and trying to find a solution to these violations is a priority.[118]

The Committee strongly believes that each and every government, be it the Canadian government or First Nations governing bodies, has a duty to respect and protect the rights of Aboriginal women, including the rights of First Nations women on reserve to their share of the matrimonial property. It is matter of law and a matter of honour and dignity.

Be great in act as you have been in thought. Suit the action to the word and the word to the action.

[118] Evidence before the Committee, 22 September 2003 (Dorothy George, Newfoundland's Native Women's Association).

APPENDIX A: WITNESSES

Second Session, Thirty-Seventh Parliament

June 18, 2003 — The Honourable Robert D. Nault, P.C., M.P., Minister of Indian and Northern Affairs

September 15, 2003

From the Department of Indian and Northern Affairs:
Sandra Ginnish, Director General, Treaties, Research, International and Gender Equality Branch
Wendy Cornet, Special Advisor
Kerry Kipping, Acting Director General, Land and Environment Branch
Serge Larose, Senior Advisor, Retired Former Manager, Lands and Environment Branch

From the National Aboriginal Women's Association (NAWA):
Pam Paul, President
Martha Montour, Legal Counsel

From the Assembly of First Nations:
Tiffany Smith, Co-Chair of the Assembly of First Nations Youth Council, Member of the Assembly of First Nations National Executive Committee
Marie Frawley-Henry, Director, International Affairs
Roger Jones, Legal Counsel

From the Indigenous Bar Association:
Nancy Sandy
Larry Chartrand

From the Native Women's Association of Canada (NWAC):
Sherry Lewis
Céleste McKay

September 22, 2003

From the Newfoundland Native Women's Association:
Dorothy George, President

From the Quebec Native Women's Association:
Michèle Audette
Diane Soroka, Counsel

From the Aboriginal Women's Association of Prince Edward Island:
Marilyn Sark, President

From the Alberta Aboriginal Women's Society:
JoAnne Ahenakew

From the British Columbia Native Women's Society:
Teressa Nahanee
Dorris Peters

From the Provincial Council of Women of Manitoba:
Elizabeth Fleming, Past President
Toni Lightning

From the Native Women's Association of the N.W.T.:
Gina Dolphus, President

From the Ontario Native Women's Association:
Marlene Pierre, Board Member

September 29, 2003 *As an individual:*
Irene Morin, Enoch First Nation

As an individual:
Sharon Donna McIvor, Lawyer

October 6, 2003 *As an individual:*
Mary Eberts and Bev Jacobs, Co-authors of *Matrimonial Property on Reserve*

As an individual:
Margaret Panasse-Mayer, Past Chief of the Nipissing First Nation

APPENDIX B: SELECTED DOCUMENTS PREPARED FOR OR RECEIVED BY THE COMMITTEE DURING THIS STUDY

Submissions from Witnesses and Other Documents

1. Presentation Notes for the Honourable Robert D. Nault, P.C., M.P., Minister of Indian and Northern Affairs, June 18, 2003
2. Letter from the Quebec Native Women's Association, June 2003
3. Comparison of Social Conditions, 1991 and 1996: Registered Indians, Registered Indians living On Reserve and the Total Population of Canada, Indian and Northern Affairs
4. Registered Indian Population by Sex and Residence, 2003, Indian and Northern Affairs
5. Basic Departmental Data 2002, Indian and Northern Affairs
6. Urban Aboriginal Women in British Columbia and the Impacts of the Matrimonial Real Property Regime, Indian and Northern Affairs
7. Fact Sheet – June 2003, Indian and Northern Affairs
8. Presentation of the National Aboriginal Women's Association, September 15, 2003
9. Presentation of the Assembly of First Nations, September 15, 2003
10. Presentation of the Indigenous Bar Association, September 15, 2003
11. Presentation of the Native Women's Association of Canada, September 15, 2003
12. Presentation of the Newfoundland Native Women's Association, September 22, 2003
13. Presentation of the Quebec Native Women's Association, September 22, 2003
14. Presentation of the Aboriginal Women's Association of Prince Edward Island, September 22, 2003
15. Presentation of the British Columbia Native Women's Association, September 22, 2003
16. Presentation of the Provincial Council of Women of Manitoba, September 22, 2003
17. Presentation of the Native Women's Association of the N.W.T., September 22, 2003
18. Presentation of the Ontario Native Women's Association, September 22, 2003
19. Presentation of Sharon Donna McIvor, September 29, 2003
20. Draft report of the Committee on the Elimination of Discrimination against Women
21. Presentation of Irene Morin, September 29, 2003
22. Canada Must Hear and Listen to Aboriginal Women, Native Women's Association of Canada
23. Matriarchy and the Canadian Constitution: A double-barrelled threat to Indian Women, Martha Montour
24. Matriarchy and the Canadian Charter: A Discussion Paper, Native Women's Association of Canada
25. Nipissing First Nation Land Code

26. Opaskwayak Cree Nation Land Code
27. Scugog Island First Nation Land Management Code
28. Georgina Island First Nation Land Management Code
29. Muskoday First Nation Land Code
30. Lheidli T'enneh First Nation Land Code
31. Paul v. Paul
32. Derrickson v. Derrickson
33. *First Nations Land Management Act*
34. *The Indian Act*
35. Relevant Provisions of the *Constitution Act, 1867*
36. Relevant Provisions of the *Constitution Act, 1982*
37. Bill C-7, An Act respecting the leadership selection, administration and accountability of Indian bands, and to make related amendments to other Acts
38. Bill C-19, An Act to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts
39. Discussion Paper: Matrimonial Property on Reserve, Wendy Cornet and Allison Lendor
40. After marriage breakdown; Information on the on-reserve matrimonial home
41. "Where are the Women"?, Report of the Special representative on the Protection of First Women's Rights to the Honourable Minister Naultin Satisfaction of the Special Representative Requirement, January 12, 2001
42. "Home/Land", Mary Ellen Turpel, (1991) 10 Can. J. Fam. L.17
43. An Act providing for the ratification and the bringing into effect of the Framework Agreement on First Nation Land Management
44. News Release, First Nations Land Management Initiative – An Important Step Towards Self-Governance for First Nations
45. Towards Resolving the Division of On=Reserve Matrimonial Real Property Following Relationship Breakdown: A Review of Tribunal, Ombuds and Alternative Dispute Resolution Mechanisms, by Jo-Ann E.C. Greene for Indian and Northern Affairs Canada, Women's Issues and Gender Equality Directorate, May 2003
46. Letter from the National Association of Women and the Law, October 17, 2003

Submissions to the Committee

1. Alderville First Nation
2. Chemawin Cree Nation
3. Heiltsuk First Nation
4. Henvey Inlet First Nation
5. Huron Wendat Nation
6. James Smith Cree Nation
7. Kitigan Zibi Anishinabeg
8. Magnetawan First Nation

9. Mississauga First Nation
10. Odanak Band Council
11. Old Masset Village Council
12. Squiala First Nation
13. Melody Andrews
14. Reginald Maloney
15. Eric Paul

Library of Parliament – Research Notes

1. June 18, 2003
2. September 15, 2003
3. September 22, 2003
4. September 29, 2003
5. October 6, 2003

Library of Parliament – Supplementary Documents

1. Division of Real Matrimonial Property On Reserve – Overview of Issues Involved, Carol Hilling, June 5, 2003
2. The Convention on the Rights of the Child: Canada's Obligations Towards Aboriginal Children, Carol Hilling, September 23, 2003