



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA
K1A 0A6

The Standing Committee on the Status of Women has the honour to present its

SEVENTH REPORT

Pursuant to Standing Order 108(2), your committee reviewed matrimonial real property rights on reserves. Your committee heard evidence on this matter, the result of which is contained in this report.

BACKGROUND

The Committee heard and acknowledges the fact that “the lack of a legal regime to govern the disposition of matrimonial real property on reserves is... the tip of a much greater iceberg” and that “[t]he legislative gap in respect of the matrimonial real property rights on reserve lands is exacerbated by chronic housing shortages that exist on most reserves and difficulties in securing financing to purchase or construct alternative housing on reserve... .”¹

Committee members are keenly aware, however, that women continue to be forced to leave their communities while waiting for an effective solution to the housing shortage and the full implementation of the right to self-determination.

Members of the Committee emphasize that the Government of Canada has a responsibility to address this human rights violation in collaboration with First Nations people, and most particularly, with the First Nations women who are affected.

Committee members heard that this situation has now existed for over two decades without redress. Members wish to see concrete progress on the issues relating to matrimonial real property rights of First Nations women, issues that are linked to violence against women. In the words of Beverly Jacobs of the Native Women’s Association of Canada (NWAC):

It’s not just in First Nations communities, but in Canadian homes where women are being abused. We are taking the brunt of it and I’m tired of it. As a First Nations woman, as a Mohawk woman, I’m tired of hearing this. I feel that it’s my responsibility to make sure that it doesn’t occur any more. My daughter is 23 and she also had to live through that. I have grandchildren and I don’t want them to live through it. I don’t want them to see violence.²

¹ Testimony Bob Watts, Assembly of First Nations, 6 June 2006, 9:35.

² Testimony. Beverly Jacobs, Native Women’s Association of Canada, 6 June, 2006, 10 :10.

While this Committee has a strong desire to move this issue forward, the Committee is cognizant that there are a number of obstacles to developing and potentially implementing solutions. For example, the Committee heard from both the NWAC and the AFN that amending legislation or drafting new legislation that would allow provincial matrimonial property laws to apply on reserve lands is not an acceptable option. Ms. Jacobs stressed that to do so would establish the undesirable precedent of the application of provincial laws to reserve lands. Ms. Debra Hanuse from the AFN noted that “there are significant challenges and problems that would flow with any attempt to apply provincial matrimonial law to reserve lands.”³

The Committee took note of the many other barriers that have slowed progress on this issue. These barriers include:

- the nature of reserve land tenures;
- the different landholding and allotment systems used by First Nations: not all land on reserves is distributed and held in accordance with the *Indian Act*;
- the inability of the Department of Indian Affairs and Northern Development to recognize some of the solutions proposed by First Nations, for example, by-laws created by First Nations such as Sucker Creek First Nation that would address this issue;
- difficulties associated with enforcing court orders on reserve lands; and
- *Indian Act* restrictions on the alienation of interests in reserve lands.

This Committee’s recognition that there are many barriers to solutions is not to be taken as the Committee’s unwillingness to consider how it can move this issue forward. Instead, it suggests the need for a more immediate approach: one that is focused on achieving incremental results in relation to two pressing and immediate barriers highlighted by the NWAC and the AFN, namely:

(1) the apparent insufficiency of ongoing, high-level discussions between the Department of Indian Affairs and Northern Development, the NWAC, and the AFN; and

(2) insufficient funding to allow the NWAC and the AFN to participate in the discussions on an equal footing.

The Committee highlights the importance of ensuring that any application of customary law respects the equality and rights of women.

³ Testimony, Debra Hanuse, Assembly of First Nations, 6 June 2006, 9:25.

RECOMMENDATIONS

Whereas the *Indian Act* is viewed by First Nations as colonial legislation which limits the autonomy of First Nations to deal with problems such as the division of matrimonial property on reserves;

Whereas Parliament, through the Standing Senate Committee on Human Rights and through the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, has studied the issues relating to the lack of a legislative regime governing the division of matrimonial real property on reserve lands;

Whereas the Canadian Human Rights Commission, in its report, *A Matter of Rights, A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act*, acknowledges that “the lack of an on-reserve matrimonial real property regime is a longstanding human rights issue”;

Whereas a number of United Nations’ reports, including the May 2006 *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, have raised the issue relating to the division of matrimonial real property on reserves;

Whereas these reports note Canada’s continued failure to act on the recommendations of the various United Nations bodies concerning the division of matrimonial real property on reserves;

Whereas, even if a legislative solution is agreed to by all affected parties, the issue is complicated by a lack of adequate housing in First Nations communities;

Whereas immediate solutions, not further study, are required to move this issue forward;

Whereas Canada and the provinces continue to focus on building new relationships with First Nations: relationships that are nation-to-nation, recognize the need for First Nations to exercise greater autonomy, are based on mutual respect, and are established in agreements such as the *Paix des Braves* between Québec and the Crees of Québec;

Whereas ultimately, Canada should recognize First Nations’ jurisdiction over family law, and First Nations that have the capacity and the support of women in their communities should be able to exercise that jurisdiction to develop their own solutions to address this issue;

Seized with the urgency of moving forward to ensure that First Nations women on reserves have equivalent rights to women off reserve in regards to the division of matrimonial real property;

Mindful that finding a solution to the division of matrimonial real property on reserves requires a balancing of the interests of the collective rights of First Nations people to self-determination and the individual human rights of women;

The Standing Committee on the Status of Women concludes that the continuing violation of the human rights of the many First Nations women who are forced to leave their homes upon the dissolution of their relationship cannot be allowed to continue indefinitely, and that waiting for the realization of the inherent right of self-determination will take too long for some women in some First Nations communities.

Considering the importance of moving this issue forward so that the rights of First Nations women and children who live on reserves are no longer ignored, the Committee recommends that the following process and timetable be implemented by the Department of Indian Affairs and Northern Development:

The Drafting of Consultation Materials

1. That a high-level committee, the composition of which is to be determined collaboratively by leaders of the government, the Native Women's Association of Canada and the Assembly of First Nations, be established by 31 October 2006 to develop a range of concrete solutions, including proposals for draft legislation or draft amendments to existing legislation, to address the division of matrimonial real property on reserves and to finalize the drafting of the materials to be used in carrying out consultations on proposed concrete solutions, including legislative solutions; and
2. That equal funding be provided to the Native Women's Association of Canada and the Assembly of First Nations to bring together knowledgeable First Nations individuals to participate in the committee mandated with developing concrete solutions, including proposals for draft legislation or draft amendments to existing legislation, and finalizing consultation materials.

Consultation

3. That a national consultation be undertaken on concrete solutions to the issue of the division of matrimonial real property on reserves, including proposals for draft legislation or draft amendments to existing legislation, by 31 May 2007; and
4. That equal funding be provided to the Native Women's Association of Canada and the Assembly of First Nations to consult both with First Nations people and leaders on reserves and with women who have had to leave their reserve communities upon the dissolution of their relationships. Moreover, the funding provided to the Native Women's Association of Canada must be sufficient to enable them to arrange consultations which respect the safety needs of women living on reserves who may only be able to discuss these issues outside of their reserves, particularly in rural and remote communities.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings No. 6, 9, 10) is tabled.

Respectfully submitted,

Hon. Judy Sgro, M.P.
Chair

**APPENDIX
LIST OF WITNESSES**

<i>Organizations and Individuals</i>	<i>Date</i>	<i>Meeting</i>
Assembly of First Nations Debra Hanuse, Acting Director – Law and Legislation	06/06/2006	6
Bob Watts, Chief of Staff – Office of the National Chief	06/06/2006	6
Native Women’s Association of Canada Beverly Jacobs, President	06/06/2006	6