

# MATRIMONIAL REAL PROPERTY CONSULTATIONS

## A TOOLKIT



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# PARTICIPANTS GUIDE



## Key Information

This guide has been provided to help participants gain a better understanding of the Native Women's Association of Canada's (NWAC) solutions consultation process.

In this guide you will find the following information:

- Letter of introduction and welcome.
- Background on how MRP issues have developed to a consultation process.
- NWAC's position on the process of matrimonial real property.
- How NWAC consultations are focused on solutions.
- The various ways individuals can participate in the NWAC MRP process.

## Dear Participant:

Thank you for agreeing to contribute to this workshop. These consultations are an important part of the work being done on the Matrimonial Real Property (MRP) initiative by the Native Women's Association of Canada.

This initiative is designed to identify solutions to the inequitable access to matrimonial property rights by First Nations women and men, through a joint effort being undertaken by the Native Women's Association of Canada, the Assembly of First Nations, and the Government of Canada. The initiative is focused on addressing the following main objectives:

1. To advise women of existing and potential legislation and its impact on them;
2. To identify immediate legislative solutions to the denial of women's equality with respect to Matrimonial Real Property;
3. To identify non-legislative solutions to Matrimonial Real Property issues;
4. To identify Indigenous solutions to Matrimonial Real Property issues; and,
5. To identify longer-term solutions to Matrimonial Real Property issues.

A wide variety of methods will be used to conduct narrative and qualitative research. These methods include holding workshops like this one in every province and two territories, as well as implementing an internet survey, conducting interviews with key community members and technical experts, organizing focus groups, conducting telephone interviews with women, and implementing a parallel Provincial/Territorial member association consultation process.

### Informed Consent

We appreciate your help in carrying out this important work. Your decision to take part in this consultation is voluntary, and it is your right to know how the information you share will be used. The sessions will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community. Your decision to accept this invitation and participate in the session is regarded as consent for NWAC to use the information you share for these purposes.

If you do not want some of your comments to be recorded, please be careful not to speak in the conference room, or feel free to leave the room for a time. We wish to assure you that we will use the information you provide in a respectful and appropriate way to facilitate positive change for Aboriginal women.

If you have any questions about the overall purpose of the consultations, please ask the consultation facilitator or contact: Myrle Traverse, MRP National Coordinator at the NWAC satellite office at (800) 461 4043, ext. 228.

## Matrimonial Real Property Initiative

The question of matrimonial real property on reserves has been studied by experts in Canada and internationally for many years. All have concluded that this situation is a human rights issue that urgently requires action. This means laws need to be developed whether that be by the federal, provincial or First Nation governments.

In June 2006, the Minister of Indian and Northern Affairs (INAC) announced Canada's intention to consult on the question of matrimonial property on reserves. The main question to be answered through this consultation process is what should be done to address this important and long neglected human rights issue.

Soon after it was announced that consultations on matrimonial real property would take place and NWAC would receive equal funding with the Assembly of First Nations (AFN) to begin these consultations. This was a major achievement for NWAC because the equal funding represented recognition of the important role that NWAC has played in keeping this issue on national federal agenda for the past 20 years.

The issue of matrimonial real property has existed for generations and has not only impacted individual families but also the First Nation community as a whole. The affects of MRP has had huge impacts on the role of women in our communities. This recent decision made by INAC to include NWAC as an equal has been a long awaited recognition of the important role that women have in our First Nation communities.

### NWAC's Position on Matrimonial Real Property

NWAC agrees that laws are needed but are also committed to ensuring that we find the best community-driven solutions that come from our consultations with individuals who have been impacted by this legislative gap in MRP on-reserve. While NWAC supports self determination of our Nations, we are equally in favour of the exercise of good governance. MRP is an issue that requires a balance of collective and individual rights of people in the communities they live in and belong.

NWAC is the voice of Aboriginal women in Canada and it's the Aboriginal women's voice that will determine NWAC's final position on what the best possible solution to the issues relating to matrimonial real property.

We belong to these communities and we are committed to finding solutions that give women and children living on reserve meaningful access to remedies and protection of their right to a fair division of the matrimonial home, while preserving and protecting our reserve lands for our children.

### NWAC Consultation Focus

The MRP initiative is designed to find solutions to the unbalanced access to matrimonial property rights by First Nations women and men, through a joint effort being undertaken by Native Women's Association of Canada, the Assembly of First Nations, and the Government of Canada.

Once the consultation phase is complete at the end of this year, each group will put forward their recommendations for change. The Ministerial Representative, Wendy Grant-John, appointed by INAC will assist all three groups come to a mutual agreement. This process is intended to address the lack of legal protections for women and their children while maintaining protections for land within First Nations communities’.

The role and mandate of NWAC in the joined effort with INAC & AFN is to:

- To ensure the unique needs and interests of Aboriginal women are reflected throughout the entire consultation and agreement process.
- To work towards a respectful balance between the collective and individual human rights of Aboriginal women and the communities they belong to.
- To seek the best possible solution(s) to facilitate meaningful access to matrimonial real property protections for women and their children living on-reserve.

It is important to NWAC to hear the voices of those who had been affected by Matrimonial Real Property directly so NWAC has prepared following guidelines for participants:

- Status Indian Women who separated or divorced while living on reserve and have lost their right to the home they lived in while married;
- Status Indian young people between the ages of 16-25 years whose parents separated or divorced while living on reserve and who were impacted by the loss of the home they were living in at that time;
- Status Indian women who are presently in a common law relationship or married; and,
- Status Indian women who are in same sex relationships.
- Any woman who has lost her home on reserve following the end of her marriage or relationship breakdown.

The MRP initiative was developed so solutions would be established to address the unbalanced access to matrimonial property rights by First Nations women and men. The following questions have been developed to guide the gathering of information from participants:

- Does your First Nation community have measures in place with respect to the division of MRP? What are these measures? Are they helpful or were they helpful to you in enabling a fair and equal division of property?
- What can be done differently that would have provided a fair and equitable division of property?
- Do you know of promising or innovative practices that are in existence for the fair and equitable treatment of MRP?
- What do you know about Aboriginal customary family laws? How might they assist in providing fair and equitable division of matrimonial property on reserve?
- Do you agree with legislative change? If so, what does it mean to you? What kind of impacts could it have? What non-legislative solutions would you suggest?

The NWAC process also includes considering all aspects of the issues of matrimonial real property before making a decision on what the best solutions may be. A number of aspects outlined in this information can change the participants mind on what will work and what will

not, when considering this material. Being fully aware of what is being done in other First Nations may also be helpful in deciding if that would be a good alternative for your First Nation community.

On the right side of this consultation kit, there is important information that explains:

- An Overview of the Issues
- Provincial/Territorial Matrimonial Property Law
- Matrimonial Property Issues Under the Indian Act
- Matrimonial Property and the First Nations Land Management Act
- Matrimonial Property and Self Government Agreements
- First Nation Initiatives Addressing Matrimonial Real Property Interests
- Matrimonial Property on Reserves – Overview of Expert Reports & Studies
- Considerations in Addressing MRP Issues under the Indian Act

The last section called “MRP Scenarios” will assist participants in identifying with real situations that some families are faced with. Not everyone’s situations are the same and they can sometimes become very complex. If we were to base change on only typical situations we would only be providing a solution for a very small part of our communities. In today’s society, native families have numerous situations that they are faced with. NWAC’s role is to ensure that all aspects are considered. This section will help participant understand the complexity of many different situations that exist.

NWAC recommends all participants take the time to review this information as it provides background information that will prepare participants for the in depth discussions during the NWAC consultation process.

### Ways to Participate in NWAC Consultations

A key consideration for NWAC is to ensure that individuals have every opportunity to participate and bring forward their solutions and recommendations in a safe and accessible way. In considering that, NWAC has provided the following options:

- Attending the consultations by invitation, as participants are today. These are being conducted in every province and two territories. The use of invitations was to ensure that the information collected was from individuals that have directly been impacted by matrimonial real property issues. Participants have survived the impact of MRP and NWAC wants to hear what systems could have been in place to make the transition of marital separation a more balanced one that does not favour one partner or the other from a lack of systems in place.
- Attending the public hearing scheduled on the last day of each consultation. Each consultation taking place across the country is scheduled for three (3) consecutive days. The first two days are for the invited participants as described above and the third day is to provide an opportunity for the public to offer their solutions. These individuals may not have fit the criteria of having been impacted by MRP personally but may have a solution from a different perspective that is valuable to the consultation process.

- Filling out an internet survey. NWAC has produced an internet survey that is available at [www.nwac-hq.org](http://www.nwac-hq.org) under the MRP section. This survey was made available for those individuals that may not have been able to attend due to travel limitations or who may not feel comfortable putting their solutions forward for fear of disrupting their present relationship. NWAC understands the situation that some Aboriginal women have been faced with due to the lack of protections for them. NWAC wants to hear from women in these situations as well to identify what could be put in place so they could make a decision that was best for themselves and their children. There are also some women that may not feel comfortable speaking in front of a public audience. NWAC has made this option available to hear the solutions from Aboriginal women in all situations.
- Participating by way of a telephone interview. These participants would make their request by calling the MRP information line at 1 (866) 796-6053. The MRP information line was made available to provide the most current updates on when and where the consultations are taking place. One option that was made available with the information line is to request a personal interview over the phone. After the recorded message the individual has the option to leave their name and have someone return their call within a 48 hour time frame to set up an interview. This may work best for people that are not easily available. This provides the opportunity to schedule the interview according to the participants schedule so they also have the opportunity to participate even if they have very busy schedules.
- Written submissions will also be considered. NWAC understands the versatility of all participants. Some individuals have the ability to communicate their solutions much better on paper. This type of participation is another option for those who feel this option is best for them. The submission is requested to be 1 or 2 pages in length and can be mailed to the NWAC Ottawa office or can be hand delivered and sealed, at the public consultation sessions. Invited participants have the option of attending the public sessions but it will be at their own cost.

NWAC is confident that with the wide variety of options available, a great diversity of solutions will be brought forward, therefore bringing the best possible solutions as an outcome.



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# A DISCUSSION GUIDE



## The Issue

The Indian Act does not contain any provisions governing on-reserve “matrimonial real property” -- a term that includes a couple’s home or land that they live on, or benefit from, during their relationship. In 1986, the Supreme Court of Canada ruled that provincial and territorial laws on matrimonial real property do not apply to reserve land. These decisions created a gap in the law which has had serious consequences.

Couples who agree on how to deal with their matrimonial real property – during their relationship or at its end – do not now have a comprehensive legal framework within which they can give effect to their intentions. Where couples do not agree, there is no mechanism for resolving their disputes. Without legal protection, women confronted by marital break-up or violence at home often lose their homes on reserve. The lack of alternative housing on reserve all too often means that a woman and her children must leave. Their contributions, now and in the future, are lost to the reserve, and they lose regular contact with their extended family, friends and culture.

## This Process

NWAC has been advocating since the 1990's for a solution to this problem. Now, NWAC is participating in a consensus-building process to develop legislative and other solutions which we hope will be in place in 2007.

NWAC and AFN are participating in this process on a fully equal basis. The Board of NWAC has established these goals for NWAC's participation:

- To ensure that unique needs and interests of Aboriginal women are reflected throughout the entire consultation and consensus-building process.
- To work towards a respectful balance between the collective and individual human rights of Aboriginal women and the communities they belong to.
- To seek the best possible solution(s) to facilitate meaningful access to matrimonial real property protections for women and their children living on-reserve.

NWAC's team includes staff and consultants with training in social science, communications, administration and law. NWAC representatives sit on a Working Group with equal representation from NWAC, AFN, and INAC to study technical matters, share the knowledge gained in our consultations, and work towards consensus about appropriate legislative and other solutions. A national Advisory Group provides guidance and assistance to NWAC's representatives at the table. The Working Group is chaired by the Ministerial Representative, Wendy Grant-John, who will report to the Minister on the consensus achieved.

The consultation process will create a space where First Nations women can share their thoughts, ideas and most importantly their solutions that work for matrimonial real property. These solutions will come from their own experiences, knowledge and culture. The solutions:

- must meet the needs of First Nation families: the parents, children, grandparents, aunts, uncles and all the other family members who might be affected.
- must support First Nations communities and enable them to manage their land and housing resources in accordance with the needs of their people, and
- must respect the community's inherent rights to self government and the customary practices by which land is held in common for the benefit of all members of the community.

NWAC believes that it is critically important for the voices of women to be heard in this process. Consultations across the country in the fall of 2006 will enable NWAC to take women's contributions to the table where consensus is being sought.

## NWAC Encourages People to Speak

At its national consultations, NWAC is seeking your EXPERIENCE, KNOWLEDGE and IDEAS.

**Experience** – Any new approach will have to deal with a wide range of situations which women experience during a relationship or at its break-up. Sharing experiences through the consultation process will create a full picture of the kinds of situations that can arise, and the strategies that have proved helpful.

**Knowledge** – NWAC hopes that this consultation process will bring to the fore our traditional approaches to family, to decision-making, and to dispute resolution. NWAC will strive to incorporate traditional wisdom and practices into any consensus recommendations. NWAC also hopes that these consultations will provide information on contemporary First Nations



practices and polices that would be helpful precedents and models.

Ideas – Many complex questions must be explored in order to arrive at a good solution. A crucial question is how to ensure that any new measures will respect First Nations sovereignty and the integrity of the First Nations approach to land-holding. There are many other matters to consider, and some of them are set out below, to prompt discussion.

Individuals, groups and communities may become involved in these consultations in a number of ways. They include:

- read MRP background documents available on NWAC's website at [www.nwac-hq.org](http://www.nwac-hq.org);
- fill out an MRP confidential online web survey;
- call the MRP information line for a personal telephone interview at 1 (866) 796-6053;
- develop a two page submission and send it to NWAC via mail or fax; and
- join us in our consultation process when it comes to your area. The confirmed dates, locations and venues are available on the NWAC website at [www.nwac-hq.org](http://www.nwac-hq.org) or by calling the MRP information line at 1 (866) 796-6053.

The tentative dates scheduled are:

- Alberta - October 8, 2006
- NWT - October 14, 2006
- Manitoba - October 16, 2006
- Saskatchewan - October 21, 2006
- British Columbia - October 25, 2006
- Yukon - October 27, 2006
- New Brunswick - November 1, 2006
- Newfoundland - November 3, 2006
- Nova Scotia - November 5, 2006
- Ontario - November 12, 2006
- Quebec - November 22, 2006

## A Host of Questions

One of the aims of the consensus-building process is to propose a good law to fill the present gap. However, NWAC does not believe that simply passing a law will do all that is needed to address the matrimonial real property issues that have arisen. The questions below seek input not just on the features of a new law, but also about other measures that should form part of a workable solution to these issues. It is not expected that those who participate in the consultations will address all of the topics set out in this guide. Contributions and insights on even one topic will be welcome and helpful.

## Flexibility and Inclusiveness

Any legislative approach will potentially apply to a wide range of different situations. How wide, or how narrow, is a matter of choice, and your views are important. Because a law usually lasts for a long time, it is not possible to anticipate every situation to which it might apply. How to ensure that the law will be flexible enough to cover unexpected situations and grow with the times is an important consideration. Sketched below are just some of the situations that might come within a new law. Comments about whether these situations should be covered, and if so, what the law might say and do about them would be most helpful.

### *Kinds of Family Structure*

- marriage by traditional custom or practice
- state- or church-performed marriage
- common law relationship
- same-sex relationship
- extended family living together
- children or the couple, or a blended family of the children of each partner, or some combination, are in the family
- children still living at home, or grown and left
- couple or a member of the couple caring at home for another family member dependent on him or her

### *Status and Band Membership*

- both spouses status and members of the reserve where land is located
- only one spouse status
- only one spouse a band member
- children are status and (a) band members or (b) not members
- children are not status but are band members
- children are neither status nor band members but may live as minors on reserve under the *Indian Act*

### *Kinds of Land Tenure*

- Certificate of Possession in name of:
  - (a) one spouses;
  - (b) both spouses;
  - (c) another person; or
- custom allotment
- location ticket
- no evidence of title Issued (NETI)
- Notice of Entitlement (NE)
- Band CPs
- First Nations Land Management Act – consult land/MRP codes passed
- Set-aside lands under self-government agreements
- Land claims settlements

### *Kinds of Family Home or Other Matrimonial Real Property*

- couple lives on land:
  - for which one (or both) has the CP (or other entitlement)
  - for which the family of one of them holds the CP or other entitlement
  - leased from the First Nation
- couple lives in a home:
  - where both contributed to the cost of building or buying it (or where only one paid the cost)
  - in a band-owned home
  - in rental property
- a member of the couple have received an interest in the land or home by gift or inheritance:
  - (a) before they start living together
  - (b) after they have become a couple
- the couple or one of them has a business in their home or on other reserve property, from which the family is supported

- the couple, or one of them, has trapping, fishing or hunting rights on a particular part of the reserve or other band lands, from which the family is supported

*Situations to which a law might apply*

- where the couple is still living together and there are no problems
- where the couple is separating
- death of one member of the couple
- spousal violence
- the couple want to make a contract or agreement, either before marriage or on marriage break-up

## Structures, Systems and Resources

The consensus-building process will be looking into what systems would be the most suitable to interpret, apply and enforce the law. These must meet several different needs:

- provide a means for settling differences cooperatively, if the couple wishes to do that
- provide a way of dealing with situations where the parties cannot agree
- be flexible enough to make provisions for short-term, long-term, and emergency situations
- enjoy the trust and respect of individuals and the community

NWAC hopes that the consultations will identify other desirable or necessary characteristics. A number of models exist:

- traditional decision-making and dispute resolution
- First Nations institutions or tribunals
- courts
- alternative dispute resolution (ADR)

In addition to the systems for interpreting, applying and enforcing the law, successful implementation of any new approach may require coordination with other systems or provision of other resources, like:

- adequate supply of housing on reserve
- services and alternative shelter for women and children affected by domestic violence
- access to legal advice and representation
- access to other advice (for example, property evaluators)
- availability of credit and forms of security that will allow the financing of property transactions or “buy-outs” of spousal interests
- a registry system for interests in property that is efficient and accessible

Creating effective new ways of dealing with matrimonial real property on reserve will also require capacity-building, as existing systems and institutions adapt to new tasks, and new systems and institutions come into being and people learn how to use them. From the consultations, NWAC hopes that a blueprint will emerge identifying which institutions need to build capacity, in what areas, and how best to accomplish that. During the consultations, NWAC also hopes to hear ideas about how to develop individuals’ capacity to understand their rights and obligations and to use the new legislation and other resources. After the consultations have been completed, NWAC looks forward

to continuing to work together with our partners in the consensus-building process to build capacity in individuals, communities and our systems so that the solutions we develop through this consultation process are implemented in a beneficial manner.

## Shaping Legislation

In addition to deciding what situations a law should cover, and what systems it needs for its administration and enforcement, the consensus-building process will be considering the important issue of what government can and should pass laws about matrimonial real property.

*Canada* has authority under the Constitution over Indians and lands reserved for Indians, and over marriage and divorce. This includes the power to pass laws about matrimonial real property on reserve.

*First Nations* do not now have any authority under the *Indian Act* to pass even by-laws on matrimonial real property. Land claims or self-government agreements typically deal with the Nation's power to manage their land, including passing matrimonial real property codes. First Nations coming under the *First Nations Land Management Act* have the power to pass land codes, including rules about matrimonial real property, but that power is seen by Canada as power delegated to First Nations, not theirs by inherent right or Treaty. Canada has not recognized First Nations' inherent right to govern.

*Provinces and territories* pass matrimonial real property laws but have no power to make them apply on reserve. Provincial land tenure systems based on fee simple title are different from the methods of land-holding on reserve. Under the Constitution, Canada can pass a law making provincial matrimonial property law apply to reserves in that province; this is called "incorporation by reference". However, court orders and other arrangements made under provincial matrimonial law are all based on the assumption of fee simple title, and so incorporation by reference could well contribute to the erosion of the systems of land tenure now applicable to reserve land.

There are several possible options for law-making in the area of matrimonial real property on reserve:

- (a) Canada itself would pass no law, but leave the whole field to First Nations. The gap in legislation would remain until filled, First Nation by First Nation, as land claims agreements or self-government agreements are signed or a Nation comes under the *FNLMA*, and the First Nation has developed its own Code. In the alternative, as recommended by RCAP, Canada could recognize all First Nations' inherent power over family law, so that the construction of individual First Nations codes could begin, with substantial participation by women, as recommended by RCAP. The approach provides substantial recognition of First Nations' sovereignty, but does prolong the problems caused by the existing gap. Capacity building for communities and for women would strengthen their ability to prepare good laws.
- (b) Canada could pass legislation in the very near future that would close the legislative gap. Such legislation could simply "incorporate by reference" provincial and territorial law, which seems like a quick solution but would threaten the erosion of Aboriginal land-holding systems and bring a lot of problems in interpretation and enforcement, including the likelihood of court challenges that the law is contrary to sections 35 or 25 of the Constitution, or to Treaty.
- (c) Alternatively, Canada could create one matrimonial property code that would apply across the country, and contain provisions which make it harmonious with Aboriginal systems of land tenure. This law could be free-standing or go into the *Indian Act* as an amendment *Act*.
- (d) Law-making by Canada alone fails to acknowledge the sovereignty of First Nations. It has been proposed that any legislation passed by Canada should only apply to a particular First Nation until it has passed its own matrimonial property code. This

suggestion could be implemented by having the whole statute passed by Canada come to an end (“sunset”) after a fixed period, during which First Nations would be developing their codes; if the Canadian statute sunset before new First Nations codes were in place, a gap would recur. Or, the statute passed by Canada could continue to apply unless and until a First Nation opted out of it by passing its own code. Capacity-building in First Nations would accompany either of these options (or other similar approaches), so that they could formulate the codes, as well as administer them effectively. Capacity-building among women and First Nations will be necessary to strengthen their ability to develop First Nations codes.

- (e) Several questions arise with respect to the standards that apply to law-making, whether it is done by Canada or First Nations. Consider, for example,
- the duty to consult
  - Aboriginal rights – s. 25 and s. 35 of the Constitution, Treaty
  - equality of women and men – s. 35(4), s. 15 and s. 28 of the Constitution
  - international law
  - Canadian Human rights Act, once s. 67 is repealed

Whether these standards apply to a particular law-maker, and what influence the standards would have on the nature of the law that is created, are important questions.

- (f) A crucial question facing the consensus-building process is how to make sure that any rights or obligations given under a new law do not erode the essential concepts underlying systems of Aboriginal land tenure, like the holding of lands in common. Any legal system that provides for the transfer of a fee simple interest to a spouse would erode this basic value. Decision-makers are thus considering how to provide remedies and strategies that would protect individual spouses and their children while safeguarding community land-holding. These include using orders for possession and occupation (but not transfer of interest) or limitations in the kinds of transfer of interest that can occur, as well as time-limited remedies. Suggestions garnered during the consultations will contribute to solutions.

## Conclusion

Creating a good and wise law about matrimonial property requires consideration of many questions. Once the consultations have concluded, a report will be prepared, which will assist those at the table during the consensus-building phase as well as contribute to NWAC’s broader efforts to secure adequate protection for women, children, families and communities in this important area.



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# MRP RESOURCE GUIDE



## RESOURCES

This guide has been provided as a resource to participants who are interested in undertaking additional reading on the issue of matrimonial real property. Selected resources have been researched for all of the areas in which consultations are being held. There are also those listed that have been found to be very informative and accurate.

## CONSULTATION PARTNER'S WEBSITES

### **Assembly of First Nations**

Home page at: [www.afn.ca](http://www.afn.ca)

Assembly of First Nations discussion paper available on line at: [www.afn.ca/article.asp?id=2816](http://www.afn.ca/article.asp?id=2816)

### **Indian and Northern Affairs Canada**

Home page at: [www.ainc-inac.gc.ca](http://www.ainc-inac.gc.ca)

On-reserve Matrimonial Real Property website at: [www.ainc-inac.gc.ca/wige/mrp/index\\_e.html](http://www.ainc-inac.gc.ca/wige/mrp/index_e.html)

### **Native Women's Association of Canada**

Home page at: [www.nwac-hq.org](http://www.nwac-hq.org)

## SELECTED LIST OF SOURCES FOR FURTHER READING

### **Discussion Paper: Matrimonial Real Property on Reserve.**

Published by Cornet Consulting & Mediation (2002). Available on line at [http://www.ainc-inac.gc.ca/pr/pub/matr/index\\_e.html](http://www.ainc-inac.gc.ca/pr/pub/matr/index_e.html)

### **Towards Resolving the Division of On reserve Matrimonial Real Property Following Relationship Breakdown: A Review of Tribunal, Ombuds, and Alternative Dispute Resolution Mechanisms.**

Published by Indian and Northern Affairs Canada (2003). Available on line at [http://www.ainc-inac.gc.ca/wige/mrp/adr\\_e.html](http://www.ainc-inac.gc.ca/wige/mrp/adr_e.html)

### **After Marriage Breakdown: Information on the on reserve matrimonial home.**

Published by Indian and Northern Affairs Canada (2003). Available on line at [www.ainc-inac.gc.ca/pr/pub/mpr/index\\_e.html](http://www.ainc-inac.gc.ca/pr/pub/mpr/index_e.html)

### **Information on Spousal Rights to the Family Home on Reserves.**

Published by Indian and Northern Affairs Canada (2004). Available on line at <http://dsp-psd.pwgsc.gc.ca/Collection/R2-351-2004E.pdf#search=%22inac%20information%20on%20spousal%20rights%20to%20the%20family%20home%22>

### **Walking Arm in Arm to Resolve the Issue of On reserve Matrimonial Real Property.**

Published by the Standing Committee on Aboriginal Affairs and Northern Development (2005). Available on line at <http://cmte.parl.gc.ca/cmte/committeepublication.aspx?com=8972&lang=1&sourceid=119922>

### **A Hard Bed to Lie In: Matrimonial Real Property on Reserve.**

Published by the Standing Senate Committee on Human Rights (2003). Available on line at <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep08nov03-e.pdf#search=%22a%20hard%20bed%20to%20lie%20in%22>



# PROVINCIAL AND TERRITORIAL LEGISLATION ON MATRIMONIAL PROPERTY AND FAMILY VIOLENCE

## BRITISH COLUMBIA

*Family Relations Act*, R.S.B.C. 1996, c. 128 (British Columbia).  
[http://www.qp.gov.bc.ca/statreg/stat/F/96128\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/F/96128_01.htm)

*Definition of Spouse Amendment Act*, 1999, S.B.C. 1999, C. 29.  
<http://www.qp.gov.bc.ca/statreg/stat/tlc/edition1/tlc99029.htm>

*Land (Spouse Protection) Act*, R.S.B.C. 1996, C. 246.  
[http://www.qp.gov.bc.ca/statreg/stat/L/96246\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/L/96246_01.htm)

*Estate Administration Act*, R.S.B.C. 1996, C. 122.  
[http://www.qp.gov.bc.ca/statreg/stat/E/96122\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/E/96122_01.htm)

*Wills Variation Act*, R.S.B.C., C. 490.  
[http://www.qp.gov.bc.ca/statreg/stat/W/96490\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/W/96490_01.htm)

Basics of Family Law, Ministry of Attorney General  
[http://www.ag.gov.bc.ca/family-justice/law/sep\\_div/index.htm](http://www.ag.gov.bc.ca/family-justice/law/sep_div/index.htm)

## ALBERTA

*Matrimonial Property Act*, R.S.A. 2000, c. M-8 (Alberta).  
<http://www.canlii.org/ab/laws/sta/m-8/20060614/whole.html>

*Dower Act*, R.S.A. 2000, c. D-15.  
<http://www.canlii.org/ab/laws/sta/d-15/20060614/whole.html>

*Adult Interdependent Relationship Act*, S.A. 2002, c. A-4.5.  
<http://www.canlii.org/ab/laws/sta/a-4.5/20060614/whole.html>

*Family Law Act*, S.A. 2003, c. F-4.5.  
<http://www.canlii.org/ab/laws/sta/f-4.5/20060614/whole.html>

*Protection Against Family Violence Act*, R.S.A. 2000, c.P-27 (Alberta).  
<http://www.canlii.org/ab/laws/sta/p-27/20060614/whole.html>

Alberta Family Law Information Centre  
Information available on line at: [www.albertacourts.ab.ca/familylaw/index.htm](http://www.albertacourts.ab.ca/familylaw/index.htm)

## SASKATCHEWAN

*Family Property Act*, S.S. 1997, c. F-6.3 (Saskatchewan).  
<http://www.canlii.org/sk/laws/sta/f-6.3/20060614/whole.html>

*The Homesteads Act*, S.S. 1989-90, c. H-5.1 (Saskatchewan).  
<http://www.canlii.org/sk/laws/sta/h-5.1/20060614/whole.html>

*The Marriage Settlement Act*, R.S.S. 1978, c. M-5 (Saskatchewan).  
<http://www.canlii.org/sk/laws/sta/m-5/20060614/whole.html>

## MANITOBA

*The Family Property Act*, C.C.S.M., C. F25 (Manitoba).  
<http://www.canlii.org/mb/laws/sta/f-25/20060614/whole.html>

*The Family Maintenance Act*, C.C.S.M. c. F-20.  
<http://www.canlii.org/nb/laws/sta/m-4/20060614/whole.html>

*The Homesteads Act*, C.C.S.M., c. H20 (Manitoba).  
<http://www.canlii.org/mb/laws/sta/h-80/20060614/whole.html>

*The Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D.93 (Manitoba).  
<http://www.canlii.org/mb/laws/sta/d-93/20060614/whole.html>

*The Victims of Domestic Violence Act*, S.S. 1994, c.V-6.02 (Saskatchewan).  
<http://www.canlii.org/sk/laws/sta/v-6.02/20060614/whole.html>

## ONTARIO

*Family Law Act*, R.S.O. 1990, c. F.3 (Ontario).  
<http://www.canlii.org/on/laws/sta/f-3/20060614/whole.html>

*The Domestic Violence Protection Act, 2000*, S.O. 2000, c.33  
<http://www.canlii.org/on/laws/sta/2000c.33/20060718/whole.html>

## QUEBEC

*Civil Code of Québec*, S.Q.1991, c.64 (Québec).  
<http://www.canlii.org/qc/laws/sta/ccq/20060818/whole.html>

## NEW BRUNSWICK

*Marital Property Act*, S.N.B. 1980, c. M-1.1 (New Brunswick).  
<http://www.canlii.org/nb/laws/sta/m-1.1/20060614/whole.html>

*Married Women's Property Act*, R.S.N.B. 1973, c.M-4.  
<http://www.canlii.org/nb/laws/sta/m-4/20060614/whole.html>

## NOVA SCOTIA

*Matrimonial Property Act*, R.S.N.S. 1989, c. 275 (Nova Scotia).  
<http://www.canlii.org/ns/laws/sta/r1989c.275/20060614/whole.html>

*Married Women's Property Act*, R.S.N.S., 1989, C. 272.  
<http://www.canlii.org/ns/laws/sta/r1989c.272/20060614/whole.html>

*Domestic Partner Registration Regulations*, O.I.C. 2001-263 (May 31, 2001, effective June 4, 2001), N.S. Reg. 57/2001 (Nova Scotia).

*Law Reform (2000) Act*, S.N.S. 2000, c. 29, Part X (Nova Scotia).

*Domestic Violence Intervention Act*, S.N.S. 2001. C.29 (Nova Scotia).  
<http://www.canlii.org/ns/laws/sta/2001c.29/20060614/whole.html>

## PRINCE EDWARD ISLAND

*Family Law Act*, S.P.E.I. 1988, c. F-2.1 (Prince Edward Island).  
<http://www.canlii.org/pe/laws/sta/f-2.1/20060614/whole.html>

## NEWFOUNDLAND AND LABRADOR

*Family Law Act*, R.S.N.L.1990, c.F-2 (Newfoundland and Labrador).  
<http://www.canlii.org/nl/laws/sta/f-2/20060705/whole.html>

*Victims of Family Violence Act*, R.S.P.E.I. 1996, c. V-3.2 (Prince Edward Island).  
<http://www.canlii.org/pe/laws/sta/v-3.2/20060614/whole.html>

## NORTHWEST TERRITORIES

Family Law Act, 1997. Available on line at [www.justice.gov.nt.ca/pdf/ACTS/Family\\_Law.pdf](http://www.justice.gov.nt.ca/pdf/ACTS/Family_Law.pdf)

Intestate Succession Act, 1988. Available on line at [www.justice.gov.nt.ca/pdf/ACTS/Intestate\\_Success.pdf](http://www.justice.gov.nt.ca/pdf/ACTS/Intestate_Success.pdf)

Dependant's Relief Act, 1988. Available on line at [www.justice.gov.nt.ca/pdf/ACTS/Dependants\\_Relief.pdf](http://www.justice.gov.nt.ca/pdf/ACTS/Dependants_Relief.pdf)

Wills Act, 1988. Available on line at [www.justice.gov.nt.ca/pdf/ACTS/Wills.pdf](http://www.justice.gov.nt.ca/pdf/ACTS/Wills.pdf)

Protection Against Family Violence Act, 2003. Available on line at [www.justice.gov.nt.ca/pdf/ACTS/Prot\\_Against\\_Family\\_Violence.pdf](http://www.justice.gov.nt.ca/pdf/ACTS/Prot_Against_Family_Violence.pdf)

## YUKON

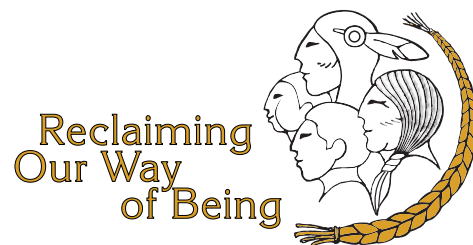
*Family Property and Support Act*, R.S.Y. 2002, c. 83 (Yukon).  
<http://www.gov.yk.ca/legislation/acts/fapsu.pdf>

*Family Violence Protection Act*, R.S.Y. 2002, c.84 (Yukon)  
<http://www.gov.yk.ca/legislation/acts/favipr.pdf>

Yukon Guide to Family Law

Information available from the Yukon Department of Justice on line at: [www.justice.gov.yk.ca/pdf/pubs/flguide.pdf#search=%22yukon%20family%20law%20%22](http://www.justice.gov.yk.ca/pdf/pubs/flguide.pdf#search=%22yukon%20family%20law%20%22)

## NOTES



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# FACILITATORS GUIDE



## **Community Consultations on Matrimonial Real Property (MRP) Solutions**

PLEASE NOTE THIS TOOL MAY BE ADAPTED TO  
ACCOMMODATE INDIVIDUAL APPROACHES

## INTRODUCTION

The Native Women's Association of Canada (NWAC) is pleased to announce that they have received federal funding to hold a series of consultations with Aboriginal women across Canada on Matrimonial Real Property (MRP). This initiative is designed to find solutions to the inequitable access to matrimonial property rights currently experienced by First Nations women.

This workshop is being held as part of the national consultations conducted under the Matrimonial Real Property Solutions initiative. There are multiple avenues for women to participate in the consultations, including:

- Attending a Consultation workshop as an invited participant (1.5 day session)
- Attending a Consultation workshop Public Hearing session (one half day session – day 3 only)
- Completing a confidential internet survey
- Completing a confidential telephone survey
- Preparing a two page written submission and delivering this in person at a Public Hearing Session or by mail to NWAC.

The consultation process will also include focus groups with specific groups such as First Nations Land Managers and lawyers who specialize in family law, and key informant interviews with individuals who have technical expertise or knowledge of these issues.

The main objectives to be addressed through this community based consultation process are:

1. To advise women of existing and potential legislation and its impact on them;
2. To identify immediate legislative solutions to the denial of women's equality with respect to Matrimonial Real Property;
3. To identify non-legislative solutions to Matrimonial Real Property issues;
4. To identify Indigenous solutions to Matrimonial Real Property issues; and
5. To identify long-term solutions to Matrimonial Real property Issues.

The target groups for the NWAC consultations have been identified as:

- Status Indian Women who separated or divorced while living on reserve and have lost their right to the home they lived in while married;
- Status Indian young people between the ages of 16-25 years whose parents separated or divorced while living on reserve and who were impacted by the loss of the home they were living in at that time;
- Status Indian women who are presently in common law relationships or are married;
- Status Indian women who are in same sex relationships; and
- Any woman who has lost her home on-reserve as a result of a marriage or relationship breakdown.



## ROLE OF LEAD FACILITATOR

The Lead Facilitator is responsible for managing the flow of the workshop. The National Consultation workshop consist of two components. The first 1.5 days are for invited participants who have been selected based on their experience of MRP issues, their willingness to participate in the sessions and share their stories. Their ability to think about and develop solutions, and their ability to represent the experiences of First Nations women from different areas, age groups, and backgrounds.

On the first day, women are invited to a meet and greet session and dinner, where they will have a chance to share their stories in a safe and personal environment. On the second day, women are invited to develop ideas and solutions in an environment that emphasizes sharing, caring, trust and strength. These sessions will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community. There will be an observer from Indian and Northern Affairs Canada attending these sessions. If women are uncomfortable about sharing their experiences in front of a government representative, they are encouraged to select focus group sessions in which this individual is not observing. Participants should remember that their travel expenses are being covered so that they may attend these sessions and provide their point of view and input into solutions around MRP.

Following the 1.5 day long invitation-only sessions, there is a half-day public hearing session held at the same location. Anyone may attend this session and provide information or a written submission about MRP issues. This session is recorded and public. Participants need to understand that their comments will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community.

Women who are unable to attend the public session may provide input into the consultation process through a variety of other methods, including:

- Completing a confidential internet survey at [www.nwac-hq.org](http://www.nwac-hq.org)
- Completing a confidential telephone survey by contacting the MRP info line at 1-866-796-6053 toll free
- Completing a one or two page written submission, and either mailing, faxing or emailing it to NWAC.

The participant's kit includes materials that explain MRP in greater depth, as well as information on websites and publications that participants may also use to discover more about MRP.

## WHY ARE WE HERE?

It makes sense that the people who have been affected by matrimonial real property issues have a direct say in developing effective and responsive national solutions.

The purpose of these by-invitation sessions and the public consultation hearing is to:

- 1) To provide information about the MRP initiative
- 2) To share with one another what we know about MRP and how it affects women and children
- 3) To identify and describe best practices that surround MRP
- 4) To identify and describe First Nations customary family laws
- 5) To consider legislative change as an approach to resolving MRP issues.

NWAC will be hosting 12 consultation sessions and public workshops to obtain this input across Canada by November 30, 2006. Due to the limited time frames, it is important to review the information provided by NWAC in the kits to get a full understanding of the issues and processes currently in place so participants can provide the best solutions for their home community.

In some provinces or territories the local NWAC PTMA association may also be conducting consultations or research work related to the MRP initiative.

### **Informed Consent - Information for Participants**

We appreciate your help in carrying out this important work. Your decision to take part in this consultation is voluntary, and it is your right to know how the information you share will be used. The sessions will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community. Your decision to accept this invitation and participate in the session is regarded as consent for NWAC to use the information you share for these purposes.

If you do not want some of your comments to be recorded, please be careful not to speak in the conference room, or feel free to leave the room for a time. We wish to assure you that we will use the information you provide in a respectful and appropriate way to facilitate positive change for Aboriginal women.

## ETHICS AND PROTOCOLS

NWAC will follow the following ethics and values as it undertakes this solution-focused consultation process with community members.

### **Caring**

NWAC is committed to our caring for one another as this consultation process is underway. NWAC will:

- Be aware and sensitive to what participating women and families are experiencing as they move through this process.
- Respect the sense of inequality and injustice that will be an integral part of this process.
- Remind each other of the vision and purpose of undertaking the MRP solutions focussed consultation.
- Be mindful of issues of confidentiality, ensuring informed consent is obtained from participants, and that they fully understand their rights.

## **Sharing**

It is important to remember to share information and knowledge with one another in a respectful way. Elders remind us to always treat people the way we wish to be treated. NWAC recognizes the need to build bridges of communication and to recognize that not everyone communicates in the same way. NWAC's role and responsibility is to enable the sharing of knowledge, ideas and thoughts. The role of NWAC is to engage in this process in a non-exploitative way and to present the outcomes in a respectful manner.

## **Trust**

Knowledge and trust are empowering and healing. The participants are sharing their knowledge and NWAC will treat this with the respect, trust and honesty it deserves. NWAC is committed to interpreting the information it receives within the culturally safe context in which it was originally shared.

## **Strength**

NWAC appreciates that each person has special gifts. It is important to recognize the strengths of one another and use these strengths to move towards a better understanding of the challenges faced by Aboriginal women and the gaps within the current system. Not everyone has the same gifts, but our strengths complement one another and provide a holistic, balanced approach to meeting the vision of the MRP initiative. The overall intent is to move towards the achievement of safety, equality and well-being for Aboriginal women.

## **CONSULTATION PARTICIPANTS**

At its national consultations, NWAC is seeking your experience, knowledge, and ideas.

### **Experience**

Any new approach will have to deal with a wide range of situations experienced by individual women. Sharing these experiences through the consultation process will assist in identifying all aspects of the MRP situation.

### **Knowledge**

NWAC hopes that these consultations will provide information on contemporary First Nations practices and policies that would be helpful precedents and models. NWAC will strive to incorporate traditional wisdom and practices into any consensus recommendations.

### **Ideas**

Many complex questions must be explored in order to arrive at a good solution. One of the aims of the consensus-building process is to propose a good law to fill the present gap. NWAC does not believe, however, that simply passing a law will do all that is needed to address the matrimonial real property issues that have arisen. The consultations, therefore, seek input not just on the features of a new law, but also about other measures that should form part of a workable solution to these issues.

## DAY ONE

### MEET AND GREET

|      |   |
|------|---|
| 5:00 | Registration & Packages                 |
| 5:30 | Introductions & Welcoming Addresses     |
| 6:00 | Dinner                                  |
| 7:00 | Meet & Greet Informal Discussions       |
| 9:00 | Closing Remarks Elder's Closing Address |

## FACILITATOR NOTES:

### A Time to Tell your Stories

The purpose of the day one Meet and Greet for invited participants is to provide an informal and closed event where women have a safe space to share their stories.

After participants have registered and received their packages, the facilitator extends a welcome to everyone. The facilitator introduces the person who will extend the Welcoming Address. The facilitator may also lead the introductions of all participants.

The facilitator or person doing the welcome address asks the Elder or Traditional person for their opening address.

After dinner, informal discussions will be held. These will be moderated by the President or a designated alternate. The purpose of these discussions is to provide a venue in which women can share their personal stories, and begin to develop a caring and trustful relationship with one another and with the moderator.

The facilitator should remind participants to review the materials provided to them so they can be better equipped for the discussions tomorrow.

At the end of this time period, the group leader asks the person who will be making the closing remarks to begin.

The group leader then asks the Elder or Traditional person for a closing address.

**NOTE:** The role assumed by the facilitator in leading this session will be directed by the President's or designated alternative person's level of involvement in managing the session. The facilitator should be prepared to assume as much or as little of the direction of the session as is consistent with the preferences of the President or designated alternative leader.

## FACILITATOR NOTES:

### A Time to Provide your Solutions

The purpose of the day two Focus Group sessions for invited participants is to provide an informal space where women have a safe and secure place to develop their ideas for solutions to the MRP situation.

After participants have registered and received their packages, the facilitator begins by extending a welcome to everyone and introduces the person making the Welcoming Address.

The Facilitator asks the Elder or Traditional person to begin with an opening address.

The Facilitator asks each person to introduce themselves by name only. Extended introductions were conducted on the previous evening. The purpose of this introduction is merely to remind participants of each others names. Also, any new guests or participants should be introduced i.e. the INAC observer.

The facilitator explains that there will be four focus group sessions, each of which will explore a different question. The large group will be divided into two or more smaller groups, each of which will discuss the same questions, in the same order. The purpose of dividing into smaller groups is that this will allow the participants more time to speak than if we stayed in one large group.

The facilitator advises the participants that there will be two health breaks, and lunch between 12:00 and 1:00 pm.

The facilitator reminds participants about informed consent. Seen on next page...

## DAY TWO

### FOCUS GROUP SESSIONS

|       |                                    |
|-------|------------------------------------|
| 8:30  | Registration                       |
| 9:00  | Welcoming Addresses                |
| 9:15  | Focus Group #1                     |
| 10:30 | Break                              |
| 10:45 | Focus Group #2                     |
| 12:00 | Lunch                              |
| 1:00  | Focus Group #3                     |
| 2:30  | Break                              |
| 2:45  | Focus Group #4                     |
| 3:45  | Key Messages                       |
| 4:15  | Closing Remarks<br>Elder's Closing |

We appreciate your help in carrying out this important work. Your decision to take part in this consultation is voluntary, and it is your right to know how the information you share will be used. The sessions will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community.

Your decision to accept this invitation and participate in the session is regarded as consent for NWAC to use the information you share for these purposes.

Participants may also choose to remain silent, if they do not wish to have their comments recorded, or they may choose to temporarily leave the room. We wish to assure you that we will use the information you provide in a respectful and appropriate way to facilitate positive change for Aboriginal women.

The intention of the organizers is to record all sessions, and synthesize the material for use in final reports and submissions related to the MRP initiative. There is an INAC observer present in the sessions today; if this is difficult for you then we request that you attend a focus group where the INAC observer is not present.

**NOTE:** If necessary, a part of the session may be held “in camera” with the INAC observer being requested to leave for that portion of the sessions, although this is not encouraged as it will result in the loss of information.

## **Closing**

At the end of the day all participants return to the large room for the closing addresses. The facilitator asks the person who will be making the closing remarks to begin.

The facilitator then asks the Elder or Traditional person for a closing address.

## FACILITATOR SPEAKING NOTES:

We need to share the important message that this isn't just a "women's issue". The family and the community are also affected if a woman and her children experience difficulties caused by the division of matrimonial property following the dissolution of a relationship.

The purpose of this focus group is to identify measures, land codes, housing policies, band council by-laws or other practices that are already in place around MRP, and to identify the effectiveness of these measures in achieving fairness and equality between former spouses when a relationship breakdown requires the division of formerly joint property. Some of these measures may be effective and others not: the purpose is to identify what is currently in place in communities, as well as to identify whether women perceive these practices to be fair and equal.

### Facilitator Prompts:

If participants appear blocked or have temporarily run out of comments, the following wide variety of situations may be used as prompts to generate additional conversation in any of the four focus groups today.

#### Types of Family Structures

- marriage by traditional custom or practice
- state- or church-performed marriage
- common law relationship
- same-sex relationship
- extended family living together
- children of the couple, or a blended family of the children of each partner, or some combination, are in the family
- children still living at home, or grown and left
- couple or a member of the couple caring at home for another family member dependent on him or her

#### Status and Band Membership

- both spouses have status and are members of the reserve where land is located
- only one spouse has status
- only one spouse is a band member
- children have status and (a) band members or (b) not members
- children do not have status but are band members
- children are neither status nor band members but may live as minors on reserve under the *Indian Act*

## DISCUSSION

### QUESTION

#### #1

What measures are already in place in First Nations communities to deal with the division of matrimonial property? Were these measures helpful to you in enabling a fair and equal division of property?

**NOTE:** It may be helpful to reference the supporting documentation in the MRP kits for this question. In the information kit there is a section that is called 'An Overview of the Systems in Place'.

### Types of Land Tenure

- Certificate of Possession in name of one spouse, both spouses or another person
- custom allotment
- location ticket
- no evidence of title Issued (NETI),
- Notice of Entitlement (NE)
- Band CPs
- First Nations Land Management Act – consult land/MRP codes passed or not passed
- Set-aside lands under self-government agreements
- Land claims settlements

### Kinds of Family Home or Other Matrimonial Real Property

- couple lives on land
  - for which one (or both) has the CP (or other entitlement)
  - for which the family of one of them holds the CP or other entitlement
  - leased from the First Nation
- couple lives in a home
  - where both contributed to the cost of building or buying it (or where only one paid the cost)
  - in a band-owned home
  - in rental property
- a member of the couple has received an interest in the land or home by gift or inheritance:
  - (a) before they start living together
  - (b) after they have become a couple
- the couple or one of them has a business in their home or on other reserve property, from which the family is supported
- the couple, or one of them, has trapping, fishing or hunting rights on a particular part of the reserve or other band lands, from which the family is supported

### Situations to which a law might apply

- where the couple is still living together and there are no problems
- where the couple is separating
- death of one member of the couple
- spousal violence
- the couple want to make a contract or agreement, either before marriage or on marriage break-up



## **FACILITATOR SPEAKING NOTES:**

The research conducted on this issue has identified that women and their children are more often negatively affected by the gap in MRP legislation than are men. The reasons for this are varied, and may include:

- The imposition of rules and policies that discriminate on the basis of sex and race
- The residual effects of colonialism and the discriminatory practices that are linked to colonial legislation, policies and practices.
- The impact of colonialism on traditional customs and practices
- The effects of family violence, substance misuse, and poverty on individuals, families and communities
- The effects of limited access to resources and capital that affect infrastructure in communities. For example, the lack of adequate housing that exists on many reserves.

The purpose of this focus group is for participants draw from their previous experiences about what would have made things better for themselves or their children. Out of past experiences, participants are asked to identify elements, services, policies or practices that would have been beneficial or helpful to them while they were living through this experience.

### **Facilitator Prompts:**

If participants appear blocked or have temporarily run out of comments, the following needs could be used to generate more discussion:

How could these solutions meet several different needs?

- provide a means for settling differences cooperatively, if the couple wishes to do so
- provide a way of dealing with situations where the parties cannot agree
- be flexible enough to make provision for short-term, long-term, and emergency situations
- enjoy the trust and respect of individuals and the community

What other models could be used to solve issues?

- traditional decision-making and dispute-resolution
- First Nations institutions or tribunals
- courts
- alternative dispute resolution (ADR)

## **DISCUSSION**

### **QUESTION**

**#2**

When you experienced MRP issues because your relationship ended, what could have been done differently that would have helped you, and/or would have provided a fair and equitable division of matrimonial property?

## DISCUSSION

### QUESTION

#3

What promising or innovative practices are you aware of that are in existence for the fair and equitable treatment of MRP issues?

What do you know about First Nations customary family laws? How might they assist in providing fair and equitable division of matrimonial real property on reserve?

## FACILITATOR SPEAKING NOTES:

There are a variety of ways in which the MRP gap could be addressed. While legislative approaches offer one avenue of redress, they are not the only option.

The purpose of this focus group is for participants to identify best practices or innovative approaches that they are familiar with or have heard about. Participants are also asked to identify how First Nations customary family laws and practices could address the MRP issue.

### Facilitator Prompts:

If participants appear blocked or have temporarily run out of comments, the following systems or other resources may generate ideas about coordination and systems that are necessary. The facilitator may also refer to the prompts provided for focus group one and two for additional assistance.

Other linked systems or resource needs:

- adequate supply of housing on reserve
- services and alternative shelter for women and children affected by domestic violence
- access to legal advice and representation
- access to other advice (for example, property evaluators)
- availability of credit and forms of security that will allow the financing of property transactions or “buy-outs” of spousal interests
- a registry system for interests in property that is efficient and accessible

## FACILITATOR SPEAKING NOTES:

There are three legislative change options that have been proposed by INAC.

These are:

1. The application of Provincial / Territorial laws on reserves.
2. The application of Provincial / Territorial law apply in interim while developing own.
3. Substantive federal law on MRP to set out rules in interim while developing own.

The purpose of this focus group is to present information on the three legislative solutions that are being presented by the federal government to address the MRP issue. Participants are asked to reflect on these three approaches, and to discuss the meaning and impact of a legislative approach.

### Facilitator Prompts:

The authority to make laws about matrimonial real property on reserve is described below.

Canada (the federal government) has authority under the Constitution over Indians and lands reserved for Indians, and over marriage and divorce. This includes the power to pass laws about matrimonial real property on reserve.

First Nations do not now have any authority under the Indian Act to pass even by-laws on matrimonial real property. Land claims or self-government agreements typically deal with the Nation's power to manage their land, including passing matrimonial real property codes. First Nations coming under the First Nations Land Management Act have the power to pass land codes, including rules about matrimonial real property, but that power is seen by Canada as power delegated to First Nations, not theirs by inherent right or Treaty. Canada has not recognized First Nations' inherent right to govern.

*Provinces and territories* pass matrimonial real property laws but have no power to make them apply on reserve. Provincial land tenure systems based on fee simple title are different from the methods of land-holding on reserve. Under the Constitution, Canada can pass a law making provincial matrimonial property law apply to reserves in that province; this is called "incorporation by reference". However, court orders and other arrangements made under provincial matrimonial law are all based on the assumption of fee simple title, and so incorporation by reference could contribute to the erosion of the systems of land tenure now applicable to reserve land.

## DISCUSSION

### QUESTION

#### #4

What are your opinions on the three options for legislative change presented?

What does legislative change mean to you?

What kind of positive/negative impacts could this have?

What non-legislative solutions might you suggest?

Remind participants of others ways to participate if they know someone that could have participated but did not receive notice in time.

- Confidential online survey
- Confidential telephone interview
- Two page written submission

Also inform them of the public session tomorrow.

## DAY THREE

### PUBLIC HEARING

|       |   |
|-------|---|
| 8:00  | Registration and Packages                                       |
| 8:45  | Welcoming Addresses   |
| 9:00  | Public Hearing  |
| 10:30 | Break   |
| 10:45 | Public Hearing  |
| 12:00 | Closing Remarks<br>Elder's Closing<br><br>Light Lunch to Follow |

## FACILITATOR SPEAKING NOTES:

### A Time for Public Oral Presentations & Submissions of Private Written Presentations

After participants have registered and received their packages, the facilitator begins by extending a welcome to everyone. The facilitator introduces the person who will extend the Welcoming Address. The facilitator next introduces the Elder or Traditional person who will speak the opening Elder's address.

The purpose of the day three Public Hearing is to provide a space and time for members of the public who were not invited to the focus group sessions to speak and/or submit written presentations on MRP. The facilitator then provides some background about the public session being focussed around SOLUTIONS and explains the process of the consultations. As well as informing the attendees of other ways to participate. Some attendees may like an explanation as to where this was advertised. Postings were sent by fax, radio ads were broadcasted and newspaper ads were published.

### Informed Consent - Information for Participants

The facilitator advises the participants about informed consent.

We appreciate your help in carrying out this important work. Your decision to take part in this consultation is voluntary, and it is your right to know how the information you share will be used. The sessions will be recorded and transcribed, and the comments and information will be used to develop a general consultation report. They will also be combined with other research to develop a NWAC position paper. NWAC also hopes to release a report to give information back to the participants and community. Your decision to accept this invitation and participate in the session is regarded as consent for NWAC to use the information you share for these purposes.

If you do not want some of your comments to be recorded, please be careful not to speak in the conference room, or feel free to leave the room for a time. We wish to assure you that we will use the information you provide in a respectful and appropriate way to facilitate positive change for Aboriginal women.

The facilitator will moderate two public hearing sessions in which individuals are able to speak for approximately three minutes, or to formally submit a written submission. Assistance may be needed to get discussions started, refer to discussion guide.

The facilitator will introduce the person making the closing remarks.

The facilitator will introduce the Elder or traditional person who will make the closing Elder's Address.

The facilitator will thank everyone for coming and remind participants of other ways to participate.

## NOTES



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# FOCUS GROUP DISCUSSION QUESTIONS



## Discussion Question #1

What measures are already in place in First Nations communities to deal with the division of matrimonial property? Were these measures helpful to you in enabling a fair and equal division of property?

## Discussion Question #2

When you experienced MRP issues because your relationship ended, what could have been done differently that would have provided a fair and equitable division of matrimonial property?

## Discussion Question #3

What promising or innovative practices are you aware of that are in existence for the fair and equitable treatment of MRP issues? What do you know about First Nation customary family laws? How might they assist in providing fair and equitable division of matrimonial real property on reserve?

## Discussion Question #4

What are your opinions on the three options for legislative change presented? What does legislative change mean to you? What kind of positive / negative impacts could this have? What non-legislative solutions might you suggest?

The three options presented are:

1. Application of Provincial / Territorial law on reserves.
2. Provincial / Territorial law apply in interim while developing own.
3. Substantive Federal law on MRP to set out rules in interim while developing own.