



MATRIMONIAL REAL PROPERTY ISSUES & THE *INDIAN ACT*

OFF-RESERVE ABORIGINAL SURVEY

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The Congress of Aboriginal Peoples (CAP) has been invited by the Minister of Indian Affairs and Northern Development, the Honourable Jim Prentice, to participate in a national dialogue to resolve the *Indian Act's* failure to deal with disputes over Matrimonial Real Property on reserve lands (MRP).

Outside of the reserve context, MRP issues are managed by provincial laws that guarantee that real property (land and homes and other assets tied to land) cannot be disposed of by either party to a relationship that is failing or failed without protection for the rights of the other partner. In all provinces, these rights extend to married persons – they deal with who may possess the marital home during a break-up or in the case of family violence, and prevent either partner from selling the home without providing an equal or equitable share in the home's value to the other partner. In some provinces, these rights are extended beyond formally married partners to common law partners, to Aboriginal customary marriages and to same-sex partnerships.

In this questionnaire, we are asking for your advice and input on what you think is the best way to resolve the outstanding gaps in federal legislation regarding matrimonial property rights on reserve lands. The government of Canada is advancing three main options – the adoption of provincial laws (which vary from province to province), the use of provincial laws with the option of Bands to opt-out of those laws where they create their own laws that meet minimum standards, and a new federal law setting basic standards for MRP rights protection, also with the right of Bands to opt-out of the federal model by adopting their own laws meeting certain standards.

Our main question is simple: which option or approach do *you* think is most likely to close the gaps in the *Indian Act* and to help those affected by MRP disputes protect their rights and interests. This may seem to be a fairly straight-forward question, but there are complex issues at play. There are so many flaws and gaps in the *Indian Act* that amending it on any one issue can invite valid demands to reform the legislation to address other and often closely related problems – like the absence of accountability and governance rules, the failure of the Act to provide appeal mechanisms regarding Band decisions, and major issues associated with the *Indian Act's* membership and status provisions. In addition, ownership of and rights to homes and land interests on reserve often raise treaty rights issues – since about 50% of all reserves in the country were established originally by treaties. Treaty rights are protected by the Constitution from any negative effect or infringement by ordinary legislation like the *Indian Act*, and so any change to the *Indian Act* itself can have un-intended impacts on treaty rights.

To assist you in understanding the issues and options, this questionnaire comes with some information materials as well as a reference glossary. We hope this material is of assistance, and you can find additional background information at our website: www.abo-peoples.org/mrp.

We invite you to think carefully in answering the questions presented – for yourself and for your children and your children's children.

Meegwetch

Mussi

Patrick Brazeau
National Chief

Lillian George
Portfolio Chief

Who Should Complete This Questionnaire?

You should complete this questionnaire if you are included in any of the following categories:

- An Indian or First Nation person with ties or connections to any reserve community, whether you are status or non-status, a member of a band or a non-member;
- An Indian, Métis, Inuk, or non-Aboriginal person who has experienced a breakdown of a matrimonial, common law or custom relationship where property on reserve has been at issue;
- A person who has directly experienced the effects of an MRP dispute, or knows of someone who has experienced such a dispute; and
- Anyone who has views to share on how to provide fairness and legal protection for the individuals involved in matrimonial disputes or family violence on reserve.

QUESTIONS: (Please *circle* the number next to your answer)

1. What is your gender?

1 = Male

2 = Female

2. In what age group are you?

1 = Under 16

2 = 16-25

3 = 26-35

4 = 36-55

5 = Over 55

3. Please indicate which Aboriginal group or people you identify as (whether you are status or non-status):

1 = Indian or First Nation

2 = Métis

3 = Inuit

4. If you are a member of an Indian Act Band or a First Nation (whether or not it is an Indian Act Band), please identify that Band or First Nation community:

5. Are you a registered or "status" Indian under the Indian Act?

1 = Yes, I am registered under the Indian Act

2 = No, am not an Indian Act status Indian

3 = I am entitled to "status" but I have not applied to be registered

4 = My application for registration is still being processed by the government

9 = I'm not sure if I'm a "status" Indian or not

6. Do any of your children have registered status under the Indian Act?

1 = Yes, they all do

2 = Some do, and some do not

3 = They all have status, but different types

4 = None of my children have *Indian Act* status

5 = I have no children

9 = Don't know

7. Do any of your children have membership in an Indian Act Band? (Please indicate which statement best describes your children's membership situation).

- 1 = They all have membership in my band
 - 2 = Some have membership in my band, some in their other parent's band
 - 3 = None of my children have band membership in any Band
 - 4 = Some of my children have membership in a Band, but some do not.
 - 5 = Not applicable (I have no children)
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8. In which province/region do you now live?

- | | | |
|----------------------|--------------------|---------------------------|
| 1 = British Columbia | 6 = Manitoba | 11 = Nova Scotia |
| 2 = Yukon | 7 = Nunavut | 12 = Prince Edward Island |
| 3 = NWT | 8 = Ontario | 13 = Newfoundland |
| 4 = Alberta | 9 = Quebec | 14 = Labrador |
| 5 = Saskatchewan | 10 = New Brunswick | 19 = Out of the country |
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9. In which province/region is your original Aboriginal community?

- | | | |
|----------------------|--------------------|---------------------------|
| 1 = British Columbia | 6 = Manitoba | 11 = Nova Scotia |
| 2 = Yukon | 7 = Nunavut | 12 = Prince Edward Island |
| 2 = NWT | 8 = Ontario | 13 = Newfoundland |
| 4 = Alberta | 9 = Quebec | 14 = Labrador |
| 5 = Saskatchewan | 10 = New Brunswick | 19 = Out of the country |
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10. What is your marital status at present?

- | | |
|---------------------------------------|--|
| 1 = married under provincial law | 5 = separated |
| 2 = traditional or customary marriage | 6 = single |
| 3 = common law relationship | 7 = widowed |
| 4 = divorced | 8 = same sex/two-spirited relationship |
-

11. If you have had children, are any of them living with you at present?

- 1 = I have no children, or all children have left home
 - 2 = All children live with me
 - 3 = Some children live with me, and some with another parent or guardian
-

12. Do you think that people who are not band members should be able to continue to live in the reserve community after the breakdown of the relationship?

- 1 = Yes, absolutely
 - 2 = Yes, but only if they have family or children from that community
 - 3 = No
-

13. Do you think it is important to allow homes on a reserve to be owned or co-owned by non-member spouses of band members?

1 = Yes

2 = No

9 = Don't Know

Do you have any

Specific reason for your view? _____

**FOR COMPLETION BY PERSONS DIRECTLY INVOLVED
IN MATRIMONIAL PROPERTY DISPUTES ON RESERVE
(If you have not been directly involved in such a dispute, please go to Question 23)**

14. Did you experience a breakdown of your marriage or relationship that involved property on reserve?

1 = No (Please continue at Question 15)

2 = Yes (Please go to Question 16)

15. Have you stayed in a relationship – even an unsafe one – in order to avoid losing possession of the marital home on reserve?

1 = Yes

(Please continue at Question 19)

2 = No

(Please continue at Question 23)

16. Did you own or share a home on reserve while married or in your relationship?

1 = Yes

(Please continue to Question 17)

2 = No

(Please continue to Question 19)

17. Was the home in your own community, or that of your former partner's?

1 = My own community

3 = Another community

2 = My partner's community

18. Did you obtain a share of the value of the home after your relationship broke up?

1 = Yes, an equal share

2 = Yes, but less than what I thought was fair

3 = No, I did not receive any share of the home's value

19. In the reserve community involved, do you know of any formal or informal measures in place to deal with the division of matrimonial real property?

1 = Yes, there is a formal, independent process.

2 = Yes, but you must be a band member to apply for help.

3 = Yes, but it's informal – and wasn't enforced by the Band Council or the courts.

4 = No, there is no process in place (Please go to Question 21).

9 = Unsure/Don't know.

20. In your view, how effective or helpful are these measures in the community concerned?

1 = Very effective and helpful

2 = Somewhat effective and helpful

3 = They make no difference

4 = They make the situation somewhat worse

5 = They make the situation much worse

9 = Unsure/Don't Know

21. In the reserve community involved, do you know of any programs in place to protect spouses and children in the case of marital disputes or family violence (e.g., a women's shelter)

1 = Yes

2 = Yes, but I was not eligible for that assistance

3 = Yes, but I was not confident that my needs or security and safety would be protected.

4 = No (Please continue at Question 23).

9 = Unsure/Don't know

22. In your view, how effective or helpful are these programs in the community concerned?

1 = Very effective and helpful

2 = Somewhat effective and helpful

3 = They make no difference

4 = They make the situation somewhat worse

5 = They make the situation much worse

9 = Unsure/Don't Know

23. Which of the following statements are you most in favour of? (Please check one only):

- 1 = Laws dealing with matrimonial real property on reserve (MRP) should be the same for all those affected, no matter where they live in Canada
- 2 = Laws dealing with MRP issues should vary from province to province, just like they do now for other types of marital property issues
- 3 = Laws dealing with MRP issues should vary from Band to Band
- 9 = Unsure/Don't Know

Context: Provincial laws dealing with matrimonial disputes already apply on reserve when it comes to most issues – like child custody and movable property. The big exception is possession or sale of land or homes on the reserve, because the Indian Act now prevents provincial laws from being enforced on reserve.

24. Do you think that the provincial laws protecting equal rights to matrimonial real property should be extended to and enforceable on reserves?

- 1 = Yes 2 = No 9 = Unsure/Don't Know

Context: Provincial laws dealing with matrimonial property, including real property, vary from province to province. Some provinces do not protect the rights of common law or customary marriage partners, while all provinces protect the rights of formally married couples. Some provinces provide assistance in marital dispute resolution and to protect people from family violence (such as ordering temporary possession of the home for only one spouse), while others do not.

25. Which of the following statements best reflects your view? (Please check only one):

- 1 = Provincial laws already deal with most aspects of matrimonial property on reserve (bank accounts, cars, etc.) and so it makes sense to apply provincial laws to the possession and sale of the home as well
- 2 = People affected by matrimonial real property issues on reserve should not be treated differently depending upon which province they live in -- they should have the same rights regardless of which province the reserve is in
- 2 = Matrimonial property issues like possession or sale of the home should be controlled only by the Band's own laws, and not those of the province or of the federal government

26. Do you feel that you or any member of your family has suffered a loss of contact with your family, or community, directly as a result of the absence of protection for matrimonial property rights on reserve?

- 1 = Yes 2 = No 9 = Unsure/Don't Know

Context: The *Indian Act* has many flaws and ‘gaps’, because it is still based on a 19th century plan to assimilate Indian people. In addition to the MRP issue, other ‘gaps’ include discrimination against non-resident members’ voting rights, a lack of accountability to band members or protection of individual rights, and the problem of membership and status control.

27. *Which of the following statements best reflects your opinion about Indian Act "gaps" and how to address them? (Please check only one)*

- 1 = The MRP issue cannot be fixed by a "piecemeal" amendment to the *Indian Act*. The entire *Indian Act* needs to be replaced.
- 2 = Matrimonial property issues are too important to wait for broader change down the road. Action to fix the MRP issue is needed now.
- 3 = MRP issues are closely connected to certain other issues -- like band government accountability or status and membership rights. While the entire *Indian Act* may take time to reform or replace, these closely connected issues need to be addressed together.

28. *What do you think about a new federal law to deal with the issue in the same way all across the country, which would give spouses equal rights to possession or a fair share of the home, but not threaten any break-up of the reserve land-base? (Please check only one)*

- 1 = Very strongly in favour of federal law in this area.
- 2 = Somewhat in favour of this approach.
- 3 = Unsure about this idea.
- 4 = Somewhat opposed to a federal law handling the issue.
- 5 = Very opposed to this approach.
- 9 = Don't Know

Context: Some Indian leaders argue that issues like the possession of homes on reserve or requiring the sale of homes to divide it’s monetary value between couples should not be made subject to either provincial or federal laws. They argue that such issues should be left to the Band to deal with under its “inherent right” to self-government.

29. *Which of the following statements best reflects your view? (Please check one response only)*

- 1 = As long as Bands remain under the *Indian Act*, and are not self-governing, federal or provincial laws for Matrimonial Real Property should protect marriage or common law/custom partners.
- 2 = *Indian Act* Bands should not be required to wait for self-government to be able to control MRP issues like possession or sale of the family home. Band Councils can be trusted to deal with these matters without any federal or provincial rules applying.
- 3 = As long as Band Councils are under the *Indian Act*, they should be given the necessary power to pass MRP laws, just as they now pass laws for membership or property taxes. But if a Band Council doesn't pass its own law, fall-back rules to protect MRP rights need to be in place.

30. *Some First Nation leaders have suggested that there is a fourth option to deal with the MRP issue: involving recognition that the issue is already able to be dealt with by existing Chiefs and Councils, or can be resolved as long as existing Chiefs and Councils are recognized as holding the necessary jurisdiction to deal with the matter – with no need for fall-back federal or provincial laws. How do you feel about this approach, which would involve leaving the matter up to Chiefs and Councils to decide on?*

1 = Very strongly in favour of this approach.

2 = Somewhat in favour of this approach.

3 = Unsure about this idea.

4 = Somewhat opposed to Band Councils being left to handle the issue.

5 = Very opposed to this approach.

9 = Don't Know

31. *About half the reserves in Canada were set up as a result of formal Treaties. Do you believe that the Indian Act should control who has Treaty rights, including rights to treaty-based reserve interests? (Check one response only)*

1 = Yes, the *Indian Act* should control all reserve-based rights and determine who gets benefits of reserve lands and property, even when that goes against Treaty rights.

2 = No, Treaty rights – including access to treaty-based reserve lands and property – should not be extinguished or defined by the *Indian Act*.

3 = The *Indian Act* rules on membership, status and property rights on reserve conflict with the spirit and intent of the Treaties that established many reserves. A reconciliation is needed to balance the interest of all those who hold such Treaty rights.

Context: The Congress of Aboriginal Peoples and a number of our regional affiliates are actively consulting with off-reserve Aboriginal people on the MRP issue – and particularly First Nation (status and non-status) people – to obtain your views. Once these consultations are completed – by early February, 2007 – the federal government has announced that it wishes to enter into a “consensus-building” phase of discussions before proceeding to introduce legislation. The Assembly of First Nations and the Native Women’s Association of Canada have already been assured a role in this consensus-building phase.

32. *Do you think the Congress of Aboriginal Peoples should also participate in the Consensus-building phase of discussions in order to represent the interests of off-reserve First Nation and other Aboriginal interests?*

1 = Yes

2 = No

9 = Unsure/Don't Know

