

RECLAIMING OUR WAY OF BEING:

MATRIMONIAL REAL PROPERTY SOLUTIONS



PEOPLE'S REPORT: "WHAT WE HEARD"



Acknowledgements

President Beverley Jacobs, on behalf of the Board of Directors and staff of the Native Women's Association of Canada wishes to extend a heartfelt thanks to all the youth, women, and men who shared their stories and who assisted in finding solutions during the Matrimonial Real Property Solutions initiative.

Many individuals faced personal risk because of their decision to participate in this process, yet they chose to do so in order to assist in the identification of solutions that will benefit all Aboriginal people. President Jacobs expresses appreciation for their strength, knowledge, and passion, and appreciates their knowledge of the responsibilities we all share to work towards the healthiness and well-being of their communities. Everyone has played a role in ensuring we are all planning and thinking about our future generations.

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Introduction

The Native Women's Association of Canada (NWAC) works to help empower women by being involved in developing and changing legislation which affects them, and by involving them in the development and delivery of programs promoting equal opportunity for Aboriginal women.

The objectives of the Native Women's Association of Canada are:

- to be the national voice for Native¹ women;
- to address issues in a manner which reflects the changing needs of Native women in Canada;
- to assist and promote common goals towards self-determination and self-sufficiency for Native peoples in our role as mothers and leaders;
- to promote equal opportunities for Native women in programs and activities;
- to serve as a resource among our constituency and Native communities;
- to cultivate and teach the characteristics that are unique aspects of our cultural and historical traditions;
- to assist Native women's organizations, as well as community initiatives in the development of their local projects;
- to advance issues and concerns of Native women; and to link with other Native organizations with common goals.

One issue that NWAC has been working on since the 1990s is the problem of Matrimonial Real Property (MRP) on First Nation reserves.



Matrimonial Real Property (MRP)

The term “matrimonial real property” refers to the house or land that a couple lives on or benefits from while they are married or in a common law relationship. In 1986, the Supreme Court of Canada ruled that provincial and territorial laws on matrimonial real property do not apply to reserve land. The *Indian Act* also does not contain any laws that apply to MRP on reserve land. This gap in the law has had serious consequences, especially for women who live on reserve after their marriage.

When a marriage or relationship ends, couples who live on reserve cannot use any laws to help them carry out their plans if they agree on how to deal with their matrimonial real property. If the couple does not agree on how to deal with their matrimonial real property, there is no law they can use to help them resolve this dispute.

This lack of legal clarity and protection also means that women who are experiencing violence, or who have become widowed, may lose their homes on the reserve. NWAC understands that this gap in the law harms Aboriginal women and children more often than Aboriginal men. Women and children who have to move away from the reserve lose the support and help of their families, friends, and community. They also lose their access to benefits and programs that are only available to people living on reserve. The entire community will miss the women and her children's contributions as well, if they have to move away from the reserve.

While the ideas for solutions included in this report are community based, it is important to understand that these problems developed because of federal legislation and policies (or the lack of legislation and policies) that discriminated against Aboriginal peoples. This discrimination occurred at both the individual and the family level: it removed their preferred means to structure our families and our communities.

NWAC was pleased to be able to work in partnership with the Assembly of First Nations (AFN) and Indian and Northern Affairs Canada (INAC) to try and find solutions to this problem. This report outlines what NWAC heard as we listened to women, men, youth and elders across the country.

¹ This paper uses the term Aboriginal people as a collective name for the original people of Canada. This term is also used as per s.35(2) of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. The term “aboriginal peoples of Canada” in the Constitution Act refers to the “Indian, Inuit and Métis. The terms Native, First Nation, and Aboriginal are used interchangeably depending upon the documentation of the historical and legal language used.

MRP Solutions Initiative

Approach

From start to finish, NWAC was careful to make sure that the ideas for solutions came from the people who have had personal experience with MRP, and reflected their own experiences, knowledge and culture. NWAC was especially careful to make sure that the voices of women were heard in this process. As one participant said:

"I think there are just layers and layers like an onion. I always say when it comes to Aboriginal women it's just like an onion, one layer after another after another after another. We're so pushed down by all those determinants that it makes it quite difficult to hear our voice."

NWAC worked hard to make sure that individuals were able to participate and provide their ideas even if they could not come to a workshop or session in person. We understood that some women were concerned about their safety as a result of their experiences, especially if they decided to participate in a session in person.

"If NWAC is determined to support this, NWAC will have to make sure that we're protected because I will tell you right now, I've got a few phone calls, some women who couldn't get here and there are still some women that want to go and their fear is when they return there will be somebody locking their door."

NWAC is in full compliance with Privacy laws and took extensive steps to keep individual's names private: for this reason the comments contained in this report are not attributed to a specific person or region. All comments, however, came directly from the individuals who participated in the MRP Solutions initiative.

Activities

There were a variety of ways that individuals could provide information and their ideas for solutions about MRP to NWAC. These included:

- attending a Public Hearing and either speaking on the record or handing in a written submission
- attending a "by-invitation" consultation session
- filling out a confidential survey, either on the internet or on paper
- calling NWAC on the 1-800 toll free line, and completing a telephone survey or an interview.
- attending a regional PTMA workshop or consultation session
- mailing, emailing or faxing a written submission to NWAC
- attending a "by-invitation" focus group. A small number of special meetings were held to get ideas from people who could not come to the public hearings or for people who NWAC believed it was especially important to hear from. Two special focus group meetings were held for Elders, for example; one in Western Canada and one in Central Canada. A focus group for men was held in Ontario, and one for federally sentenced women at the Okimaw Ochi Healing Lodge, SK.

NWAC staff read all the ideas, suggestions and comments that came from each of these sources and grouped them into similar themes. This information was used to write the vision, principles, and recommendations that are in this report and in other documents that NWAC has produced on MRP. A list of the locations of the public hearings and by-invitation consultation sessions is included in Appendix A of this report.

Timelines

On June 20, 2006, the Honourable Jim Prentice, Minister of Indian Affairs and Northern Development, appointed Wendy Grant John as his Ministerial Representative. Her role was to lead the overall process and work with the three partners – NWAC, the AFN, and INAC – to come to a consensus on a solution to MRP.

On September 29, 2006, NWAC, AFN, and INAC jointly announced the beginning of the Canada-wide consultation process on MRP solutions.

NWAC conducted our information gathering activities that form the basis for this Report and other reports between September 29, 2006 and January 29, 2007. NWAC held 17 consultation sessions for individuals from each province and territory, except Nunavut. Although the Aboriginal People who live in Nunavut are not directly affected by the *Indian Act*, their rights are affected by the MRP issues. NWAC also held 12 public hearing sessions for each province and territory (except Nunavut) and nearly a dozen special focus groups at locations across Canada. Individuals also

provided input into the process by completing surveys, individual interviews by telephone, and through written submissions.

NWAC participated in consensus building meetings with the AFN and INAC between February 6, 2007 and March 8, 2007. The Ministerial Representative provided her report to the Minister on March 9, 2007.

Vision and Principles

The words and ideas of the Aboriginal youth, women and men and Elders who were part of this process helped us develop the following vision and principles which guide us as we work through the process of identifying solutions.

Vision

Reclaiming Our Way of Being: we believe in and strive for a balance of healthy individuals, families, communities, and nations that are grounded in our traditional teachings and knowledge.

Principles

Our stories are who we are. The voices and stories of Aboriginal women have been the central source of our solutions to MRP. When we listened to the words of the women who came to speak at the consultation sessions and public hearings, we heard the following ideas about the roles, relationships and responsibilities between the people who form our communities.

Women and children have always been integral to the traditional laws and values of their nations. Women are honoured as the givers of life, and their skills and knowledge give them an essential and equal role in the community. Women provide leadership in rebuilding our communities.

"I want back the respect that my grandmothers and ancestors had – people listened to them; let's put women back to their rightful place of respect."

"As women we have that obligation to our children and not just our daughters and granddaughters but our sons and grandsons who need to learn what our ancestors taught us."

Children are a sacred gift from the Creator. They have a right to be raised within their family, their culture, and their community.





Children have the right to live in a safe and healthy environment. The well being of children is best met by their parents being able to find solutions to their disagreements that consider the needs of the children first.

"...the importance of making the children feel safe in their communities and not having to leave their communities and so that they can have some stability."

Men are our equal partners, and their skills and knowledge give them an essential and equal role in the community. Men contribute to and benefit from the existence of strong and respectful families in our communities. Men also provide leadership in rebuilding our communities. As one woman said:

"We need to work together, right - men and women. I'm a mother of two sons; I don't want my sons separated from stuff that's going to affect them. We are women, we give birth to men, and they are a part of us."

Elders are the carriers of our traditional knowledge, and through their guidance and oral teachings they will help us reclaim our way of being.

"...our traditional ways have brought us through and we have the ability to pull back from the memories of our elders and utilize those systems for our people."

We also heard that First Nations communities are diverse. While First Nations people face many common issues, these problems are affected by the local conditions in which people live. The communities that are located in remote or isolated locations may have special situations or concerns that must be considered in the MRP solutions we develop.

"I think currently we have to look at a different scenarios of each type of First Nations within our area – we have reserves that are semi-remote and some that are really remote and others that are really, really remote with no airport and we have to keep that in mind when we are talking about jurisdiction and providing solutions."

Re-claiming our Way of Being: Identifying Solutions

NWAC believes that solutions to the MRP issue must come from Aboriginal people themselves. In all the sessions and workshops, NWAC invited participants to speak of their experiences, the barriers they faced, and what they needed to move forward.

The people who attended the sessions spoke about many different issues. There were six main themes that the youth, women, men and elders brought spoke of again and again. Each is described below, with a selection of the comments that we heard from participants. In addition to these six main topics, there were other comments and ideas that people brought forward. These ideas and comments are also included in this report.

Intergenerational Impacts of Colonization

"...we became non-persons. We couldn't vote. Our women had no say whatsoever."

The federal *Indian Act* and the government policies that came from it have created harmful effects on the individuals who experienced them as well on as their families. Actions such as the imposition of Band Council government, the placement of children in residential schools, and the adoption policies of the 1960's that favoured non-aboriginal placements for aboriginal children all had harmful effects on Aboriginal families.

These actions were part of a deliberate strategy to replace Indigenous teachings about the roles, relationships and responsibilities of women and men in Aboriginal communities with European concepts, values and laws. The Europeans held a different view of the role of women: they did not respect women or their contributions to society in the way that Aboriginal cultures did.

"Canadian society came from Europe and it was very patriarchal"

"But Indian Affairs had made the man as the Chief, we didn't coin that word either. Our headmen were different because the women chose them and made them."

"...the racism, the apartheid notions and the discrimination within the guts of the Indian Act."



The women who attended the sessions clearly identified where these discriminatory practices came from. They know that the *Indian Act* and the policies and practices that flowed from it were the source of the many structural disadvantages that face Aboriginal women.

"Clearly the Indian Act places the power in my view unfairly on the male side and therefore it can leave women and children at a tremendous disadvantage."

It's male orientated in our community. Everything is all about the benefits for the man and if a woman stands up, they're really actually really quick to put them back down in their place so to speak.

I don't know how involved the women are in the (...) area. I do know that they are getting more involved than they did ten years ago. It was always run by men and nowadays they see women running for Band Council seats. I think even today a lot of the men feel they shouldn't be running, that it's a man's place to run the government.

As a result of their systemic discrimination, the role of Aboriginal women became devalued and disrespected in Aboriginal communities, along with the honour they once had.

"... our women are crippled. Crippled to stand, crippled to bring back that respect that they've been so disrespected for so long that they couldn't even stand up and be heard, and they would rather stand back and just be in their homes, or whatever home they are given without any fight."

"...they are echoing what the patriarchal system has trained them. So good intentions really are sometimes not fitting for us because it comes from a patriarchal sense and as loving mothers we are always so accommodating. We accommodate to the point where we put ourselves on the back burner and become invisible. So that is why we've even put our own identity, our heritage aside to accommodate the patriarchal system and then to levitate the men to the positions. I will tell you they are hurting too because they are not working with their mothers, their wives or their sisters. They have another force that they have to reckon with and it's the patriarchal system."

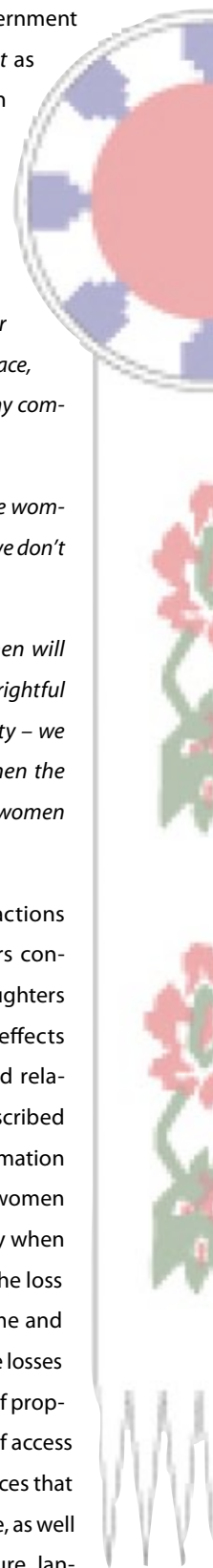
Participants clearly identified federal government legislation and specifically the *Indian Act* as contributors to the devaluation of women in Aboriginal communities.

"The Indian Act, yes, it's an old legislative document that has no room. It has no room for us today in today's society. It has to change or get rid of it so that we put our own. Once we put our own constitutions in place, we don't need the Indian Act. But how many communities across Canada can do that?"

"I mentioned yesterday about how... Native women's voices start to become invisible, where we don't have a place to speak."

"The key is restoring equality and only then will Aboriginal women regain and occupy their rightful place as equal partners in Aboriginal society – we used to be raised as equal to men but when the Indian Act came along, the Europeans said women are property of the men."

The consequences of these negative actions that were experienced by grandmothers continue to affect their daughters, granddaughters and future generations. These harmful effects include the breakdown of marriages and relationships. Almost every woman who described her experience with MRP included information about the losses she experienced. Many women spoke about the loss of personal property when forced to abandon the family home and the loss of their personal investment of effort, time and funds into the family home or property. The losses were located in more than just the realm of property, however. Women spoke of the loss of access to Band administered programs and services that are only available to those living on reserve, as well as the loss of access to their family, culture, lan-



guage and community. They spoke about the cost to themselves and their families that resulted from the *Indian Act* generally, and the MRP gap in particular:

"Then you know that the biggest thing and the worse thing that ever happened to me was the day that I left for residential school and the mother and child bond was severed and never mended, never fixed"

"I have 34 grandchildren but none of my family are married and I think that's because of what they went through as children and what I went through and they saw all that when they were growing up. I have four sons and I had three daughters, I lost one, and so today I still do not have one child that is married."

Compensation for women and their descendants would help alleviate some of the personal harms and financial difficulties that they have experienced. The lack of mechanisms to address the issue of matrimonial real property has resulted in women and their descendants experiencing family breakdowns to suffer a loss of personal property and personal safety, as well as to lose their connection to their culture and their community. The notion of compensation also extends to all the harms that Aboriginal women have suffered under the *Indian Act* and federal government policies that promote colonial attitudes and actions towards Aboriginal women.

"People should have injustices compensated at fair market value – monetary compensation."

"NWAC should advocate for women who have found themselves at the end of an unjust decision, once a law comes into place, there should be some compensation."

"Retroactive... should be given special rates for CMHC, special grants for women who have been dislocated or special scholarships for their children. I would benefits from employment training..."

"When you are working at that part of this, look at court cases; the rights of women who have been denied fair and equitable solutions; community models – would they look at restorative justice?"

"...it's about who we are in our community. It's about what we want to accomplish. It's about the sharing of our life history, so our leaders, whoever they may be, can take that and put it into the language that needs to be looked over for the legislation..."

"It's not colonization that moves me about in my community, it's my values and my beliefs that makes me decide what I want to decide in my decision making."

"Healing starts with me, then my family, and then my community. The healthier we are, the more stable we are, the stronger."

As can be seen from the comments above, many women spoke to the concept of compensation in the sessions. Their communities have a limited ability to assist them, in part due to the restrictions placed on federal funding to band administrations, and in part due to the overall poverty found among many First Nations people which places enormous demands on communities and their governance structures. Reducing the financial hardship experienced by women after the end of their marriage or common law relationship requires a combination of supports: compensation for the losses suffered due to the MRP legislative gap, supports and services aimed at lessening the impact of violence, addictions or other ills, and assistance linked to healing and increased self-sufficiency including education, training, daycare, and other family assistance.

Despite the negative effects of the *Indian Act* and colonization, the women who provided information believed that the community could heal, in part through the use of holistic and culturally appropriate programs.

The women told us that they believed that healing and wellness programs would assist in this process of strengthening individuals and communities. The agencies and organizations that deliver

these programs must be adequately funded so that programs may be delivered to all Aboriginal people in need. In particular, the programs must be accessible to those who live in remote and isolated communities, where distance and lack of local infrastructure makes access to programs more difficult. As one participant phrased it:

"...honour the treaty with the resources."

NWAC heard the call from participants to increase and expand Aboriginal healing and wellness programs, in order to facilitate the healing that must take place in communities. NWAC suggests that this call should be taken one step further, by conducting a gender-based analysis and a gender-based evaluation of the programs. Aboriginal men and women have suffered different experiences throughout the colonization process because of their gender.

"Sometimes we are bumped off the agenda if it's perceived as a women's issue as this is perceived as a women's issue, but it's really not."

It's not a women's issue. You said, we bring sons into this world and whatever environment our sons are raised in and they become husbands and sometimes abusers and if they remain in environments like that."

"One of the difficulties that under the election code of the department, especially here and we're trying to change it and I don't know how it is for other reserve communities, but off-reserve people cannot run for Council. So it makes our participation very limited."

"...there is this systemic issue in terms of patriarchal views and women not being heard or listened to."

Band membership is another topic that many participants spoke about during the consultation initiative. Currently band membership is assigned under regulations that do not always take into account the interests, wishes or needs of the individual into account.

"... my spouse who is a Chief, really forced my band membership to be transferred from...[my] First Nation into the community. He had threatened my children be apprehended if I didn't sign the documentation of my transfership; my membership."

"People never forgot that you're really not 'from there' and the Band membership drives the process. Up until 1985, Band membership was involuntarily transferred to the man's band."

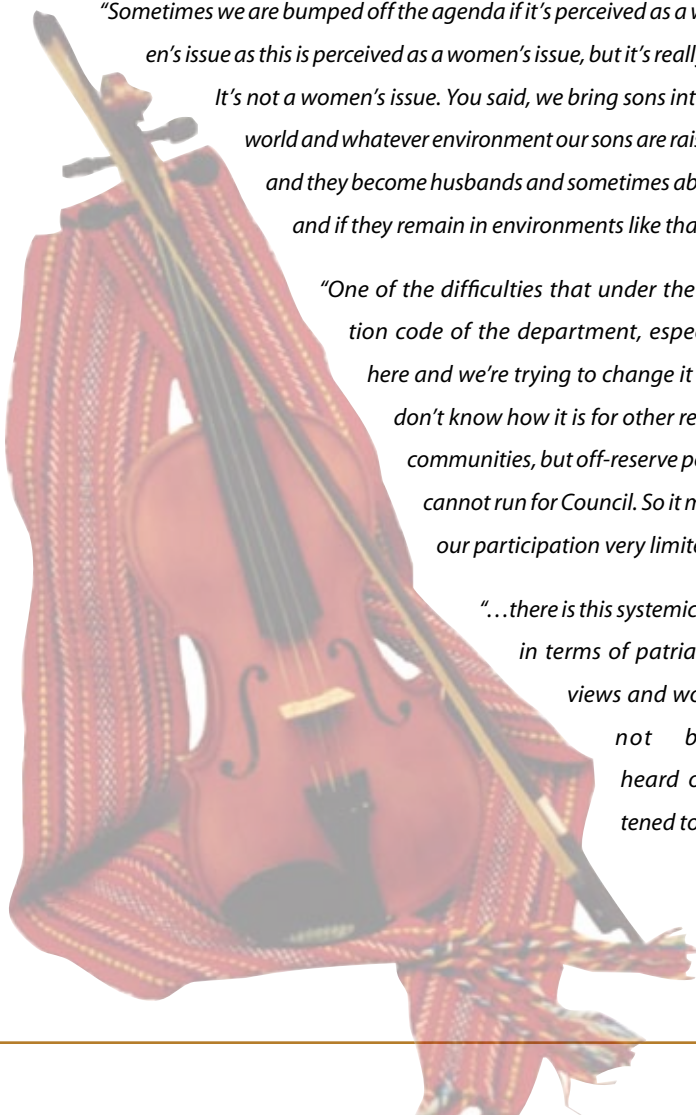
"...in our situation in northern communities we have a hard time trying to transfer our Band from our previous Band where our parents are from because the Bands won't sign the release over."

Participants suggested different ways that band membership policies could be changed to so that individual would be able to make a personal choice about membership when necessary. These choices include being able to establish dual membership for the children of a marriage where the parents came from different First Nations, and women being able to choose whether to transfer her membership upon marriage, separation, divorce, or the death of a spouse. The administration of Band membership also requires evaluation and changes so that there are fewer roadblocks and delays experienced by women and their children.

"When I married I was automatically transferred to his Band and I have been trying to transfer back to my Band because I was born and raised and the Band I belong to won't release me; it's problematic because the BCR expires after one year and to get a release from the Band I belong to has been a problem."

Being able to make these choices in a timely manner would enable Aboriginal women to make decisions about membership that are in the best interests of themselves and their families.

"...there is a repercussion still today in our community... We have women that came back home, still homeless so to speak because they



are not honouring that Bill C-31. So those kinds of things are still doing that control type of stuff against the women and children."

The passing of Bill C31 which reinstated Indian status to many individuals, created confusion and pressure on Aboriginal individuals and communities. First Nations were required to accept people back into bands and communities without adequate resources to do so. Many individuals who were finally able to return to their communities found that they were greeted as strangers. First Nations communities lack the resources and funds to establish programs to help repatriate those women and their descendents. Education programs for community members and individuals returning to communities are critical in the repatriation effort. These activities will result in positive change for youth, women, men and Elders.

"... you feel like there is an evolution going on and growth happening in leaps and bounds but it starts with the children. As soon as we started working with the children everything started changing, and women as well as their men become engaged when they see something good for their children and now you're not on opposing sides..."

Violence

Violence is the single most important issue facing Aboriginal women today. NWAC knows that violence against Aboriginal women can take many forms, including violence in the home, violence in relationships, and violence on the streets. Statistics Canada has reported that Aboriginal women are more than three times more likely to be the victim of spousal violence than other women in Canada.

"There are many stories about abuse on the reserve, women are stuck in homes of misery."

The experience of violence affects not only the woman and her children, but also her family and her community. One woman described this cycle:

"Generations to generations; I am a survivor of a mother that had to run away, all the way to the city of Toronto, take her five kids and move there for domestic violence as she was scared for her life. She was chased out of her house and out of her community and I see that."

Violence against Aboriginal women is compounded by the lack of understanding and utter indifference from community members, service providers and society in general.

"Even if we get something big, wonderful, all encompassing beautiful document that's going to help us forever, how do you enforce it, especially in the isolated communities? Hey, you've got a gun at your head and there's no police around you, what do you do? You take off and you leave. So I mean the enforcement to me has to be well thought out and we have to have the cooperation of the justice systems in this."

"When my marriage broke down I felt like I had no where to go and no one to guide me."

"There should be some type of transitional houses on reserves... this would enable members to stay in their communities."

Many participants talked about the lack of policing in First Nations communities. Women spoke of situations where they had asked law enforcement personnel for assistance, but were unable to get help.

"But the fact that we don't have help, not only just with family law, but in a lot of areas on reserve, in reserve life there are no laws."

"There is no authority right now, he can walk in and beat her up whenever he wants and that is how it is."

"Whatever occurred in that community we had to take care of it ourselves, there was no one to rescue us. I remember the frustrations I felt and had seeking help in when I was in a violent relationship and there was no one available... the police were an hour by flight, skidoo, boat, and there are no services in the community for women in crisis."

Women who cannot remain in their homes because of violence need immediate help. Sometimes assistance may be available through their family and friends, but the provision of assistance through programs and service providers is essential to ensuring that women have access to a continuum of supports. Transition houses help women in two ways: they provide a temporary place to stay and the support workers can help women to make healthy choices about their next steps. Women who live in remote or iso-

lated areas also need transition housing, but they told us that they are often unable to access these services because these services are not available in their communities; the cost of transportation to travel from their community to the service was too high; or because they were ineligible to use the services based on some eligibility criteria.

“Certainly we need more services on reserve but for a woman who needs to make the choice for safety reasons; you know there needs to be services and supports elsewhere as well. So I don’t think it should be an either/or. Options are great because you can meet your own particular need.”

When there is no transition house located on the reserve, women who need these services have to decide whether to leave their community in order to access them. Some women told us that they could not leave the reserve, because this would disrupt their children’s schooling, or because they would lose their access to other services if they moved off reserve.

“...separation should be planned and not have to be emergency evacuation, and there is a need for protection of the right to leave.”

“... he is asked to leave because that is her home and that’s her womb and that’s her children. That’s natural law.”

Some participants suggested that transitional houses for men should also be developed. It would be less disruptive for the family if the woman and children can stay in the home, and the man can find temporary shelter elsewhere. Some Elders spoke of traditional approaches that supported this idea.

Creating transitional houses for men would bring the added benefit of increasing their access to the programs and supports that are usually available at these sites, which could help men to resolve the issues that led them to the transition house. This would benefit women and children by helping the marital home to continue to be a safe space for them.

“We know about the cycle of violence and all of that so that if children you know, if we can help the children in this process, then I think that will help in the coming years, decades and generations. That’s all.”

The housing shortage that exists on many reserves makes the issues associated with MRP even worse.

“There is not enough housing to accommodate marriage breakups and I think really the Department of Indian Affairs has really fallen down in their responsibility.”

The lack of housing can be one reason why women stay in abusive and violent relationships. There is a need not just for more housing, but also for subsidized and affordable housing for Aboriginal women and children, both on and off the reserve.

“...the issue is not enough housing in our communities... it wasn’t resolved in Bill C-31 and they need to address severe housing shortages in our communities.”

Finally, women spoke about the need to develop tools that will help communities move their people along the healing path. Traditionally, First Nations people had a collective responsibility for the well being of the community. This responsibility included providing assistance to community members who require help to resolve conflicts, including those between partners.

“We probably will go back to the way we used to do things, with Elders and community members rather than go to the court system.”

“...even though the legislative options are focused on matrimonial real property and the underlying issue is violence, there needs to be clear protection for women on reserve in terms of legislation, shelters, a community safety plan, which is broader than the legislation being proposed but this is important and because of the Indian Act and colonization there is disrespect for women, violence and women are being pushed out of their homes.”

Freedom from violence will allow Aboriginal communities to thrive, and will allow community members to reclaim their way

of being, and feel trust among their membership and pride in their peoples.

“...if it takes a community to raise a child then it takes a community to bring that family, bring it together, [to] help.”

Justice

Justice, access to legal services, and enforcement of court orders were common problems that many participants spoke about. They discussed issues around policing and protection services, as well as access to legal aid and legal professionals knowledgeable on MRP issues. Over and over, NWAC heard the frustrations of women who had tried to access judicial processes, but were unsuccessful due to barriers such as finances, remoteness, the lack of services and the lack of knowledge about Aboriginal issues on the part of service providers.

“To be eligible for legal aid, I would have to quit my job.”

Accessing legal advice is expensive. Participants described how the costs of even simple legal processes place them out of reach for many Aboriginal women and their children, who we already know face the highest rates of poverty over any other population in Canada. NWAC also heard about Aboriginal women who were unable to access legal aid because they were employed, yet their low income was not enough to cover the costs of the legal services they needed. Participants felt that improved access to legal aid and advice in First Nations communities would help alleviate some of the issues surrounding MRP.

“Legal aid has been cut, so many women go without representation in the court and increasing the funding, having advocates and lawyers available for women to represent them would be helpful.”

“They have legal aid available in the cities and we should have access to it. There needs to be legal aid support within communities, even if there are two lawyers per community. Every reserve has a lawyer for their land entitlements...”

“A lot of times these women have to leave the communities to come into urban cities and urban towns to access the family judicial courts”

The distance of remote and isolated communities from courts and legal services is another barrier that women face.

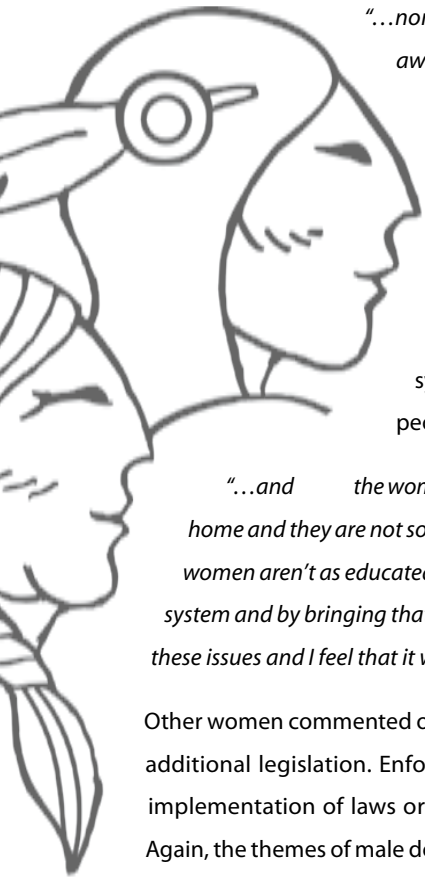
“In my case the lawyer didn’t know the reserve land issues and rights of Native people”

With no services in the communities, Aboriginal women who need to access judicial processes must travel outside of their communities. This is expensive, and hard to coordinate with work and family responsibilities. The difficulties associated with traveling to access justice often results in women deciding not to make the attempt, which results in their being denied assistance in resolving their issues.

Many participants discussed situations in which they sought legal help during the breakdown of their matrimonial relationship but found that legal professionals lacked knowledge of MRP issues.

Other women found that there was not enough policing on reserve to provide protection and enforce legal judgments. Participants spoke about the difficulties they experienced gaining police presence or action on matters related to MRP, violence in the family home, or court orders against a partner or spouse. One woman identified the need as better communications or training for police, rather than just an increase in the number of police available to serve communities. This communications training is needed for both First Nations and non-First Nations police forces:

“I just wanted on the record to make a comment on if there is going to be MRP legislation that there has to be a way, something included where they inform the police of all these new laws I guess. First Nation policing, there needs to be something in there with First Nations policing and the reaction time...”



"...non-native police also [need to] become aware so that there is some type of program rolled out to the legislation."

Another woman identified the potential for tension between women and the justice system. Justice system personnel are frequently seen as agents of the colonial systems that have harmed First Nations people in the past.

"...and the women in the communities will feel more at home and they are not so threatened. A lot of times a lot of these women aren't as educated and they are intimidated by the judicial system and by bringing that into the community it resolves a lot of these issues and I feel that it would benefit everybody."

Other women commented on the need for enforcement, not just additional legislation. Enforcement includes the idea that the implementation of laws or by-laws is linked to accountability. Again, the themes of male domination and unequal enforcement that favours men were raised by several women.

"There is no body to make sure those laws are implemented. It's a law that is based on survival and that's when many of our women leave. It's also male dominated."

"...how do you enforce those bylaws? If you don't want to enforce those bylaws you don't have too. They are strictly just bylaws. I think that there has to be an analysis on that as well. I think that there have been First Nations across the country who has tried to enact and execute many different types of bylaws but they are not enforceable. So, in fact, if you break a bylaw and you go to the local RCMP detachment or your First Nations freestanding, they will not enforce that bylaw, nobody will be charged."

"So what the RCMP is doing is that anything that has to do with women, he suggests that it's an internal thing, go to your Chief in Council but when it comes to male report, when a male reports to the RCMP, they are right at the women's face the RCMP."

"... when proper legal processes are taken they too are often powerless and not worth the paper they are written on. For instance there is not enough policing that deals with matrimonial real property as a means of enforcing maintenance issues. This leads to ineffective enactment and enforcement of court ordered payments. Most see on reserve policing as inadequate. Many speak of the fact there is little regard or sensitivity for women's issues."

Participants consistently called for the creation of an independent system to act on the needs of First Nations people for justice, especially for women. There is a need for accountable, fair, and equitable justice and enforcement systems, not simply 'more' police officers or increased enforcement. An appropriate system was described as one that would use Aboriginal systems, language, and culture to achieve sound and appropriate solutions.

Participants suggested various alternate methods that could be used to achieve these results,

"... ombudsman people would hear the cases and on the merits adjudicate the cases and I think that would be fairer for all parties concerned, especially in the case of children."

"So dispute resolution is one way, and so give it a thought. It's almost like a sentencing circle; it's almost like that within the community."

including establishing an independent Aboriginal women's representative to act for matrimonial issues; establishing specialized First Nations tribunals; using existing Alternate Dispute Resolution processes by enhancing existing community based justice initiatives to include MRP issues; or creating local decision making bodies based on the clan or family structures of the First Nation.

"A mediation process, a mediator and someone who is sensitive to our world view because that's another issue like the communication and cultural barrier gaps where we're not communicating effectively because of that gap."

"We need basically, like an independent body to come and assess our situations. Like in my situation; come in and talk to us and see who supplied what, who paid for what, who takes care of the children, who

takes care of the home? We need somebody to come there and not like our Chief and Council."

Some participants cautioned that even culturally appropriate alternative dispute resolution processes may require the participation of external, uninvolved participants to ensure that both parties are well represented and supported.

"I do a lot of the mediation and there I have to be biased so I try and listen to both sides and always bring somebody else from a different territory to come into the mediation. Never have your own Band to do the mediation because it doesn't work in most cases. It's the husband that knows all the connections and I would, even for myself I could say that. My husband was a very powerful man and he had the connections so there was no help from me also."

Some participants knew that First Nations communities are implementing MRP Codes under the provisions of the *First Nations Land Management Act*. There is considerable interest in this process, especially in the identification of best practices that may be appropriate or could be transferred for the use of other First Nations. Unfortunately, there is little information available about the success of this initiative to date. There is a need for evaluation of the experiences of First Nations who have been engaged in this process as well as an analysis and evaluation of the MRP codes that have been created and adopted under the FNLMA process. Information on the status of this initiative is not reaching Aboriginal women at the community level. In the long term, the use of culturally appropriate mechanisms was seen by the majority of participants as the best way to resolve MRP conflicts. There were several participants who commented on the key role in dispute resolution to be filled by the grandparents of the individuals involved:

"The modern day, in the reserve, you could bring in the grandmothers, the elders, the grandfathers, bring them in of both sides and on the outside

it could be the social workers. Usually, the social worker or maybe the psychologist, maybe the

lawyer to sit in this dispute resolution, but the relatives need to be involved, especially the grandmothers need to be involved in that. They need to be involved because they know the genealogy of her family and his family who built that house, who was on that piece of land throughout the years, who built the fence."

"So dispute resolution is one way and so give it a thought. It's almost like a sentencing circle; it's almost like that within the community. But through genealogy, knowledge of the genealogy by a grandparent on both sides, the parents on both sides is one of the tools that will be used under that dispute resolution, knowing where you come from."

This is consistent with the traditional practice of the community being collectively responsible for the well being of the community and individuals, including supporting healthy marriages.

"If it takes a community to raise a child, then it takes a community to bring that family, you know bring it together, to help."

Accessibility of Supports

Participants told NWAC that a difficulty for individuals experiencing MRP issues is that they are often unable to access supports or programs that they need for themselves or their children. Participants described being unable to access programs and services after the dissolution of their marriage or partnership because space was not available, because pilot programs had ended, because programs had been discontinued or reduced, or because of eligibility criteria unrelated to the need for service such as minimum or maximum age restrictions.

"...domestic violence is bad, there are no safe homes – women have to go outside the community to be safe which isn't right."

"As a single father I have raised my children since they were infants and when they were young, programs were denied to me because I was not a woman."

"I approached the community about couple counselling, for help. But Indian Affairs doesn't provide counselling. Went a year with no help, the only help we got was from the Church, it helped me but not my husband, the church just didn't meet his need, this kind of counselling was not available immediately."

"There is nothing available, here are no couples counselling, there are no parenting classes, families started younger and younger, but there are no supports. There are no models in place that show what healthy relationships look like."

Funding for programs and services is sometimes very limited in duration: women have learned not to depend on short-term or pilot funding that sets up programs and services which then expire after the pilot is completed. In other cases, the supports or programs are only available at certain times of the year, or on a limited schedule throughout the year. Other supports or services are only available if the woman is able to travel a greater distance than is usually required in the southern urban centers. Women who live in remote or isolated communities told us they were often not able to travel because of the high cost, the limited schedules, and bad weather conditions that made travel difficult. The organizations that provide programs and services also face problems in these communities, because the formulas used to determine their funding do not take into account the higher costs associated with providing services in remote or isolated communities.

Women also spoke of their concerns about the levels of assistance provided by these programs. There is a need for programs that provide culturally relevant services that are grounded in the community and the needs of the individual as part of that community. Programs that address violence, addictions, health and wellness must centre women and their experiences in their culture and their community. They also must offer appropriate programming for the needs of the individual: this may require the implementation of targeted programming for women who have experienced violence within the family, for example, or services that recognize the needs of women with children as distinct from the needs of the 'general individual'.

They recognized that accessibility is unequal across the country, in part due to geography as discussed above. Other factors affecting unequal accessibility include the division of responsibility between federal and provincial governments for providing programs and services, and the differing provincial and territorial policies regarding eligibility and funding levels for supports. This lack of supports and services especially affects young people and their relation-

ships, thus continuing the inter-generational aspects of family and violence problems.

"One of the ideas that we could do is to have a safe home in the reserve with emergency houses like we do have in Winnipeg. So, if a woman is in crisis on the reserve with the children, there should be immediately a safe home with her where she doesn't have to remove the children from the reservation into Winnipeg. In most cases, the kids are in school, so it impacts them when they have to move into Winnipeg. I think there could some emergency homes for the woman and the children."

Women who are unable to resolve a MRP situation frequently move off reserve because they cannot find safe, secure, or appropriate housing on reserve. As a direct result of this move they become ineligible to receive supports or programs delivered through the Band Council.

"I understand that they got a lot of monies from Indian Affairs for operating costs, education, recreation, cultural whatever and we got nothing off the reserve for medication, some of us who need medication, and we don't get anything. We phone health care and they say phone your Band it's a complete run around."

"...once you leave the reserve as a treaty status woman, once you leave the reserve, the money stays for education, housing, all the needs, all the funding that goes for your per capita to the reserve stays there. It does not follow you. Then I've got to dress up my children, pay for school supplies because I live off reserve, I don't get any help from my band...."

This is because access to these supports and programs is limited to members who reside on reserve. The spouse who moves is immediately disadvantaged compared to the spouse who remains on reserve. Women who participated in the MRP Solutions initiative process repeatedly spoke about this loss of access to supports and programs delivered through the Band Administration that occurs when they leave their family home and move off reserve. Several participants suggested that women should be able to access services for themselves and their children no matter where they reside. Many women expressed concern about the negative impacts on themselves, and on their children, of these enforced moves away from their communities:

"I think it's a matter of health for the children; staying in the community where they are growing up and close to their relatives which are likely there. I think it's what our human rights are supposed to be, support the family. So yes, I'd like to see that service and stuff provided right on the reserve."

Women who had married men from another First Nation community talked about having additional problems accessing programs and supports because of issues related to membership. Women who do not have membership in their partner's First Nation may not be able to use services following a relationship breakdown, even if they continue to live on that First Nation's land.

A lot of time these women in these communities, they do not belong in these communities and a lot of times these women have felt outcast in these communities. A lot of times they are not accepted, so when the marital homes breaks down the only option to have is to leave and a lot of times they leave without their children.

"What we've started to see now is that we cannot provide services to some of our children on the reserve because they are not status under the legislation of Bill C31. So when we're talking about matrimonial real property, in terms of where and who has responsibility for these children... it's going to start conflicting within the community because... we have some of our population saying it's for status only, they're not wanting to recognize the impacts of Bill C31."

In other situations the mother and children may have different First Nations memberships from one another, and only part of the family may hold membership with the First Nation where the family is living. The individuals who hold a different membership than the community where they are living may also experience barriers to accessing programs and services.

"It was because of who I am, because I wasn't from that community and he was from there so they do whatever they can for him."

Participants expressed frustration at their inability to get support from the programs and services administered through the Band. They told us that despite efforts:

"... and all kinds of movements to advance the cause of our people so our kids wouldn't suffer no matter where they lived. It's not hap-

pening. It's the same old people doing the same old crap and the end result is that you're getting nothing for your dollars. Those people get that money for our children, our purposes and it's not happening. No body knows how to change it because they've developed their own power structures in these communities. You can't break it unless you're a part of the group."

The situation described above does not have to exist. Aboriginal women experiencing MRP issues do not have to lose access to programs and supports. Some participants at a consultation session described how their community has chosen a path that supports all community members.

"...we looked after everybody the same.... So we don't really abide by the department's rules. By us doing that though, we run into problems with our self-government agreement because the programs are only available to status people. They're not available to non-status. So, the First Nation carries a lot of the load there."

The *Indian Act* restricts the ability of women and their children to access their treaty, membership and Aboriginal rights. A long-term solution that enables women and children access their treaty, membership, and Aboriginal rights regardless of their residency would be an improvement. This approach would result in women being able to access programs and supports delivered through their Band Council based on their need for these services, rather than being denied such supports because of their place of residence.

Communication and Education

Many Aboriginal women need more information about MRP. Participants face barriers to their well being on a daily basis but are not always aware of the underlying factors that shape these issues. NWAC repeatedly heard the call for more information and communication about MRP as one way of empowering Aboriginal women.

"It is important to educate ourselves to protect our spiritual, physical, mental and emotional rights."

"Women need to be better informed and aware of their rights and options."



There were calls for access to forums or women's councils at the community level, as well as to band or community meetings to raise awareness of issues that affect women. Topics that were suggested for these meetings included the MRP process itself, the rights of Aboriginal women, and traditional teachings and knowledge. The increased understanding that would result from this work would assist women experiencing MRP issues to make informed choices. They would also help to educate the community as well, which could result in broader support for women whose marriage or relationship has ended.

Participants at the sessions also spoke of how their participation in the MRP Solutions initiative had given them a new awareness and understanding that issues associated with MRP are not individual problems or the problems of individuals. Participants said that they felt less isolated after meeting other women who were also negatively impacted by the current lack of protections around MRP:

"I didn't realize the rate at which this was happening to other people."

"... this is the first time I had a voice and there are women who have lived in isolation in abuse until they found out there was others like them living that way."

The women who attended the sessions learned that there are many others who have shared similar experiences and who need similar solutions. They began to feel empowered to work together to learn more about the issues and identify solutions.

"Most of our women are so naive; this is what they've seen growing up and this is normal and this is what we have to do. I think we need awareness out there for women and single women basically to show them that this is not normal and yes, you do deserve everything that you put your back into and you've supplied. You don't have to walk away with nothing especially."

"... we need to know how to cope. We need to know how to strategize. We need to know how to analyze... there is a need to be given some sort of education on what is out there, what is the last issues, how do we get around it, where is the money coming from. How do we go lobby for the money..."



"NWAC should have tool kits (communications, materials, financial and person resources) ready for communities to use. The reasons for a split up aren't the focus here. Division of assets, fair treatment and kids are."

Participants reported that there is too little information available to them about the rights and laws that specifically relate to their situations. A number of women questioned what their rights are and how they can access information about divorce, prenuptial agreements and family law. Women also told us that they lack information about other policies that affect them, such as Band housing policies.

"... INAC funded school systems on reserve, a stipulation of the funding should include that children be taught about treaties, matrimonial laws, Indian Acts, Bill C-31, and local by-laws."

"I would like to see a way to collect a history of our practices. Do some research into our practices and this would involve going to our old people, finding out what they remember and documenting it and taking that information and sharing it with community members. Share the awareness."

The participants also repeatedly called for Aboriginal people to improve their knowledge of traditional ways of being. They suggested that NWAC should be resourced so that the organization can provide leadership and assist women in moving forward on these issues. Participants said that they needed education that supported the efforts of individuals and families to learn and used culturally relevant, traditional approaches to wellness, relationships and the resolution of conflicts. These approaches need to be grounded in tradition, and respected by and presented in the school system.

"I should have been able to stay in my community with my kids and should have had access to information from the community. I needed information regarding educational opportunities and social services."

Many participants also talked about the need for personal education or training in order to obtain employment and be able to provide for themselves and their children following the end of

their marital relationship. Single mothers wishing to enhance their self-sufficiency generally found that attending post-secondary educational institutions was the best way to access income and other supports while living off reserve. This is because education funding is one of the very few band-delivered programs offering financial supports that can be accessed by individuals who live off reserve.

Post-secondary education, however, is not the answer for every woman. Unfortunately, training, economic development, and small business funds other than those available for post-secondary education were often inaccessible to women because many of those programs have restrictive eligibility criteria. One of the criteria most frequently mentioned as a barrier was age restrictions that eliminate the participation of individuals over the age of 30 years.

"Education and training programs should raise their age limits so that those women who spent their younger years raising children, only to find themselves alone afterwards can go for training".

Although some participants valued or took advantage of opportunities to enroll in post-secondary or other education or training courses, others expressed concern about the impact of those programs on Aboriginal people. They told us that education must include learning about traditional ways, as noted above, and expressed concern about the effects of the Canadian education system on individuals:

"I get worried when we talk about capacity and when we talk about education because I don't want us just to limit ourselves to talking about western education."

"We have people coming in, we have young people; we have people coming in that are very education in the western system but I will tell you they are the ones that oppress us the most. Not all, but most of them because they have moved away from the traditional knowledge and they are echoing what the patriarchal system has trained them."

Clearly a balance between the potential benefits of further education in terms of immediate supports and future earnings has to be



balanced with the biases inherent in educational systems that are based on European values and practices.

Legislative Change

The Matrimonial Real Property situation is often described as a legislative gap. This way of looking at MRP leads to solutions that are based in legislative change.

There are a variety of ways that this situation can be changed, and each should be weighed against the standards that are required as part of the law-making process, including the duty to consult, Aboriginal rights, the equality of women and men, international law, the *Canadian Human Rights Act*, First Nation sovereignty, and First Nations laws.

"I am not in support of anything to do with the Provincial law."

"Separate legislation for each Province and Territory would create difficulties."

"If we had provincial law apply on reserve, we would be dealing with an even bigger patchwork of laws, so it would be better for a Federal law to apply in the interim; Provincial law applying on reserve would weaken what little we already have."

"Provincial laws are the greater evil."

As part of the MRP Solutions initiative, INAC asked NWAC to discuss three legislative alternatives with participants. One of these alternatives involved the use of federal legislation, while the other two would have been based on the use of provincial and territorial legislation.

These alternatives were discussed at every session, in each interview, and were included in every survey. The level of knowledge of participants varied widely: some were unfamiliar with legislative approaches to resolving gaps, while others were extremely knowledgeable about the benefits and drawbacks of different legislative alternatives. Some women expressed skepticism about the ability of any type of legislation to resolve the issues that result from marital breakdown:

"Then when the marriage didn't last the woman was left with nothing whereas the men just got richer and married younger women to share their wealth with. Meanwhile the wife who was beside him for 40 years and their children were left with nothing. So why do we want a law that doesn't even protect Canadian women?"

Generally, participants expressed muted support of the use of federal legislation to address MRP in the short term. This level of support was partly due to the fact that the majority of participants were strongly opposed to the use of provincial and territorial legislation to address MRP issues. As an alternative, federal law was seen as preferable to the provincial or territorial law approach. One of the positive features of the proposed federal regime was that it was described as being 'interim', existing until the First Nation put its own legislation into place. This likely increased the level of support expressed for this approach.

"I hope we get a chance to do this in the community. I really do because that's the only driver that can get behind the federal legislative change. OK, they might think of something, a blanket that they can throw on us for now, but eventually it must be the driver from the community that responds to that."

"We don't necessarily have the best relationship with the colonial state and I would venture to argue that our interests are not always their interests."

"None of these alternatives: a good start would be protecting the human rights of First Nation women."

"I think... that would be better for us as well in regards to matrimonial law to have federal law rather than provincial law."

The survey asked participants if they thought that "legislative change would be a good approach to resolving" the MRP situation. Almost 65% responded yes, that they supported this approach to some extent. Participants suggested that federal legislation would provide better consistency than band by-laws, which can be removed or altered by Chief and Council, and that it would provide greater equality in MRP solutions for women living in different provinces.

There was a clear and sizeable minority opinion among participants that neither federal nor provincial law should be implemented to resolve MRP issues on reserve.

"I believe very strongly that we have to develop that legislation ourselves. We have to believe in that legislation that it's going to work and the only way we can believe in it is if we're a part of its development and in the approval process."

"I wouldn't ask for federal or provincial legislation, it's still within our nation to do that and for me that's the only answer."

This opposition to legislative approaches is particularly marked in some regions such as Saskatchewan and Prince Edward Island. This is in contrast to the usual consensus that NWAC found across regions about non-legislative solutions and approaches to resolve MRP issues.

Participants expressed concerns about the resources, capacity, consistency and consensus that will be necessary as First Nations move towards enacting their own MRP laws.

"...there is a need for resources to address this – there is no capacity on reserve to devote time to development of a solution."

There should be standards that new laws, whether federal or First Nations, must meet. Participants suggested that fairness, equality, and independent decision-making are minimum standards. One participant stated:

"The basic principles are obvious - no discrimination on basis of gender, religion or politics and whether non-Indian spouses would be in possession of land on reserve is not a basic principle"

Participants also recommended the use of consultative processes that are based on indigenous knowledge. This reflects their concerns that the identification and the implementation of solutions in a manner that supports women and their communities, rather than in a way that creates further division and conflict.

"Our law is simple, quiet, you don't see people going to court to win something, they are quiet and respect each other."

The results of the MRP Solutions initiative also support the idea of diversity in finding solutions to MRP. While there was strong support for traditional approaches and the use of First Nations law making capacity to deliver solutions, participants also acknowledged that some individuals follow different paths, and that these differences must be respected.

"An option should be given to a complainant where traditional aspect to dealing with the issue exists that they are provided an option to go with traditional process as the first line of dealing with the issue and second being more legislative entrenched in law."

"You are entitled to whatever you believe and it may be traditional or the European Christian way but the point of the matter is that there is an issue there and that issue is Human Rights and it needs to be addressed."

It became very clear that participants are ready to move forward. They clearly stated that finding solutions to the MRP issue was one that involves and includes both women and men. The solutions must be developed at the local level, and must achieve fair and equitable results.

"... the basis of any negotiation, any discussion has to be with that (sovereignty) in mind at all times. Let's not forget that part because we're just not trying to save ourselves from that hurt today, we're looking at centuries of our relationship to ourselves, to our families, to our communities, to the world that, we are who we are, and nobody can take that away from us."

The best result of this collaborative approach will be that First Nations use Indigenous law which reflects the unique needs and interests of their community, to resolve MRP issues. Participants were very aware that the solutions identified and the processes implemented should ensure that the basis of action respected First Nations as sovereign people.

NWAC suggests that federal legislation should include an opt-out clause. This clause would enable First Nations who have or who develop their own laws on matrimonial real property to opt-out of the federal legislation at any time in the future. Any approach

needs to be flexible enough to accommodate the varying situations of First Nations across Canada.

"... we need our own laws, our own legislation and it has to reflect our culture. It has to reflect our world views and it has to be sensitive to the things we've seen over the last 200 years... It has to be done holistically."

"...no matter what this legislation that we're going to be developing here; it has to be in recognition of our self-determination as a First People's of this country... we are sovereign people."

"...our laws are paramount in the Yukon. Whenever we enact a law in the Yukon, we occupy that field. And the Yukon law is vacated."

"We have rights that are pre-confederation and we have other rights that are post-confederation. We have to understand that we should not want to infringe upon existing rights in order to achieve this."

Challenges and Courage

"Why are we always at the behest of government scheduling? I object to that because obviously we haven't had enough time to even discuss this. We're just becoming acquainted with the word, "matrimonial real property" and we have no idea of the legal impacts, the social impacts, any of that. There isn't even time for any kind of real discussion in the communities."

NWAC experienced difficulties that affected the participation of women on this project. The short time that was available for the activities to be completed was a serious problem that was mentioned by many participants across the country. There were several consequences that resulted from this limited time frame. Women who wanted to attend sessions were sometimes not able to make travel plans, arrange for the care of their families, or organize time away from their jobs in order to attend the sessions because of the limited notice they were given. Many participants told NWAC that they wanted more time for a full-scale consultation process to take place that would gather the views of more women in First Nations communities. Women were concerned that solutions identified through a short process may be flawed:

"I think changes do need to take place and we have to be really cautious in how we do them. We may open the door to problems that are worse than we have now."

Each of the three partners in the MRP Solutions initiative conducted activities targeting their constituents. NWAC represents Aboriginal women across the country regardless of where they reside, and the NWAC welcomed women who live both on and off reserve to participate. While most of the NWAC activities were conducted in locations off reserve, NWAC was also invited to hold a small number of sessions on reserve. NWAC is aware that women living on reserve experienced greater difficulty accessing consultation activities, due to distance, cost, lack of transportation, and concerns about privacy and safety.

"...there are more sisters at home that need to be consulted.... We need their stories; we need whatever way they do things because every individual has their own way of expressing themselves... and we need those stories."

The women who were able to participate using one of the methods available (i.e. facilitated sessions, confidential survey, public hearings, written submissions, personal interviews) told NWAC that they saw value in this process. They frequently expressed concern, however, that the voices of many other women were not being heard, because these women were not able to travel away from their home communities or to access other participation channels, such as the internet. These communication difficulties especially affected women living in northern, remote, or isolated communities.

Some women wanted to provide information and opinions to this national consultation effort but were afraid that doing so would harm their personal safety or security. NWAC made every effort to help women to participate safely and to make sure that the protection of their personal information was in compliance with Canadian Law and held in strict confidence. Even so, attending a session could in place some women at risk, especially women who live on reserve.

"There are other reasons why women didn't show up, there are safety issues, threats and intimidation why women haven't come to the meeting..."



The small size of some communities, combined with the limited number of options available for transportation meant that the decision to participate in the Solutions initiative could not be guaranteed to be a private matter. Some women feared that their safety would be compromised through participating; therefore they did not do so.

"It is important that Federal government leaders recognize that there were women that were invited to attend this meeting, who were unable to come due to threats by spouses or former spouses; some women were afraid to lose their jobs for speaking out."

The women who did attend the sessions made it clear that they were not speaking about issues that are only associated with MRP, but that rather there is a broader issue, specifically of their human rights that has not been adequately addressed:

"You are entitled to whatever you believe and it may be traditionally or the European Christian way but the point of the matter is that there is an issue there and that issue is Human Rights and it needs to be addressed."

"This is the way it was, I want it back. I have an International Human Right to my culture, language and education."

Finally, NWAC discovered that there was a general lack of information about the MRP issues and process that hindered some women from providing a full and considered opinion about the issues and the alternatives presented. While all those who attended sessions, hearings or completed interviews were generous about sharing their experiences and thoughts about solutions, the need for further education and awareness building was obvious throughout the process.

Next Steps

The Honourable Jim Prentice, Minister of Indian and Northern Affairs received the Ministerial Representative's report in March 2007. The Minister and INAC staff will determine how the report will be used in taking further action to develop solutions to the MRP issues.

The federal government announced at the start of this initiative that they intended to introduce legislation on MRP in the spring of 2007. While this initial time line appears to have been too com-

pressed, the Minister and INAC continue to state that they intend to introduce legislation in the near future on MRP.

NWAC is continuing to work towards achieving MRP Solutions. As more information becomes available, NWAC will update this and other reports, and will make this information available in print and on our website.

As an individual woman, you can stay in touch with the MRP process using the NWAC website. As more information becomes available, NWAC will continue to post it there. You can also find links to other resources and information about MRP and related issues on the NWAC web site, as well as on the websites of AFN and INAC.

NWAC believes that introducing legislation on MRP is only a part of the solution. As one participant told us:

"I know that the urgency of the problems, one would be quick to look at what we do to 'stop the bleeding' and why that concerns me is that I've seen over the years too often that if government can stop the bleeding that is all they want to do, they haven't healed the wound."

NWAC presented recommendations about non-legislative approaches and solutions that would assist women and their children following the end of a marital or common law relationship. While MRP is sometimes narrowly defined as relating only to the matrimonial home, the situation of individuals experiencing this issue brings in a wide variety of related issues. The individuals who attended our sessions spoke of membership, status, and the negative effects of Bill C31 on individuals and communities. They talked about housing on reserves, including availability, safety, adequacy, repair, and overcrowding. Participants also talked about the emotional toll caused by MRP issues, and the need to ensure that the health and wellness of those involved is considered:

"...there is going to be quite a tension... and I just want to make sure NWAC is able to support our women and children. I mean we have to have support groups there in order to handle this because there will be breakdowns."

NWAC continues to work on issues associated with justice, wellness, safety, freedom from violence, accessibility of supports,

communication and education, and ameliorating the effects of colonization. Information about these initiatives and activities can also be found on the website. It was clear that the individuals who attended the sessions supported the continued participation of NWAC in these activities:

“NWAC needs to take a lead in partnership with other national organizations, particularly the AFN, in drafting legislation. That would be phenomenal. It would be progressive and I think that it is one of the solutions.”

The overlapping issues associated with MRP underpins much of the work undertaken by NWAC as the organization focuses on work associated with the elimination of violence, increases in Aboriginal women’s health and wellness, increased training and education, opportunities for youth, and support for international initiatives, such as the UN Declaration of the Rights of Indigenous Peoples. NWAC is well aware that the approach taken to resolving issues is of paramount importance in how well solutions are able to resolve these issues. The lessons of Bill C31 were mentioned in many sessions, and NWAC agrees that legislation without capacity building supports, education and communication and transitional measures is unlikely to succeed. NWAC will continue to work with other organizations and partners to identify and implement solutions that meet the needs of Aboriginal people and their communities.

“I could support Option 3 if Aboriginal women were involved as key decision makers and involved in the administration which would be a role for NWAC and other Aboriginal women’s organizations.”

“...encourage relationships between native communities, you have to create some interrelationship to make a connection and Native Women’s Association should play a key role in that.”

Conclusion

The connections of Aboriginal peoples to our lands and territories are sacred and historical. These are not just pieces of land, but our traditional territories. This issue of matrimonial property on reserve was not created by Aboriginal people. The issue of matrimonial real property on reserve is now a complex one to resolve; however, it should not be. There has been much discrimination in the past and it continues to this day. This discrimination has created detrimental





impacts upon many generations of youth, women, men, families, and communities across this country.

When the *Indian Act* was amended in 1985 (Bill C-31), NWAC and the AFN made contributions prior to any amendments being made. There were many lessons learned from that process. One of them is that we do not want to be used as pawns to justify government processes. We will not get caught by divide and conquer tactics. NWAC believes that our communities need to resolve the impacts of colonization and to assist in building healthy communities. We know that our voices are critical to these efforts.

NWAC appreciated having at least a short time to consult with Aboriginal women and their children who felt the direct impacts of the MRP issue. This was considered the “bridging” point between the long fight for the recognition of Aboriginal women’s rights and issues arising out of the MRP cases. It was an opportunity for these participants to speak their truth and to have a voice.

However, there were very serious concerns raised by the participants regarding the short time frame for this consultation process. As noted in previous NWAC submissions, a full year would be needed to complete consultations. In this process, we were given three months. Many participants were skeptical of this process because they viewed it as government driven but delivered by Aboriginal organizations. Based on the way the process was conducted, with only three months of consultation, they were justified in their skepticism. The participants told NWAC that they wanted to see movement towards successful change. Because of their participation in this process, any amendments, legislative change, or creation of new legislation can consider their thoughts, ideas and words. The participants in this process stated that they want their rightful place in society. This has been a positive step in the right direction: women are re-establishing their feelings of pride and self-worth by speaking out about themselves and their communities. The voices of these women must be heeded. Their words are reported in this paper created by NWAC and in the many other documents and reports that resulted from the consultation and dialogue sessions held by other organizations through this process. When decisions are made in the future that will affect these

women's rights, their words, ideas, and suggestions for solutions must ground the changes and actions taken in the future.

The women who provided these solutions are daughters, sisters, mothers, grandmothers and granddaughters. They want the inter-generational cycle of abuse and marginalization to end. They want this to be a collective effort to bring the required change in their communities. The men we heard from are our sons, brothers, fathers, grandfathers and grandsons. They too wanted to see change that respects our ways of being and the women of their communities. Through the creation of a responsive and comprehensive MRP process, they want to heal and come together to reclaim their way of being now more than ever.

"We need to continue on our path and acknowledge one another for the strength we possess..."

Appendix A: Location of By-Invitation Sessions and Public Hearings:

By-Invitation Sessions	Public Hearings
Calgary	Calgary
Yellowknife	Yellowknife
Winnipeg	Saskatoon
Saskatoon (two sessions)	Winnipeg
Whitehorse	North Vancouver
Moncton (included PEI)	Whitehorse
Gander	Moncton (included PEI)
Halifax	Gander
Thunder Bay	Halifax
Edmonton	Thunder Bay
Vancouver	Val D'or
Prince George	Conne River
Montreal	
Conne River	
Saskatoon	
Ottawa	
Toronto	

Appendix B: Summary of Solutions

These tables present the formal recommendations that NWAC took forward to the Consensus Building meetings with the Assembly of First Nations, Indian and Northern Affairs, and the Ministerial Representative. These meetings were held between January 2007 and March 2007. Each recommendation was grounded in the comments, ideas and suggestions for solutions that individuals shared with NWAC during the MRP Solutions initiative.

Intergenerational impacts of colonization

<i>Short term solutions</i>	<ul style="list-style-type: none"> Federal legislation must include a retroactive clause to financially compensate Aboriginal women and their descendants who suffered a loss as a result of the <i>Indian Act</i> legislation
	<ul style="list-style-type: none"> Membership and citizenship legislation and policies must be revised to provide choice for women and their descendants regarding band membership
	<ul style="list-style-type: none"> The Aboriginal Healing Foundation and all Aboriginal healing and wellness programs must be expanded and adequately resourced to better address intergenerational impacts of colonization
<i>Medium term solutions</i>	<ul style="list-style-type: none"> A mechanism is developed to implement compensation for the lack of protections for women and their descendants including disenfranchisement from First Nation communities, loss of language, culture and identity as a result of MRP
	<ul style="list-style-type: none"> Gender based impact analysis of the Aboriginal Healing Foundation and healing and wellness programs be resourced for improved effectiveness for Aboriginal women, children and families
	<ul style="list-style-type: none"> Repatriation programs are developed and resourced for communities to embrace their members
<i>Long term solutions</i>	<ul style="list-style-type: none"> Break the cycle of intergenerational impacts of colonization and create the space to re-instill pride in Aboriginal identity and improve self-esteem
	<ul style="list-style-type: none"> Women and their descendants will gain redress for the lack of protections they experienced under the <i>Indian Act</i>

Violence

<i>Short term solutions</i>	<ul style="list-style-type: none"> NWAC is provided with resources to develop an effective national strategy to stop violence against Aboriginal women, children and families that contributes to matrimonial breakdown
	<ul style="list-style-type: none"> Implement enforcement orders
	<ul style="list-style-type: none"> Increased transitional housing for women, children and families
	<ul style="list-style-type: none"> Formalize and recognize the role of Aboriginal women's organizations as an official stakeholder in policy and program design and initiatives.
<i>Medium term solutions</i>	<ul style="list-style-type: none"> Subsidized and affordable housing be provided in a safe and healthy community
	<ul style="list-style-type: none"> Impact assessment to evaluate existing programs and services which address violence and the impacts they have including shelters and transition houses and provide additional resources where needed.
	<ul style="list-style-type: none"> Investigate promising practices for developing healthy communities
	<ul style="list-style-type: none"> Provide transitional housing for men
<i>Long term solutions</i>	<ul style="list-style-type: none"> Violence is unacceptable
	<ul style="list-style-type: none"> Communities utilize a collective culturally-relevant approach to resolving conflict
	<ul style="list-style-type: none"> Implement or expand the application of promising practices for developing healthy communities

Justice

<i>Short term solutions</i>	<ul style="list-style-type: none"> • Improve access for Aboriginal women to judicial processes which should take into consideration the unique needs of semi-remote, remote and isolated communities
	<ul style="list-style-type: none"> • The justice system must enforce court orders, Band bylaws, etc.
	<ul style="list-style-type: none"> • Development of multi-staged systems of Aboriginal mediation or other appropriate Aboriginal system and practices for justice / decision making under MRP
	<ul style="list-style-type: none"> • Assessment and evaluation of the impact of MRP measures implemented under <i>First Nations Land Management Act</i> (FNLMA)
<i>Medium term solutions</i>	<ul style="list-style-type: none"> • That legal professionals and the justice system receive training regarding on reserve Aboriginal rights issues
<i>Long term solutions</i>	<ul style="list-style-type: none"> • Implementation of a community-based, culturally appropriate Aboriginal conflict or dispute resolution by First Nation communities

Communication and Education

<i>Short term solutions</i>	<ul style="list-style-type: none"> • Develop, implement, and resource an ongoing facilitation and communication process to increase the understanding of Aboriginal women and communities on MRP rights, policies, and processes.
<i>Medium term solutions</i>	<ul style="list-style-type: none"> • Establish mandatory federal / provincial / territorial policies for funding and implementation of Aboriginal Studies curriculum
	<ul style="list-style-type: none"> • Provide additional resources for education and upgrading training to increase employability of Aboriginal women to enable them to rebuild their families, communities and nations including the need to change eligibility requirements such as restrictive funding age limits.
	<ul style="list-style-type: none"> • Create a special fund / program specifically for women following marriage breakdown for education, training, economic development, and small business development with no eligibility barriers
<i>Long term solutions</i>	<ul style="list-style-type: none"> • Individuals, families, communities, and nations will have resources and rights based knowledge to build healthy, viable and sustainable communities

Accessibility of Supports

<i>Short term solutions</i>	<ul style="list-style-type: none"> • Increase the funding of programs to support Aboriginal women and children to prepare them for healthy relationships and to support them during the breakdown of matrimonial relationships
	<ul style="list-style-type: none"> • Ensure that Aboriginal women can access programs and supports both on and off reserve, including those living in semi-remote, remote, and isolated communities
<i>Medium term solutions</i>	<ul style="list-style-type: none"> • Develop a mechanism to provide a continuum of services for transitional ongoing support for Aboriginal women and children
<i>Long term solutions</i>	<ul style="list-style-type: none"> • Aboriginal women and children are able to access their benefits under the <i>Indian Act</i> regardless of their residency.

Legislative Change

<i>Short term solutions</i>	<ul style="list-style-type: none"> • Implement overarching substantive federal legislation to protect the rights of women and children living on reserve in the interim until First Nation communities can develop their own laws: this legislation should include opt-out and compensation clauses.
<i>Medium term solutions</i>	<ul style="list-style-type: none"> • An enabling body consisting of Aboriginal women and First Nations representatives should facilitate a consultation and development process based on Indigenous law approaches for the resolution of MRP that is appropriate to each First Nation.
<i>Long term solutions</i>	<ul style="list-style-type: none"> • Communities utilize Indigenous law, which includes equal participation of women, to resolve MRP issues.
	<ul style="list-style-type: none"> • Communities will use this expertise to approach all decision making in the community

Appendix C: Definitions

Aboriginal People

A collective name for the original peoples of North American and their descendants, defined in the *Canadian Constitution Act 1982* as including Indians, Métis and Inuit.²

Aboriginal Healing Foundation

The Aboriginal Healing Foundation encourages and supports Aboriginal people in building and reinforcing sustainable healing processes that address the legacy of physical abuse and sexual abuse in the residential school system, including intergenerational impacts. It facilitates the healing process by providing resources for healing initiatives, promoting awareness of healing issues and needs, and by nurturing a supportive public environment.

First Nation(s)

A collective name for Status and Non-Status Indian persons, often used to specifically identify individuals belonging to a particular community or First Nation (formerly 'band'). This term is widely used in Canada.

First Nations Land Management Act (FNLMA)

The *First Nations Land Management Act* was passed by the federal government in 1999. It provides signatory First Nations with the opportunity to opt out of the land administration sections of the *Indian Act* and to establish their own regimes to manage their lands and resources. Under this process, a participating First Nation will develop a land code that sets out the basic rules for the land regime, which may include environmental management and protection laws. Within twelve months from the date the land code comes into effect, the First Nation must establish a community process to develop rules and procedures to deal with matrimonial property that do not discriminate on the basis of gender.³

Indian

The term "Indian" describes all the Indigenous people in Canada who are not Inuit or Métis. Indian peoples are one of three peoples recognized as Aboriginal in the *Constitution Act, 1982*.⁴

Matrimonial Real Property (MRP)

This term refers to a couple's home or land that they live on, or benefit from, during their marriage or marital relationship. The key characteristic of this property is that it cannot be moved or easily physically divided between the spouses, unlike other types of property such as funds in a bank account or family furniture.

Transition Houses

Transition houses provide up to 30 days of temporary, safe, supported shelter to women and their children experiencing domestic violence in their lives. Transition houses may provide some combination of the following services: child care, parenting support, shelter, crisis intervention and counseling, transportation, outreach and accompaniment to appointments or to court.

² INAC at www.ainc-inac.gc.ca/pr/pub/wf/trmrslt_e.asp?term=1

³ INAC Backgrounder First Nations Land Management Initiative, 2003.

⁴ INAC at www.ainc-inac.gc.ca/pr/pub/wf/trmrslt_e.asp?term=12

Appendix D: Native Women's Association of Canada (NWAC) Contact Information

NWAC Head Office

Six Nations of the Grand River

P.O. Box 331

Ohswegen, ON N0A 1M0

Telephone: 905.765.9737

Fax: 905.765.0173

Website: www.nwac-hq.org

NWAC Satellite Office

1292 Wellington Street West

Ottawa, ON K1Y 3A9

Telephone: 613.722.3033 or 1.800.461.4043

Fax: 613.722.7687

E-mail: reception@nwac-hq.org

Appendix E: NWAC Provincial and Territorial Member Associations Contact Information

North Region

Labrador Native Women's Association

P.O. Box 542 Happy Valley-Goose Bay, NL A0P 1S0

Native Women's Association of the Northwest Territories

P.O. Box 2321 Yellowknife, NT X1A 2P7

Telephone: 867.873.5509 Fax: 867.873.3152

E-mail: reception@nativewomens.com

Website: <http://www.nativewomens.com>

Yukon Aboriginal Women's Council

103-307 Jarvis Street, Whitehorse, YT Y1A 2H3

Telephone: 867.667.6162 or 1.866.667.6162

Fax: 867.668.7539

E-mail: yawc@yknnet.ca

East Region

New Brunswick Aboriginal Women's Council

230 Big Cove Road, Elsipogtog, NB E4W 2R9

Telephone: 506.523.4732 Fax: 506.523.6014

E-mail: nbawci@nb.aibn.com

Newfoundland Native Women's Association

General Delivery, Benoit's Cove, NL A0L 1A0

Telephone: 709.789.3430 Fax: 709.789.2207

E-mail: nf.nativewomen@nf.aibn.com

Nova Scotia Native Women's Society

P.O. Box 805, R.P.O. Truro, NS B2N 5E8

Telephone: 902.893.7402 Fax: 902.897.7162

E-mail: claragloade@eastlink.ca

Aboriginal Women's Association of Prince Edward Island

P.O. Box 145 Lennox Island, PE C0B 1P0

Telephone: 902.831.3059 Fax: 902.831.3468

E-mail: awapei@pei.aibn.com

South Region

Mother of Red Nations Women's Council of Manitoba

141 Bannatyne Avenue, 3rd floor, Winnipeg, MB R3B 0R3

Telephone: 204.942.6676 or 1.866.258.6726 Fax: 204.942.7639

E-mail: morn@morn.ca

Website: <http://morn.cimnet.ca/cim/92.dhtm>

Ontario Native Women's Association

212 Miles Street East Thunder Bay, ON P7C 1J6

Telephone: 807.623.3442 or 1.800.667.0816 Fax: 807.623.1104

E-mail: onwa@shaw.ca

Québec Native Women Inc. /

Femmes autochtones du Québec Inc.

P.O. Box 1989 Kahnawake, QC J0L 1B0

Telephone: 450.632.0088 or 1.800.363.0322 Fax: 450.632.9280

E-mail: info@faq-qnw.org

Website: <http://www.faq-qnw.org>

West Region

Saskatchewan Aboriginal Women's Circle Corporation

P.O. Box 1174 Yorkton, SK S3N 2X3

Telephone: 306.783.1228 Fax: 306.783.1080

E-mail: sawcc.hq@sasktel.net

Alberta Aboriginal Women's Society

P.O. Box 5168, STN MAIN Peace River, AB T8S 1R8

Telephone: 780.624.3416 Fax: 780.624.3409

E-mail: aaws@telusplanet.net

British Columbia Native Women's Society

4213 Alexis Park Drive Vernon, BC V5L 1J5

Telephone: 604.253.6262 Fax: 604.253.6263

E-mail: bcnativewomen@nethop.net

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