



**Affaires autochtones et  
Développement du Nord Canada**

**Aboriginal Affairs and  
Northern Development Canada**



# **Proposed Family Homes on Reserves and Matrimonial Interests or Rights Act**

## **BILL S-2**



## Issue Definition

- Matrimonial real property refers to the immovable assets (in other words things that cannot be moved) owned by one or both spouses or common-law partners, such as a house and structures used by the family.
- The Supreme Court of Canada confirmed in 1986 that courts cannot apply provincial or territorial laws dealing with the division of family assets in a manner that would alter the interests of First Nations in their reserve land because reserve lands fall under federal responsibility.
- The *Indian Act* does not address the issue of on-reserve matrimonial real property.

**\* THERE IS A LEGISLATIVE GAP.**



## Issue Definition (cont.)

- **As a result of this legislative gap, courts cannot:**
    - **Grant temporary occupation of the family home to a spouse or common-law partner who does not hold the interest in the family home; or,**
    - **Prevent one spouse or common-law partner from disposing of their interest in the family home on a reserve without the approval of the other spouse or common-law partner.**
  - **Courts may award compensation for the purpose of adjusting the division of family assets between spouses or common-law partners; however, such orders are difficult to enforce on reserves.**
  - **The result is that on-reserve residents have a critical lack of basic rights, remedies and protections that are available to individuals living off reserve.**
- \* ON-RESERVE INDIVIDUALS DO NOT HAVE SIMILAR PROTECTIONS TO OFF RESERVE INDIVIDUALS.**



# Overview of the Proposed Legislation

The proposed legislation, **Family Homes on Reserves and Matrimonial Interests or Rights Act**, has two main objectives:

1. First Nations can enact their own community-specific matrimonial real property laws which courts can apply.
2. It also establishes a clear set of interim rules, called provisional federal rules, that once in force, would provide matrimonial real property rights and protections for residents living on reserves until such time as a First Nation develops and enacts its own laws.

**\* Bill S-2 strikes a balance between individual and collective rights:**

- Balances the collective rights of First Nations with adequate legal protection for individuals by respecting the unique situation of reserve communities' collective interest in their reserve lands;
- Provides basic rights and protections through First Nations' laws or the provisional federal rules that are:
  - similar to those afforded through provincial/territorial legislation
  - accessible through the provincial/territorial courts



# Changes to the Legislation

- The proposed legislation has been introduced on three previous occasions starting in 2008 but, in each case, died on the *Order Paper*. The most recent was Bill S-4 that was amended in the Senate to address witness testimony and comments from other stakeholders.
- Three additional changes have been made in Bill S-2 to address concerns expressed by First Nations and further support them in developing their own laws.

## The three changes are:

- 1. The verification process, including the role of the verification officer, has been removed.**
- 2. The ratification threshold has been lowered to a single majority with a set participation in the vote of at least 25 per cent of the eligible voters.**
- 3. A 12-month transition period has been added before the federal provisional rules come into force.**



# 1. First Nation Law-Making Power

- Bill S-2 includes a process for First Nations to develop and enact their own laws related to matrimonial real property. Once the bill comes into force, First Nations may choose to develop and enact their community-specific laws under the legislation from that date forward.
- Neither the Minister of Aboriginal Affairs and Northern Development, nor any departmental officials would have control over the content of First Nation laws. Moreover, there would be no ministerial power to disallow, cancel or alter, such laws.
- Under the legislation, a community vote is required to approve the proposed First Nation law. This means the First Nation law is approved if at least 25 per cent of the eligible voters participated in the vote and a majority of those voted to approve the law.
- Agreement on the content and acceptability of a law would take place between First Nation members and their First Nation governments.



# Possible Process for First Nations to Develop Matrimonial Real Property (MRP) Laws under Bill S-2

**First Nation Council decision to develop MRP laws**

## Process Begins

- Notify the Attorney General in their province that they intend to enact their own law
- Assess requirements/develop plan
- Hold community meetings
- Draft MRP laws

## Draft Laws Completed

- Further community meetings
- Re-assess draft MRP laws

## MRP Proposal Package

- Education component created to inform community about what the MRP laws will and will not do
- Share proposal package with community

## Ratification Process

Members of the First Nation that are 18 years and older, whether they live on or off reserve, are eligible to take part in the community ratification process. The bill also requires the council to take reasonable measures, in accordance with the First Nation's practices, to locate voters and inform them of their right to vote, the means of exercising that right, and the content of the proposed laws.

## MRP laws ratified:

Vote Passes  
Report the outcome of the vote to the Minister and provide copies of the laws as stated in the legislation

## Vote fails

Federal regime continues to apply if in force; community may choose to hold another vote or re-craft laws

First Nation laws, once ratified, will come into force on the date they are ratified or on a date that is stated in the laws.



## 2. Provisional Federal Rules

- Twelve months after Bill S-2 comes into force, the provisional federal rules will apply.
- The federal rules, once in place, allow all parties to determine what they are entitled to when a marriage or common-law relationship breaks down. While on-reserve residents could, as always, choose to resolve issues among themselves or through alternative dispute resolution, a clear set of interim rules would be in place if needed.
- These rules would no longer apply to a First Nation that, at any time, enacts its own law under the legislation.
- \* **Should a First Nation enact its own matrimonial real property law under the legislation during the 12-month transition period, the provisional federal rules will not apply to that community.**



## 2. Provisional Federal Rules: Key Components

- The following rights and protections would be available in the federal provisional rules on reserves once they are in effect:

### *Emergency Protection Orders*

- In a situation of family violence, an individual would be able to apply to the court for an order to exclude a spouse or common-law partner from the family home on an urgent basis.

### *Matrimonial Home*

- Would provide spouses or common-law partners with an equal entitlement to occupancy of the family home until such time as they cease to be spouses or common-law partners.
- Would require spousal or partner's consent to sell the matrimonial home, which will prevent one spouse or common-law partner from selling the home without the other spouse's or common-law partner's agreement.
- An individual would be able to apply to the court for an order for short to long-term occupancy of the family home to the exclusion of the other spouse or common-law partner.



## 2. Provisional Federal Rules: Key Components (cont.)

### *Division of on-reserve Matrimonial Interests or Rights*

- Entitlement, on application, of each spouse or common-law partner to an equal division of the value of the family home and any other matrimonial interests or rights.
- An individual would be able to apply to the court for an order to transfer in some circumstances, the matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.
- An individual would be able to apply to the court for an order to enforce a written agreement made by spouses or common law partners that would set out the amount to which each is entitled and how to settle the amount payable.



# How the Federal Rules Could Work: Scenario 1

Mary has lived with Peter on his reserve for 7 years. Mary is not a member of his reserve community but their 3 children are members. They live in a house for which Peter holds the Certificate of Possession. Mary has been subject to Peter's physical abuse for some time and he has threatened her with further physical harm.

For her protection and that of her children, Mary wants to leave but cannot immediately think of where to go.

Under the federal rules in the legislation, Mary could apply for an emergency protection order allowing her to stay in the family home without Peter for a temporary period of time, up to 90 days, to give her the protection and stability necessary to make alternate arrangements for her and her children. If she requires more time, Mary could apply for an extension.

Currently, provincial laws giving access to emergency protection orders cannot apply to Mary while she remains on reserve. This is because provincial law cannot affect Peter's interest in the family home.



## How the Federal Rules Could Work: Scenario 2

Upon the death of Lucy's husband, David, the First Nation council issues an eviction order to Lucy and her 3 children. David's will specifies that the house should go to his brother. Lucy has lived with David on his reserve for 10 years. Lucy is not a member of his reserve community but their 3 children are members. They live in a house for which David holds the Certificate of Possession. David's brother is also a member of his reserve community.

Provincial estates law cannot affect the First Nation's interest in the home and land, so Lucy and her children could only stay in the home if the First Nation council and David's brother agree.

Under the federal rules in the legislation, Lucy could automatically occupy the family home for a period of up to 180 days following David's death, to give her time to make alternate arrangements for her and her children. In addition, Lucy could apply for an order of exclusive occupation of the family home for a specific period of time. Upon application, based on criteria set out in clause 21(3), a court may order exclusive occupation of the family home for a set period of time, such as until the children reach the age of majority to ensure they can maintain a connection to their community. The decision for the period of the order for exclusive occupation would take into consideration factors such as how long Lucy has lived in the community, the age of her children, her medical condition and whether she cares for any elderly or disabled community members. First Nations can make representations to the court on Lucy's application.



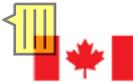
## How the Federal Rules Could Work: Scenario 3

For the last 5 years, Angie and Don have lived together in a home that is part of their First Nation's social housing program, however, Angie and Don are splitting up.

Both Angie and Don are members of their First Nation and want to be able to stay in the home without the other.

Under the federal rules in the legislation, Angie and Don each could apply for an exclusive occupation order to stay in the home to the exclusion of the other for a period of time determined by the court. Among the factors the court would look at before providing an exclusive occupation order is that their First Nation collectively holds an interest in the home. Also, First Nations can make representations to the court at the hearing of the application. If either Angie or Don were granted exclusive occupation of the social housing home, that person would be required to continue to pay any rent owing during the period of the court order and the lease.

Provincial laws do not apply to the home in this case. The provincial law cannot affect the First Nation's interest in the social-housing home or the land. In some instances, a First Nation determines the right to occupancy of homes in their social housing program.



# Provisional Federal Rules Fact

It is important to note that:

- the legislation provides for First Nation councils to be notified regarding any proceedings under the Act, except in the case of emergency protection and confidentiality orders.
- First Nations can make representations to the courts about the cultural, social and legal context relevant to the proceedings, and to present views about whether or not the order should be made, e.g., the impacts on First Nation communities of potential orders involving non-members.
- this respects the fact that reserve lands are set aside for the use and benefit of First Nation members.



# What the bill does **not** do

## It does not:

- allow non-Indians and non-members to gain permanent rights to reserve land. In other words, non-Indians and non-members may occupy the family home only temporarily.
- entitle non-members to share the value of interest in lands held by a member.
- allow non-members to make money from the value of reserve land. In other words, non-members can not sell the land or the family home.
- allow the Minister nor the department to have any role in reviewing, cancelling, disallowing or altering First Nation laws.



# Conclusion

## **The proposed legislation:**

- Responds to the Government's commitment in the Speech from the Throne 2011 to introduce legislation to ensure that people living on reserve have matrimonial real property rights and protections.
- First Nations can develop and implement community-specific laws with respect to matrimonial interests or rights.
- The development of matrimonial real property law is between a First Nation government and its community members.
- Provides rights and protections through federal rules, once in force, where needed.
- Confirms the government's commitment to further protect the rights of Aboriginal people, particularly women and children living on-reserves.



## **For more information**

Visit and Monitor the Aboriginal Affairs and  
Northern Development Canada's

Matrimonial Real Property website:

[http://www.ainc-  
inac.gc.ca/eng/1100100032553/1100100032557](http://www.ainc-inac.gc.ca/eng/1100100032553/1100100032557)

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