

Addressing Matrimonial Property On-Reserve

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2006

In September of this year, the Assembly of First Nations (AFN), the Federal Government and the Native Women's Association of Canada (NWAC), announced a second round of consultations to discuss on-reserve matrimonial property rights.

These consultations will take place all across the country beginning in October 2006 and lasting until January of 2007. The consultation will yield a report and recommendations that will be given to the government.

Ministerial Representative Wendy Grant-John said, "This is an important opportunity to correct a situation that has troubled our communities for far too long. I look forward to working with NWAC, the AFN, INAC and other interested parties in developing options to resolve the problems that have been created by lack of appropriate measures governing matrimonial real property on reserves."

Historically, the lack of property rights on-reserve for women and children has been cited as being one of the reasons for their disadvantaged status.

In Canada, the division of assets and child custody upon a divorce or separation are dealt through by provincial law. However, First Nations, under the Canadian Constitution, are governed by the federal government, who has exclusive authority over "Indian and land reserved for Indians", as found in the Indian Act.

The application of the Indian Act over on-reserve property, has been upheld by the Courts. Unfortunately, the Indian Act does not address matrimonial property. In fact, there is no legal provision for property. In fact, there is no legal provision for the division of a family home located on-reserve, or the land that it is built on.

This is the real issue. The Department of Indian and Northern Affairs has statistics indicating that the majority of certificates of possession for on-reserve property are held by men. This is a concern because, often, the person who has the home, will have a better chance of success in terms of custody and access rights of any involved children, thus giving men an upper hand in custody and divorce settlement disputes. And even in cases where women are awarded custody of the children, they will have no place to live and will likely have to leave the reserve or move in with other family members. This goes against the notion of the importance of the well-being of families; a notion that is part of cultural traditions that speak of ensuring the well-being of future generations.

That often compounds other problems found on reserves, such as housing shortages, the problem of limited resources to find housing and support children, as well as overcrowding.

All parties hope that the consultations will help to address the issues, by applying, as National Chief Phil Fontaine has indicated, “First Nations solutions that are based on our traditions, that accommodate human rights, and acknowledge the traditionally strong role of First Nations women in our communities”, while at the same time balancing the protection of the rights of both spouses and respecting the collective rights of First Nations.

To find out more about Matrimonial Property On-Reserve, you can check out the INAC website at http://www.ainc-inac.gc.ca/pr/pub/matr/mrr_e.html or contact us for a copy of their booklet. To find out more about the consultations, you can contact INAC at 1-800-567-9604, the AFN at 1-866-869-6789 or the Native Women’s Association of Canada at 1-866-796-6053. Consultations took place in Thunder Bay on November 12th.