

CONSULTATION REPORT ON
MATRIMONIAL REAL PROPERTY

INDIAN AND NORTHERN AFFAIRS CANADA
MARCH 7, 2007

The purpose of this document is to provide background information for focussed discussion on possible legislative solutions for the provisions of matrimonial real property rights on reserve, in the context of consultation. This document presents an overview of previously identified issues shared through public discussions. This document contains legislative wording that is solely intended to provide an example for the reader of general types of legislative provisions that illustrate how an option may be introduced. This document does not describe every provision related to any particular legislative option. For these reasons, this information document is of a general nature and is solely intended to facilitate the consideration of solutions to the application and enforcement of matrimonial real property rights on reserve. As this document serves to stimulate discussion and ideas, it does not commit the Government of Canada into endorsing/adopting its contents. Also, any future legislative proposal may be subject to amendments by Parliament that could directly impact the future consideration of this issue. Please note that any statements contained in this document should not be treated as legal advice.

The views and opinions expressed in this document represent those of the authors and do not constitute the views of either the Department of Indian Affairs and Northern Development or the Government of Canada.

Published under the authority of the Minister of Indian Affairs and Northern
Development and Federal Interlocutor for Métis and Non-Status Indians
Ottawa, 2007
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1-800-567-9604
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QS-7090-000-BB-A1
Catalogue: R2-470/2007
ISBN: 978-0-662-49983-1

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REPORT OVERVIEW

The on-reserve matrimonial real property (MRP) issue has been reviewed by three Parliamentary Committees that have each recommended the federal government address the legislative gap related to matrimonial real property on-reserve by enacting appropriate legislation.

MRP legislation is intended to fill this legislative gap by ensuring that individuals who possess or have an interest in MRP on reserves have access to legal provisions for the equitable division of MRP and protection of related rights and interests in the event of a separation, divorce or death of a spouse.

The MRP consultation process that was announced on June 20, 2006, and launched on September 29, 2006, was intended to inform the legislative solution that will be developed for the MRP issue.

This consultation report comprises five sections that provide background information and highlight what was heard during the INAC departmental consultations held with Aboriginal organizations not represented by the AFN or NWAC on the MRP issue. The AFN and NWAC have prepared their own reports on their consultation and dialogue processes.

Section One provides background information on the legislative gap relating to on-reserve MRP.

Section Two outlines the MRP consultation process that will inform the MRP legislation that is to be developed.

Section Three presents the main findings from consultations held by individual Aboriginal organizations and communities funded by INAC.

Section Four highlights the consultation process with the provinces and territories.

Section Five provides an overview of the consultation process and the main issues raised.

SECTION 1: INTRODUCTION

In the Canadian legal system, matrimonial property is generally defined as property owned by one or both spouses and used for a family purpose. Matrimonial property can be divided into two types of property: (a) "matrimonial real property" (MRP), which includes the land and anything permanently attached to the land, such as the family home; and (b) "matrimonial personal property", which includes property that is movable, such as the family car, furniture and money in a bank account.

Provincial/territorial governments have jurisdiction over property and civil rights under the *Constitution Act*, 1982. In accordance with this legislative power, provinces have enacted laws protecting spousal interests in matrimonial property, including MRP. However, because reserve lands fall under federal jurisdiction and because MRP is not addressed in the *Indian Act*, case law has established that provincial matrimonial property law does not fully apply on reserves.

As a result of this legislative gap, courts have no authority to protect the MRP interests of spouses on reserves. Moreover, courts cannot make an order for temporary or permanent possession of the family home located on a reserve. In relation to on-reserve MRP, courts can only take the value of such land and house into consideration when ordering the distribution of the assets among the spouses. In doing so, courts can use orders in an attempt to strike a balance between the assets of each spouse for equalization purposes.

Many of the legal rights and remedies relating to MRP that are applicable off reserves are not available to individuals living on reserves. Unlike their counterparts living off reserves, spouses living on reserves cannot ask courts to: (a) grant an order for temporary or permanent possession of the family home, even in a situation of domestic violence or when the spouse has custody of the children; (b) order partition and sale of the family home to enforce an order of compensation from one spouse to the other; and (c) preclude a spouse from selling or mortgaging the family home without the consent of the other spouse.

Anecdotal evidence suggests that the issue of on-reserve MRP disproportionately affects Aboriginal women and children, particularly those experiencing family violence. On the breakdown of a marriage or a common-law relationship, many women living on reserves who do not hold a Certificate of Possession (CP) are forced to leave their family home, and in cases where there is no alternative on-reserve housing, their community. Even in cases where a CP is issued to a couple as joint tenants, courts have no authority to grant exclusive interim possession to one of the joint tenants, or to direct the sale of the property. Pursuant to the *Indian Act*, a CP cannot be cancelled or corrected based on family considerations.

SECTION 2: THE CONSULTATION PROCESS

The on-reserve MRP consultation process was launched on September 29, 2006, by the Honourable Jim Prentice, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, with Beverley Jacobs, President of the Native Women's Association of Canada (NWAC), and Phil Fontaine, National Chief of the Assembly of First Nations (AFN). At the same time, Minister Prentice announced the appointment of a Ministerial Representative on this issue,

Wendy Grant-John, to facilitate this consultation process and report back by March 31, 2007, on a recommended legislative solution.

During the consultations, NWAC ensured that the voices of women were heard, the AFN conducted dialogue sessions with representatives of First Nation communities, and Indian and Northern Affairs Canada (INAC) consulted with provincial and territorial governments, as well as Aboriginal organizations not represented by NWAC or the AFN. Ms. Grant-John assisted the parties in preparing their consultation plans and began work leading to the consensus-building phase of this initiative.

The consultations, which began in September 2006 and ended on January 31, 2007, are to form the basis of the collaborative work that will contribute to building consensus on an acceptable legislative solution.

Proposed Options

As part of the consultation process, three options were presented to generate discussion on what a potential legislative solution might entail. Consultation participants were to be asked for their opinions on each of these options and invited to offer other possible solutions for consideration.

Option 1: *Incorporation of provincial and territorial matrimonial real property laws on reserves.*

Under this option, federal legislation would be adopted to make provincial and territorial legal protections on MRP available on reserves. As changes are made to provincial and territorial laws relating to MRP, the same changes would apply on reserves.

Option 2: *Incorporation of provincial and territorial matrimonial real property laws combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property.*

Similar to the first option, federal legislation would be adopted to make provincial and territorial legal protections on MRP available to First Nation individuals living on reserves. This option is different from the first in that it would also enable First Nations to exercise jurisdiction with respect to MRP on reserves.

The laws of the province or territory in which a reserve is located would provide an MRP regime unless and until a First Nation enacts its own MRP rules.

Option 3: *Substantive federal matrimonial real property law combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property.*

Under this option, a substantive federal law would be developed. This law would provide protections for MRP on reserves and enable First Nations to exercise jurisdiction on this issue. Similar to the second option,

the federal law would apply on reserves unless and until individual First Nations enact their own laws on MRP.

INAC Consultation Process and Methodology

Consultations held by Aboriginal organizations

This report provides information from consultations the department held with and provided funding to, interested organizations and communities not represented by either the AFN or NWAC. During 52 sessions, over 680 people were directly consulted by the department, approximately 76% of whom were women. The formal meeting schedule is included in Annex B. There were no applicants from the Yukon, North West Territories, Nunavut, or Saskatchewan.

For their part, the individual Aboriginal organizations arranged their own consultation sessions. As part of their funding requirements, an INAC representative was permitted to attend each session. At the outset of these particular consultation sessions, a consultation package prepared by INAC, which included the three proposed legislative options, was distributed, along with any material the Aboriginal organizations wished to provide.

A copy of the INAC consultation package is included.

Provincial and Territorial Government Consultations

On August 22, 2006, Minister Prentice wrote to his colleagues within the provincial and territorial governments requesting assistance in facilitating access to their government officials for the purposes of undertaking the on-reserve MRP consultations. To further assist this process, Michael Wernick, INAC Deputy Minister, subsequently also requested the input of his colleagues within the provinces and territories on the MRP consultation process.

INAC consulted officials from all the provincial and territorial governments, with the exception of Nunavut. Sessions with these officials generally consisted of an overview presentation of the MRP issue by an INAC representative followed by a question and answer segment concerning the MRP consultation process, including questions relating to the potential legislative options contained in INAC's Consultation Document. Often, provincial and territorial government officials shared their preliminary views with the INAC representative on a "without prejudice" basis.

Other consultation methods

Other means of consultation included the INAC web site with an email address for receiving comments. Approximately 40 individuals accessed the web site, responding to, and or seeking information on, the MRP consultation process.

Approximately 15 First Nation organizations contacted the Minister directly to provide input on the consultation process.

This report is the result of information collected and recorded by INAC personnel and from reports submitted by Aboriginal organizations who received funding from INAC to conduct MRP consultation sessions.

SECTION 3: ABORIGINAL ORGANIZATION CONSULTATION FINDINGS

The perspectives of women heard throughout the consultation process contained very consistent messaging. Over 72% of the participants were women, all of whom spoke passionately about the impact of the lack of MRP legislation on their lives. These women specifically spoke about:

- the need for the protection of children to be at the forefront of any solution;
- the fact that women were often forced to leave the reserve after a relationship breakdown or when fleeing domestic violence;
- concerns that women often return to an abusive relationship due to a lack of housing options;
- their disillusionment with the mostly male-dominated system of leadership within First Nation communities; and
- concerns that a First Nation MRP regime may perpetuate this imbalance of power if they are Chief and Council driven and not community driven.

Many common issues were raised by participants during the consultation process undertaken by the Aboriginal organizations not represented by the AFN or NWAC. The following five themes were raised most consistently. Annex B provides further detail, by organization, regarding consultation findings.

1. Concerns about the family home were raised at 64% of consultations

Participants raised concerns that individuals often have no choice but to leave the reserve after a relationship breakdown which is exacerbated by the housing shortage and the lack of housing policies.

In determining who should occupy the family home, children were often cited as needing to be considered first, with older people and those with disabilities also requiring special consideration.

Some participants suggested that if new MRP legislation required a market price for the house, an incentive to divorce may result. This raised alarm that forced sales of family homes may occur, as well as concerns that a spouse could sell a family home without their spouse's knowledge or consent.

Suggestions with respect to the division of the family or matrimonial home included:

- a 50/50 split;
- have the Band buy back the CP to retain Band control with both partners having to vacate; and
- certificates of possession should be passed on through women.

It was further suggested that the CP be tied to specific terms, including a condition that if one spouse (whose name is on the CP) becomes violent against his/her spouse and/or children, the CP will be revoked by the Band and/or granted to the abused parent without question.

Some participants felt that rules should be developed to ensure that each spouse has a means of recuperating their investments in the family or matrimonial home.

In regard to MRP and non-members, suggestions included:

- assigning the CP to the parent caring for the children, regardless of band membership, status or who has title to the CP;
- permitting the custodial parent to occupy the home even if non-status; and
- providing for the family home to be placed in the names of the children with status/band membership and held in trust.

2. Domestic violence was raised at 59% of consultations

Participants reported that, in the event of domestic violence, it is typically the woman who leaves the family home, often returning to an abusive relationship due to a lack of housing options. A decision to leave the relationship generally results in the loss of a home on the reserve and often without anything that may have been acquired during their relationship.

We heard that abusers are rarely permanently or even temporarily removed from the home by the Band or RCMP and that it is the victims of abuse who are forced to flee, typically with their children.

Many suggestions were raised for dealing with cases of domestic violence, including a nearly unanimous belief that an abuser should lose their interest in the home and be forced to leave and that the interests of children should be taken into account above all others.

It was also suggested that legislation should include a provision to revoke a CP from an abusive spouse and temporarily provide one to the abused spouse. Furthermore, participants asserted that abusers should not be allowed on the reserve and that Bands should rule in favour of the victim, regardless of their status. It was further suggested that counselling be provided to both partners in the event of family violence, and that safe houses be available for victims.

3. Membership and Indian Status were raised at 63% of the consultations

Participants asserted that non-members should be entitled to, at least, a temporary interest in the home. There was a feeling that if a non-member had lived with a Band member “for a long time” (e.g. “20 years or more” was cited in one session) that person should be allowed to stay, particularly in the event of the death of a spouse.

On relationship breakdown, there was general consensus that the parent – regardless of status or Band membership – should remain in the home, at least until the children reach the age of majority.

Concerns were raised that non-status individuals may be required to leave the reserve in the case of relationship breakdown. It was suggested a non-status person or non-member’s contribution to the community be taken into account when decisions on who will remain in the home are being made.

4. First Nation, federal/provincial jurisdiction was raised at 38% of consultations

First Nation/Band Jurisdiction

Many participants felt that Band Councils make decisions based on who they know and that Chiefs and Councils may not necessarily deal with the issues fairly. Many participants expressed concerns that Chiefs and Councils, often perceived as being a male-dominated power system, have few or no accountability requirements imposed on them. Many felt that Chiefs and Councils should not be allowed to decide which MRP-related regime will apply on reserves and they should not be accorded individual power over MRP-related policies.

Federation/Provincial/Territorial Jurisdiction

Federal/provincial/territorial jurisdictional issues were commonly raised; some participants expressed concern that provincial court orders were not always enforced on reserves, while other participants indicated that it would be important to harmonize federal, provincial, and First Nation laws to ensure an MRP solution would work on reserves. Lastly, the need for an independent appeal process was raised in various discussions.

5. Child welfare protection and child custody was raised at 35% of consultations

It was often argued that children should be the first consideration in any MRP solution. It was stated that MRP issues have resulted in children suffering by being removed from their home communities and moved to urban areas.

Suggestions were framed around protecting children (and their mothers) first and foremost, and recognizing the right of a child to be raised in their own culture.

Key suggestions included:

- whomever has custody of the children should stay in the house;
- where children are involved, there has to be compensation for both parties whether they have status or not; and
- any law must ensure that a parent with a child or children is allowed to remain in the home, regardless of who has their name on the CP.

The Proposed Options

In many of the consultation sessions, participants tended to focus on addressing the issues outlined above rather than discussing the proposed options. Where the options were specifically addressed, the following summarizes what was heard.

Option 1 - Incorporation of provincial and territorial matrimonial real property laws on reserves

Option 1 was largely rejected as most groups felt that existing provincial laws are inadequate. It was stated that the application of provincial laws on reserves works against the self-determination of a given community and does not acknowledge traditional laws and values nor recognize the assertion of First Nation governance.

Specific concerns regarding provincial legislation were raised in relation to the following issues:

- in Newfoundland and Labrador, common-law couples must prove their financial contribution to a relationship to gain access to any of the matrimonial property, whereas married couples are better protected;
- there is no alternative dispute resolution mechanism in place to settle a separation out of court;
- many participants thought that there should only be one law for all Bands and that the application of provincial/territorial MRP laws would create different regimes across First Nation communities; and
- this option does not provide a legislative mechanism for individual First Nations to develop their own MRP laws.

Option 2 - Incorporation of provincial and territorial matrimonial real property laws combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property

While it was generally agreed by participants that Chiefs and Councils are more likely to support this option over Option 1, the same concerns regarding the application of provincial laws on reserves apply. In addition:

- some participants stated that Band Councils should not be allowed to make laws on MRP because they did not have faith that Band Councils would act in the best interests of the community;
- an independent appeal body was proposed to alleviate concerns regarding Chiefs and Councils having authority over MRP issues; and
- there were many who thought that each Band's laws should appropriately reflect their unique needs and values.

Option 3 - Substantive federal matrimonial real property law combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property

When participants indicated a preferred solution, it was almost always Option 3, with the caveat that a means for First Nations to create their own MRP laws be included. The following points were also heard:

- as with Option 2, it was strongly felt that federal laws, in general, do not recognize traditional laws and values and dividing assets is contrary to the more traditional approach of sharing assets;

- some participants felt that the federal government alone has a fiduciary or nation-to-nation relationship with First Nations; and
- the *Indian Act* was raised at several consultations with suggestions that it be completely replaced; and
- that Aboriginal people draft legislation from a grassroots level.

Alternative Solutions

At the consultation sessions, other legislative suggestions included: recognition of First Nations inherent jurisdiction to enact their own laws governing MRP; a hybrid of federal and provincial/territorial laws with First Nation law-making abilities; and a hybrid of federal and provincial or territorial laws without First Nation law-making abilities.

Some non-legislative solutions were also suggested as alternatives to the three proposed legislative options. Fundamental principles underlying most of these alternative suggestions were the best interest of the child and a First Nations culturally-appropriate framework.

The main non-legislative solution discussed was some form of independent and accountable tribunal/body determining MRP issues that would create checks and balances for Chiefs and Councils, and to act as an appeal process for their decisions to ensure protection of rights and equality of all parties involved.

Other considerations included:

- the creation of independent First Nation circuit courts or Elders Circles;
- implementing alternative dispute resolution mechanisms;
- addressing the gap in the on- and off-reserve housing market values to compensate couples who vacate the family home for their share in the equity of the home on the basis of an independent appraisal;
- increased representation of women in decision-making roles when addressing MRP issues;
- the creation by Chiefs of a forum that ensures the equal representation of women and men in the development of community-based solutions to MRP;
- investments to reduce family breakdown and support systems for women and children including housing and shelters;
- increased education and awareness of MRP issues on reserves;
- amendment of the CP system to ensure equity; and
- a moratorium to allow time for more consultations.

SECTION 4: CONSULTATIONS WITH PROVINCES AND TERRITORIES

All provinces and territories were invited to participate in the consultation process. In addition, all provincial and territorial Ministers responsible for Aboriginal Affairs were asked for their cooperation in arranging and coordinating their government's input into the MRP consultation process. Comments were received on a "without prejudice" basis.

Although many common issues were raised by provincial/territorial representatives during the consultation process, including that the consultation timelines were too short and that they needed more time to prepare for implementation, there were four main areas of concern, namely:

1. Division of Powers

The challenge created regarding this issue relates to the provinces having jurisdiction over family and property law and the Government of Canada having jurisdiction over reserve lands.

Specific concerns revolved around:

- enforcement, including which court(s) will have jurisdiction over on-reserve MRP issues; and
- the different provincial/territorial regimes, especially the harmonization of laws and regulations within their own jurisdiction.

2. Funding Pressures

Some jurisdictions expressed the view that MRP legislation may result in an increased demand on existing provincial programs and services and suggested the Government of Canada was offloading a federal responsibility to the provinces and territories.

Specific funding issues that were identified as needing to be addressed related to implementing and administering legislation that implicates provincial/territorial jurisdiction, particularly where the demand for legal or social services is increased as a result of the legislation.

3. Self-Government Agreements

Provincial and territorial government representatives wanted reassurance that any MRP solution would not affect any existing agreements or negotiations and requested further information on the application of a legislative MRP solution to self-government or land agreements as soon as possible.

4. Further Consultations

Almost all jurisdictions indicated that they want to be consulted further, once a legislative solution is identified.

The Proposed Options

Of the seven provincial/territorial representatives that stated an opinion on a preferred option, four preferred Option 3.

Each of Options 1 and 2 were preferred by a jurisdiction and one jurisdiction stated that all three options presented were acceptable as a means for the Minister to provide protection on reserves.

Five provincial/territorial governments advised that they would be better able to indicate a preference if the proposed legislative model were provided to them.

There was consistent support for First Nations assuming jurisdiction.

SECTION 5: CONCLUSIONS

The consultation process provided the opportunity for First Nations and other relevant stakeholders to engage in efforts to determine a solution to the MRP legislative gap that affects so many people in First Nation communities.

While options for legislation were proposed for consideration, most participants were more concerned about addressing MRP issues rather than specific mechanisms to resolve these issues.

When participants did choose a specific option, Option 3 was most favoured of the options proposed.

Overall, suggestions by participants during the consultation sessions include:

- incorporate a First Nation mechanism to create and implement MRP legislation;
- create a balance between the authority of Chiefs and Councils over MRP issues and a First Nation community-driven approach to the decision-making process;
- maintain federal involvement in MRP issues as the Government of Canada has jurisdiction on reserves pursuant to the *Indian Act* and also has fiduciary obligations toward First Nations;
- ensure that First Nation organizations are actively involved in the policy-making process;
- incorporate First Nation traditional and cultural values into any legislative solution, i.e. it was suggested that any new MRP legislation respect traditional marriages;
- develop a legislative solution to immediately address the legislative gap for this complex issue and build on this by enabling a future review of the legislation; and
- ensure that the best interest of the child is placed first and foremost in the development of an MRP legislative option.

While it was generally agreed that the issue of MRP needed to be addressed, criticisms were expressed regarding the consultation process, particularly with respect to the timeframe in which they occurred. The timelines were often viewed as too short, not allowing time to review and properly understand the complexities of this issue. Some participants felt that INAC should have gone directly to individual community members and that information should have been more readily available to everyone and not just disseminated via the internet.

ANNEX A: CONSULTATIONS WITH ABORIGINAL ORGANIZATIONS AND COMMUNITIES

The information presented above in Section 3 is an aggregation of reports from INAC representatives (who attended the consultation sessions) in addition to reports submitted by each Aboriginal organization and community funded to undertake MRP consultations. This section provides a summary of each Aboriginal organization's consultation report and highlights issues that were emphasized or that differed significantly from the findings already presented in Section 3.

Assembly of Manitoba Chiefs (AMC)

The AMC held one session with approximately 43 participants, including representatives from 27 Manitoba First Nation communities, four tribal council representatives and five members of the AMC First Nations Women's Council.

The session was framed as a preliminary educational/information session. Participants felt that consultation with First Nations directly by the federal government must occur based on the principles of free, prior and informed consent, and reconciliation.

According to the AMC, essential elements for an MRP solution should include, but not be limited to:

- recognition and implementation of First Nations' authority over family law;
- protection of the First Nations' land base and interests, now and into the future;
- support systems for women, men, children and families;
- building on, and promotion, of First Nation human rights, including an appropriate balance between individual and collective rights; and
- sustainable outcomes for First Nation communities and governments.

Other suggestions included:

- the federal government should recognize authority over citizenship and provide education/information sessions on Bill C-31 in the interim;
- future discussions between the federal government and First Nation leaders should include a combined Bill C-31 and MRP scenario;
- a First Nations principle for "best interests" of children should be developed;
- interventions to keep families together; and
- more conceptualizing of "human rights" needed before any MRP solution is implemented.

Congress of Aboriginal Peoples (draft CAP Report)

CAP held four dialogue and consultation sessions with a total of 188 participants. Additional sessions were cancelled due to logistical challenges. These, however, were offset with the addition of a web-mounted survey.

Specific concerns included:

- *Indian Act* provisions that discriminate against Aboriginal women and their children and future generations of Aboriginal people;
- no protections for same-sex couples;
- a lack of family supports and institutions designed to sustain First Nation families both on and off reserves;
- impacts of socio-economic issues contributing to increased family violence, marital breakdown and other issues; and,
- enforcement of MRP legislation.

Proposed solutions included:

- gender equity amendments to the *Indian Act*;
- increased social programming to enhance well-being on and off reserves, e.g. housing, shelters, cultural awareness; and
- emphasis on education, advocacy, counselling and awareness of MRP issues.

There was no decisive reaction to the three options, however participants were less favourable to the application of provincial laws and concerns were raised that the application of federal laws would be seen as detrimental to self-government. It was felt that funding to address the issues and proposed solutions should accompany any option.

Eel Ground First Nation

One consultation session occurred in Miramichi with approximately 15 participants. In addition, 100 telephone surveys were conducted within the communities of Eel Ground, Burnt Church and Metapeniage; and six tape-recorded interviews with Elders regarding customary laws, marriage and property was broadcast on the Aboriginal people's Television Network (APTN) to reach a broader audience.

Specific recommendations to address indirect issues included:

- increased cultural awareness;
- increased focus on family and culture;
- laws and policies need to respect traditional ways and not divide people into categories;

- culturally appropriate education systems; and
- taking control over policies and legislation that impact on daily lives, in relation to all matters.

The Eel Ground First Nation's report indicated that many women were not aware of the issues with respect to MRP and did not fully understand what the government was trying to achieve through the proposed options. Opinion was expressed that women and children should be protected as a priority, that enforcement, implementation and redress are critical issues; and, the development, implementation, and enforcement of any future policies must be carried out in full partnership with Mi'kmaq governments and their communities.

Federation of Newfoundland Indians (FNI)

The FNI held nine consultation sessions with approximately 85 people in total – 76% women.

The FNI report indicates that many participants did not consider the consultation sessions to be true consultations due to the short time frame in which they were carried out. Participants favoured a consistent, flexible approach that permits First Nation communities or Bands to establish a common framework that suits their unique culture and community needs while providing protection for women and children involved in marital breakdown.

Participants identified a need for greater education, awareness and intervention capacity to support women and children in understanding and acting on their rights in all stages of marriage and marital breakdown.

Other concerns included:

- MRP consultation efforts required more in-depth consideration;
- any *Indian Act* amendments are closely intertwined with gaps on other topics, such as Band governance, rights protection and enforcement; and
- the fact that many women faced persecution and retribution in coming forward with their stories and that this was not addressed.

Indigenous Bar Association (IBA)

The IBA consultation session was held as part of their 18th Annual Fall Conference. As such, their report is limited to highlighting a few key challenges, key successes and key messages.

Information gleaned from the INAC representative report indicates that 15 participants attended and that 66% were women.

With regard to the options, participants felt that there needs to be a hybrid of Options 2 and 3 since both federal and provincial governments have overlapping, but not full jurisdiction. In addition, it was felt that an immediate recognition of powers should be given to First Nations to develop their own MRP laws.

More general suggestions included:

- funding should be available to First Nations to make their own codes/laws if either Options 2 or 3 are chosen;
- the options proposed lack a traditional component;
- participants want to see draft legislation before it is introduced;
- the consultation timeframe is too short; and
- it is questionable whether the AFN or NWAC truly represent the First Nation population.

Les femmes autochtones du Québec (FAQ)

The FAQ held 5 one-day consultation sessions involving 55 participants in total – 93% of whom were women.

Given the small number of participants, the views expressed by participants were not considered by the FAQ to be representative of all First Nations in Quebec.

The main recommendations were:

- all parties involved should work together to correctly and adequately inform First Nations to allow them to make informed choices about MRP;
- the legal protection of women during separation or divorce is desirable, but not if it is imposed without meaningful consultation.

The FAQ rejected the consultation process because it considered:

- the timelines short and inflexible;
- inadequate financial resources provided, and a large territory to cover, forced the FAQ to make choices limiting the number of First Nations consulted;
- that insufficient information was provided to make an informed choice between the three options;

The FAQ recommended more time to discuss and consider:

- implications of the *Indian Act*, the creation of new laws or modification of existing laws;
- the interplay between First Nation law-making powers and the application of provincial law on reserves; and
- alternative options put forward at other consultation sessions, e.g. for AFN Chiefs and not others.

National Aboriginal Circle Against Family Violence (NACAFV)

The NACAFV held seven MRP sessions across the country with a total of 42 participants, all of whom were First Nations women (shelter staff and clients).

The issue of domestic violence was raised often, particularly as to how it relates to women, in the context of family violence, losing their homes; many women felt they have few rights as it pertains to their homes and having to move off the reserve for security reasons. Considerable concern was raised about shelter clients returning to their communities and not having anywhere to go due to housing shortages. There was significant concern about the power of Chiefs and Councils to make decisions and a common feeling that they may not care about MRP issues. Many participants felt that it was important to incorporate customary or traditional decision-making approaches to determine possession of the matrimonial home, and most believed gender equality needed to be addressed in any MRP solution.

Limited discussion took place around the proposed options. However, in one consultation session where discussion was more lengthy, the options were specifically addressed with Option 1 not being supported because it was felt that it meant relinquishing jurisdiction to a province, Option 2 not being supported as it was felt that provincial and federal cooperation was not likely, and Option 3 receiving some support as it includes a First Nation mechanism that may assist First Nations in developing their own rules. It was noted that were an Option 3-type solution to be used, minimum standards should be required. It was commonly felt that women's involvement in the development of MRP codes or laws would need to be incorporated into any process that is contemplated for MRP legislation.

National Association of Friendship Centres (NAFC)

The NAFC held one consultation session with 23 participants, 87% of whom were women.

The main recommendation was for legislation to include recognition of First Nations inherent jurisdiction over MRP with clearly defined minimum standards, e.g. Charter application, principles of fairness and equity, inalienability of First Nations land, priority on dependants, and incorporation of customs and traditions.

In addition, it was viewed that new MRP regimes must be linked to implementation and enforcement plans; and that formal relationships between Friendship Centres, local First Nations communities and other government agencies be addressed, as Friendship Centres are often relied on to provide unfunded services to sustain women and children grappling with the affects of MRP.

Native Council of Nova Scotia (NCNS)

The NCNS conducted seven consultation sessions with approximately 39 participants, 56% of whom were women.

The NCNS recommended Option 3 as the best of the three options presented, provided that MRP legislation is in line with human rights and constitutional law, and is enforceable.

Some participants believed that:

- both status and non-status partners should be compensated, especially if children are involved;
- there be an independent review panel and/or an Elders' Circle to make decisions on an individual basis; and
- children should be a priority.

Native Council of Prince Edward Island (NCPEI)

NCPEI held three consultation sessions involving a total of 28 participants, 60% of whom were women. In addition, a wrap-up session was held with 27 participants.

The main conclusions were:

- that Aboriginals should draft their own MRP laws;
- focus should be on individuals and not Chiefs and Councils; and
- the need to consider children and future generations.

Most of the participants did not agree with the proposed options.

Additional discussions occurred around:

- eliminating or revising the *Indian Act*;
- limiting the scope of federal or provincial legislation with respect to MRP;
- framing the options around an Aboriginal perspective;
- sovereignty being considered as a fourth option; and
- the incorporation of traditional practices including mediation through justice circles.

New Brunswick Aboriginal Peoples Council (NBAPC)

The NBAPC held six consultation sessions with approximately 22 participants, 50% of whom were women.

Three main recommendations were noted:

- the *Indian Act* be replaced rather than "tinkered" with;
- MRP related legislation should be adjudicated by federal courts, provincial courts and an independent First Nations circuit court; and
- on- and off-reserve legal systems should work together to resolve MRP-related issues based on mutual jurisdiction.

Other recommendations included:

- amending the CP system to include more than one spouse;
- recognition of traditional marriages;
- application of a consistent MRP regime on reserves;
- Chiefs and Councils should not be accorded individual power over MRP-related policies; and
- mechanisms to resolve Bill C-31 issues should be put in place.

Nishnawbe Aski Nation (NAN)

NAN held one consultation session that included three focus groups over three days with approximately 30 participants, all of whom were women.

All three options were rejected on the basis that provincial and federal laws do not recognize traditional laws, and that dividing assets does not accord with the traditional approach of sharing assets.

Recommendations included:

- a five-year moratorium on MRP consultations and funding for communication with communities; and
- MRP customs and practices be revived by each community, including restorative justice and “the circle approach”.

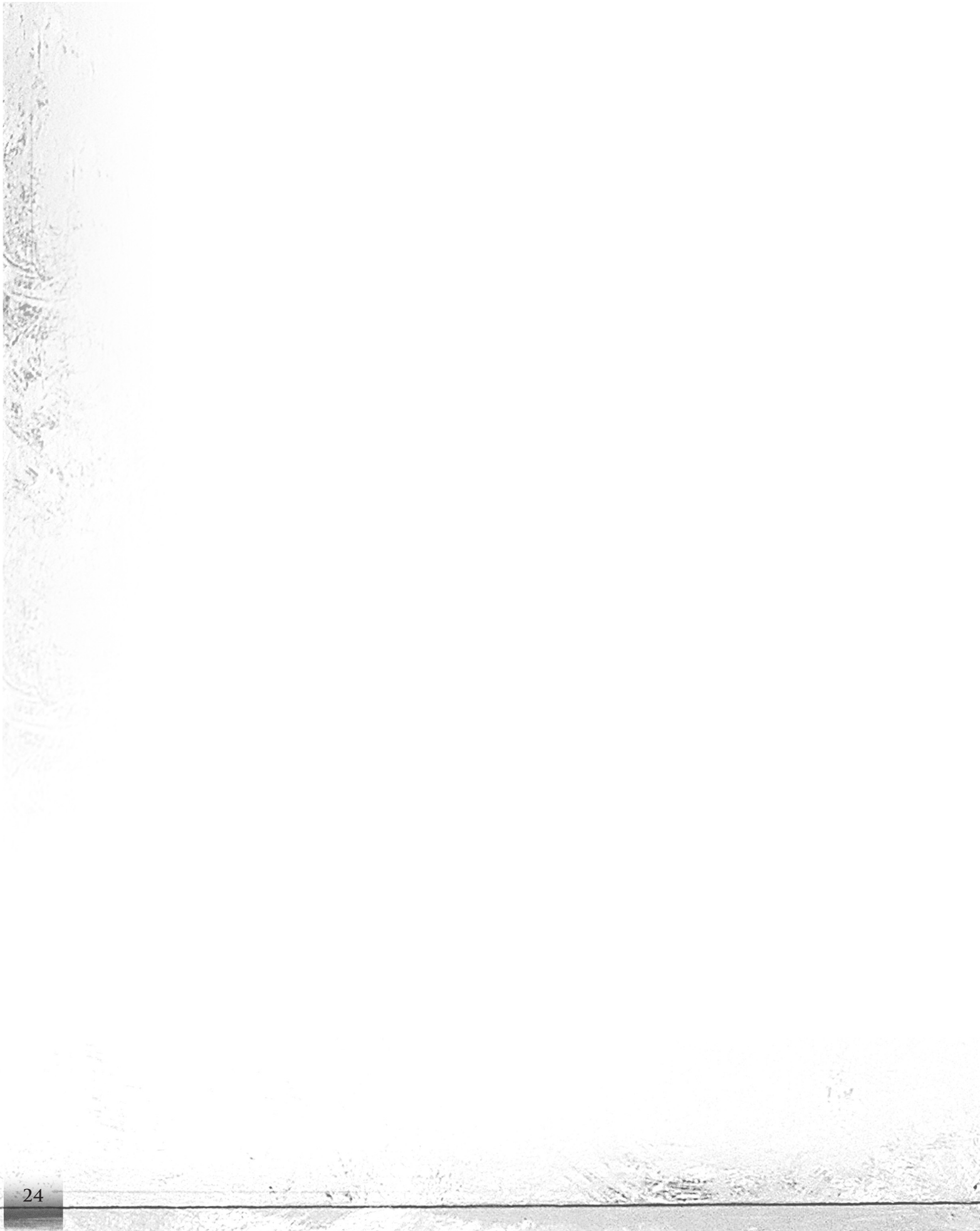
Other concerns were expressed over the safety and well-being of women and children, the possible infringement of collective rights, and the quality and availability of housing.

Treaty 6, 7 and 8 (Gathering hosted by Advisory Council of Treaty #6)

This “Information Sharing Session” included 52 participants, 69% of whom were women.

The main recommendation was to recognize First Nations’ inherent jurisdiction to enact MRP laws.

Other recommendations included: a review of Bill C-31 issues, continued involvement of all members in land-use decisions, and a restructuring of the consultation process. Some participants also felt that the federal government’s fiduciary trust responsibility must be preserved to safeguard Treaty Indians’ political, social and economic interests.



ANNEX B: CHRONOLOGY OF INAC MRP CONSULTATIONS BY PROVINCE/TERRITORY

NATIONAL CONSULTATIONS

British Columbia Date: December 12, 2006
Event: National Consultation
Lead organization: Congress of Aboriginal Peoples (CAP)
Place : Vancouver, BC

Date: November 18, 2006 (2 sessions)
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Bella Cola, BC

Alberta Date: November 14-15, 2006 (2 sessions)
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Morley, AB

Saskatchewan Date: October 19, 2006
Event: Indigenous Bar Association Annual General Meeting
Lead organization: Indigenous Bar Association (IBA)
Place: Saskatoon, SK – Annual General Meeting

Date: December 13, 2006
Event: National Consultation
Lead organization: Congress of Aboriginal Peoples (CAP)
Place: Saskatoon, SK

Date: November 11-13, 2006 (2 sessions)
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Fort Qu'Appelle, SK

Ontario Date: December 5, 2006
Event: National Consultation
Lead organization: National Association of Friendship Centres (NAFC)
Place: Ottawa, ON

Date: November 3-4, 2006
Event: National Consultation
Lead organization: Congress of Aboriginal Peoples (CAP)
Place: Ottawa, ON – Annual General Meeting

Date: January 2007
Event: National Consultation
Lead organization: Congress of Aboriginal Peoples (CAP)
Place: Ottawa, ON – FN Caucus

Date: November 27, 2006
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place : Sault Ste Marie, ON

Date: December 4, 2006
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Akwesasne, ON

Quebec Date: December 13, 2006
Event: Regional Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Kitigan-Zibi, QC

Nova Scotia Date: December 5-7, 2006 (2 sessions)
Event: National Consultation
Lead organization: National Aboriginal Circle Against Family Violence (NACAFV)
Place: Halifax, NS

REGIONAL CONSULTATIONS BY PROVINCE/TERRITORY

British Columbia Date: January 11, 2007
Event: Consultation session with Wet'suwet'en
Lead organization: Wet'suwet'en
Place: Moricetown, BC

Date: January 12, 2007
Event: Consultation session with Wet'suwet'en
Lead organization: Wet'suwet'en
Place: Houston, BC

Alberta Date: December 6, 2006
Event: Regional Consultation
Lead organization: Treaty 6, 7 & 8
Place: Edmonton, AB

Manitoba Date: November 22, 2007
Event: Regional Consultation
Lead organization: Assembly of Manitoba Chiefs (AMC)
Place: Winnipeg, MB

Ontario Date: November 17-19, 2006
Event: Nishnabe-Aski Nation Annual General Assembly
Lead organization: Nishnabe-Aski Nation (NAN)
Place: Thunder Bay, ON

Quebec Date: November 28, 2006
Event: Regional Consultation
Lead organization: Femmes Autochtones du Québec (FAQ)
Place: Sept-Iles, QC

Date: November 30, 2006
Event: Regional Consultation
Lead organization: Femmes Autochtones du Québec (FAQ)
Place: La Tuque, QC

Date: December 2, 2006
Event: Regional Consultation
Lead organization: Femmes Autochtones du Québec (FAQ)
Place: Wendake, QC

Date: December 9, 2006
Event: Regional Consultation
Lead organization: Femmes Autochtones du Québec (FAQ)
Place: Val D'Or, QC

New Brunswick

Date: November 18, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: Dalhousie, NB

Date: November 19, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: Beresford, NB

Date: November 22, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: Saint John, NB

Date: November 26, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: St-Basile, NB

Date: November 29, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: Fredericton, NB

Date: November 29, 2006
Event: Regional Consultation
Lead organization: New Brunswick Aboriginal Peoples' Council (NBAPC)
Place: Moncton, NB

Prince Edward Island

Date: December 7, 2006
Event: Regional Consultation
Lead organization: Native Council of Prince Edward Island (NCPEI)
Place: Mt. Stewart, PEI

Date: December 11, 2006
Event: Regional Consultation
Lead organization: Native Council of Prince Edward Island (NCPEI)
Place: Tyne Valley, PEI

Date: December 14, 2006 (2 sessions)
Event: Regional Consultation
Lead organization: Native Council of Prince Edward Island (NCPEI)
Place: Charlottetown, PEI

Nova Scotia

Date: December 4, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Sydney, NS

Date: December 6, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Truro, NS

Date: December 8, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Yarmouth, NS

Date: December 9, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Kentville, NS

Date: December 11, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Milton/Liverpool, NS

Date: December 13, 2006
Event: Regional Consultation
Lead organization: Native Council of Nova Scotia (NCNS)
Place: Milton/Liverpool, NS

Date: January 9, 2007
Event: Eel Ground First Nation Consultation
Lead organization: Eel Ground First Nation
Place: Amherst, NS

Newfoundland & Labrador

Date: November 26, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: St. George's, NL

Date: November 27, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Corner Brook, NL

Date: November 27, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Stephenville (Indian Head), NL

Date: December 3, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Benoit's Cove, NL

Date: December 3, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Flat Bay, NL

Date: December 4, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Grand Falls/Windsor, NL

Date: December 5, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Gander Bay, NL

Date: December 6, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Port au Port, NL

Date: December 7, 2006
Event: Regional Consultation
Lead organization: Federation of Newfoundland Indians (FNI)
Place: Appleton (Glenwood), NL

Yukon, North West Territories and Nunavut

No INAC sessions

ANNEX C: SUMMARY STATISTICS

(Note that these statistics exclude consultations held by NWAC and the AFN; and the number of participants **usually excludes** the INAC representative(s) and facilitator)

| NAC MRP Consultation Sessions Summary Statistics (based on available information) | | | | |
|--|---|--------------------------|--------------------------|------------------------|
| Location | # of Participants | # of Female Participants | % of Female Participants | |
| NATIONAL SESSIONS | | | | |
| 6 sessions | 226 | 34 | 15% | |
| Congress of Aboriginal Peoples | Vancouver | 4 | 4 | 100% |
| Congress of Aboriginal Peoples | Ottawa (AGM) | 162 | Unknown | |
| Congress of Aboriginal Peoples | Saskatoon | 6 | Unknown | |
| Congress of Aboriginal Peoples | Ottawa (caucus) | 16 | Unknown | |
| Indigenous Bar Associations | Saskatoon | 15 | 10 | 67% |
| National Association of Friendship Centres | Ottawa | 23 | 20 | 87% |
| REGIONAL SESSIONS | | | | |
| British Columbia | 4 regional sessions | 19 | 17 | 89% |
| Wet'suwet'en | Smithers | 3 | 3 | 100% |
| Wet'suwet'en | Moisestown | 9 | 7 | 78% |
| National Aboriginal Circle Against Family Violence | Nuxalt Nation Transition House | 1 | 1 | 100% |
| National Aboriginal Circle Against Family Violence | Nuxalt Nation Transition House, Bella Coola | 6 | 6 | 100% |
| Alberta | 3 regional sessions | 63 | 49 | 78% |
| National Aboriginal Circle Against Family Violence | Mofey | 6 | 6 | 100% |
| National Aboriginal Circle Against Family Violence | Mofey | 5 | 5 | 100% |
| Treaty 6, 7, and 8 (Women's Advisory Council) | Edmonton | 52 | 38 | 73% |
| Saskatchewan | 2 regional sessions | 7 | 7 | 100% |
| National Aboriginal Circle Against Family Violence | Fort Qu'Appelle | 1 | 1 | 100% |
| National Aboriginal Circle Against Family Violence | Fort Qu'Appelle | 6 | 6 | 100% |
| Manitoba | 1 regional session | 43 | Unknown | |
| Assembly of Manitoba Chiefs | | 43 | Unknown | |
| Ontario | 3 regional sessions | 41 | 41 | 100% |
| Nishnawbe Aski Nation | Thunder Bay | 30 | 30 | 100% |
| National Aboriginal Circle Against Family Violence | Sault Ste. Marie | 6 | 6 | 100% |
| National Aboriginal Circle Against Family Violence | Akwesasne | 5 | 5 | 100% |
| Quebec | 5 regional sessions | 52 | 49 | 94% |
| Femmes Autochtones du Québec | Wendake | 20 | 19 | 95% |
| Femmes Autochtones du Québec | La Tuque | 2 | 2 | 100% |
| Femmes Autochtones du Québec | Val D'Or | 6 | 6 | 100% |
| Femmes Autochtones du Québec | Sept Îles | 18 | 16 | 89% |
| National Aboriginal Circle Against Family Violence | Kiġgan-Zibi | 6 | 6 | 100% |
| Atlantic | 28 regional sessions | 231 | 126 | 55% |
| Native Council of Nova Scotia | Sydney | 5 | 2 | 40% |
| Native Council of Nova Scotia | Yarmouth | 2 | 2 | 100% |
| Native Council of Nova Scotia | Truro | 2 | 1 | 50% |
| Native Council of Nova Scotia | Kentville | 2 | 1 | 50% |
| Native Council of Nova Scotia | Milton | 8 | 6 | 75% |
| Native Council of Nova Scotia | Sheet Harbour | 20 | 10 | 50% |
| National Aboriginal Circle Against Family Violence | Millbrook | 1 | 1 | 100% |
| National Aboriginal Circle Against Family Violence | Millbrook | 5 | 5 | 100% |
| Eel Ground | Amherst | 15 | 1 | 7% |
| Federation of Newfoundland Indians | Grand Falls | 4 | 4 | 100% |
| Federation of Newfoundland Indians | Port au Port | 14 | 4 | 29% |
| Federation of Newfoundland Indians | St. George's | 3 | 3 | 100% |
| Federation of Newfoundland Indians | Stephenville | 10 | 10 | 100% |
| Federation of Newfoundland Indians | Flat Bay | 11 | 11 | 100% |
| Federation of Newfoundland Indians | Gander Bay | 29 | 19 | 66% |
| Federation of Newfoundland Indians | Appleton | 3 | 3 | 100% |
| Federation of Newfoundland Indians | Benoits Cove | 4 | 4 | 100% |
| Federation of Newfoundland Indians | College of the North Atlantic | 11 | 10 | 91% |
| New Brunswick Aboriginal People's Council | Dalhousie | 5 | Unknown | |
| New Brunswick Aboriginal People's Council | Beresford | 5 | 2 | 40% |
| New Brunswick Aboriginal People's Council | Saint John | 3 | 1 | 33% |
| New Brunswick Aboriginal People's Council | Fredericton | 7 | 5 | 71% |
| New Brunswick Aboriginal People's Council | Saint Basile | 1 | Unknown | |
| New Brunswick Aboriginal People's Council | Moncton | 1 | 1 | 100% |
| Native Council of PEI | Tyne Valley | 10 | 6 | 60% |
| Native Council of PEI | Mount Stewart | 11 | 6 | 55% |
| Native Council of PEI | Charlottetown (Elders Circle) | 12 | 8 | 67% |
| Native Council of PEI | Charlottetown (wrap-up session) | 27 | Unknown | |
| The North | | | | |
| TOTAL (National and Regional) | 52 sessions | 682 | 323 | 77%¹ |
| OTHER CONSULTATION METHODS | | | | |
| Emails | Approximately 55 | | | |
| Letter | Approximately 15 submissions | | | |
| Phone calls | Approximately 15 calls | | | |
| Provinces/territories | All provinces/territories except Quebec have provided input | | | |
| Government of Canada | 1 interdepartmental meeting has occurred | | | |

¹ percentage has been adjusted for missing gender information