



Matrimonial Interests or Rights Act

What is Bill S-2?

Bill S-2, an *Act respecting family homes situated on Reserves and Matrimonial Interests or Rights*, proposes to address issues relating to family real property on reserves, 'granting' First Nations the right to create their own laws, approve membership and notify the attorney general. Bill S-2 was passed on June 11, 2013, received Royal Assent and is now law.

Key Elements of Bill S-2:

- Allowing for the temporary exclusive possession of the matrimonial home in urgent and other situations;
- Authorizing courts to grant applications for compensation orders relating to the value of the matrimonial home;
- Authorizing courts to develop new interim remedies;
- Application of Provincial law in relation to matrimonial real property disputes occurring on reserves.

Concerns and Impacts of Bill S-2 on First Nation Communities

- The Bill fails to recognize the 'collective ownership of homes and property on reserve' and imposes the concept of 'individual property ownership' upon collective ownership of homes and property;
- The Bill conflicts with the inherent authority of First Nations over their lands;
- The federal government introduced this legislation without engaging in proper consultation with First Nations communities whose constitutionally protected Aboriginal and Treaty rights may be negatively impacted;
- The Bill grants provincial judges the authority to make decisions on homes, properties and estates within First Nation communities;
- The Bill does not provide any funding for implementation and there is the potential for removal of people from the family home.

At the root of First Nations' opposition to Bill S-2, is the Bill's failure to respect the inherent First Nation jurisdiction and authority in regards to collective property ownership on reserves and the failure of the bill to properly address the limited capacity of First Nations to properly implement the changes necessary to actually improve access to justice for people's affected. In empowering the provincial courts to preside over disputes related to the division of matrimonial property, this Bill fails to recognize that many First Nations communities are situated in remote regions, with limited access to lawyers and courts—for individuals residing within these communities, this Bill creates an additional barrier to justice for First Nation's citizens.

Additionally, it is problematic, that this legislation will be imposed upon First Nation communities, until the First Nation is able to ratify its 'laws regarding matrimonial real property through a vote of at least 25% of eligible members.' First Nations who have existing codes/laws regarding matrimonial property are also required to ratify their existing laws and notify the Ministry of Aboriginal Affairs and the Attorney General of the ratification. It is particularly concerning that this Bill imposes a process of ratification upon First Nation communities, which is not respectful of existing practices of adopting laws based upon membership consensus and/or other traditional processes. This Bill functions in direct contravention of Section 35 of the *Constitution Act, 1982*, which affirms existing Aboriginal treaty rights. Additionally, this Bill does not include a provision for additional funding, necessary for First Nations to enact their own customs and codes.

The government's failure to consult with First Nations prior to introducing this legislation is also concerning given that this is national legislation which will apply to all First Nations. As reserve lands are protected in the Indian Act, the Constitution Act, 1982, and numerous Treaties, land claims/ self-government agreements, it is clear that this legislation requires 'formal legal consultations as [was] envisioned in the *Guerin, Delgamuukw, Haida, Taku* and *Mikisew* decisions of the Supreme Court of Canada.'

Recommendations

- Legislation should be developed in consultation with First Nations' input from Aboriginal women should inform the development of this Bill.
- Additional funding should be provided to First Nation communities, in order to build capacity for the development and implementation of a custom code designed by the communities themselves.
- An arbitration process for matrimonial disputes and division of assets should be developed within the community, to negate the necessity for First Nations people to go to an outside court in order to settle a division of property, upon the dissolution of a marital relationship.

References

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