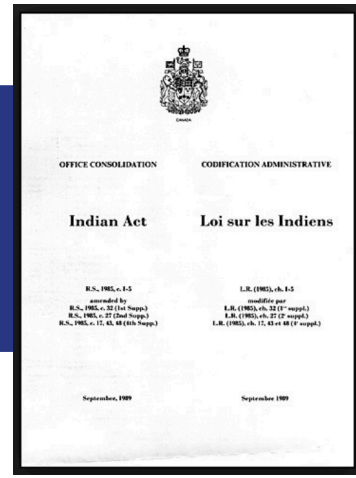


# Understanding the Family Homes on Reserves and Matrimonial Interests or Rights Act

## History

**S. 91 (24)** of the *Indian Act* gives exclusive jurisdiction to the federal government in regards to Indians and lands reserved for the Indians.



## Meaning...

Provincial laws regarding matrimonial property and Interests did not apply to First Nations people.



## This Led to Issues Like...

### *Derrickson v. Derrickson (1986)*

**Facts:** A divorcing couple were both members of the Westbank Indian Band. Upon divorce, the wife wanted to apply part 3 of the *British Columbia Family Relations*, which would give her half an interest in her husband's property to which he held a Certificate of Possession, or compensation in lieu of division.

**Held:** Since the federal government has exclusive jurisdiction over First Nations and lands on reserves, the wife could not apply the provincial statute. Therefore, her husband kept all the property in the divorce.

## Problem...

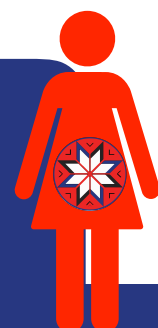
If provincial laws do not apply, the federal government does not legislate in regards to matrimonial property (because it is provincial jurisdiction), and the *Indian Act* does not cover matrimonial property, then where are First Nations supposed to bring these types of claims?



## Mainly Affecting...

### First Nations Women

The situation on reserve is that Certificates of Possession of property are issued to male band members. This means First Nations women could be evicted from their house by their husband upon divorce or upon their husband's death.



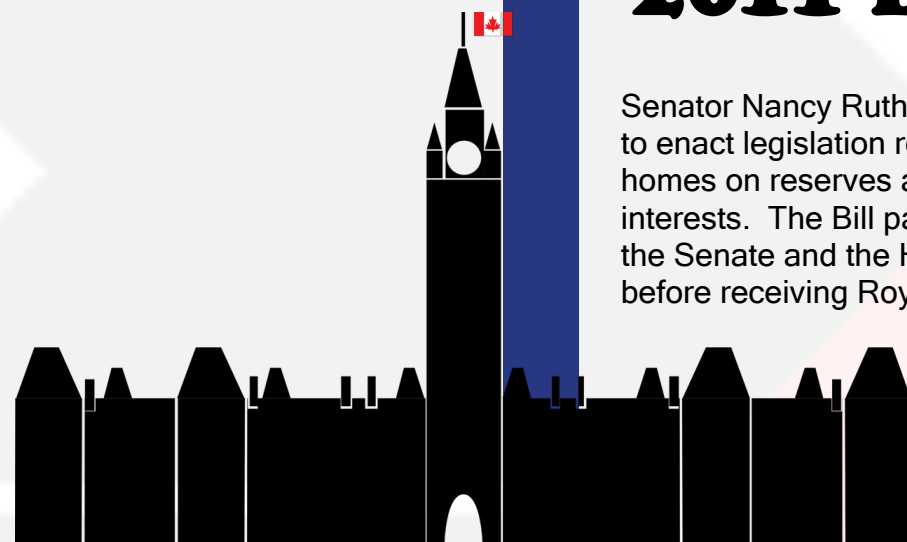
## Numerous Studies

From 1988 until 2011, this gap in legislation was studied, reported on, and recommendations were given. In 2006 and 2007, consultation sessions were held with various First Nations groups and organizations.

## Solution

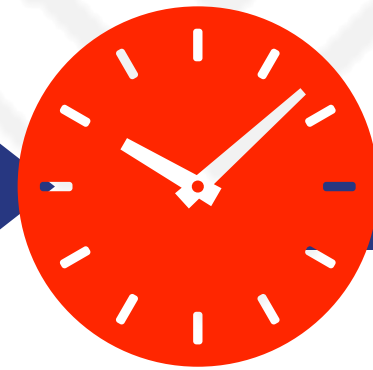
## 2011-Bill S-2

Senator Nancy Ruth puts forward a Bill to enact legislation regarding family homes on reserves and matrimonial interests. The Bill passes through both the Senate and the House of Commons before receiving Royal Assent.



## 25 years Post-Derrickson

In 2014, the Bill becomes enacted into law as the *Family Homes on Reserves and Matrimonial Interests or Rights Act*



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

## Purpose

Preamble

"Whereas it is necessary to address certain family law matters on First Nation reserves since provincial and territorial laws that address those matters are not applicable there and since the *Indian Act* does not address those matters;"

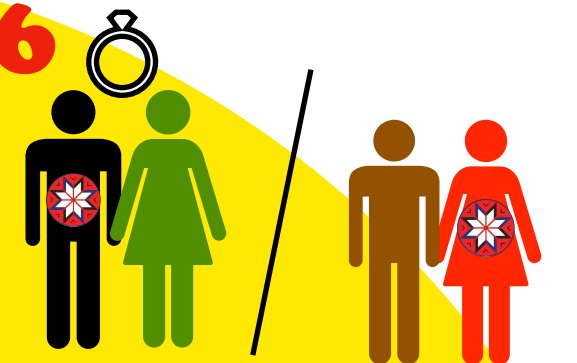
## Important Sections

### S.7 (1)

A First Nation has the power to enact their own laws regarding conjugal relationships and an individual's interest in matrimonial homes on reserve.



### S.6



This Act applies to spouses or common-law partners only if at least one of them is a First Nation member or an Indian.

### S. 28(1)

Upon divorce or breakdown of the relationship, each spouse/partner is entitled to one half interest in the family home.

### S. 15(1)

A spouse/partner cannot sell or dispose of their interest in the family home without the consent of the other spouse/partner.



### S. 13

Each spouse/partner may occupy the family home during the relationship whether or not the person is a First Nation member or an Indian under the *Indian Act*.



### S. 16(5)

In situations of domestic abuse, the court can order

## EVICITION NOTICE

exclusive possession of the home to one spouse, or force the violent spouse to vacate the home.

### S. 14

Following the death of a spouse, the surviving spouse can remain in the home for up to

# 180

days whether or not the survivor is a First Nation member or an Indian.