

QUESTIONS & ANSWERS FROM THE NOVEMBER 19, 2007
SIX NATIONS MRP COMMUNITY MEETING –

1. WHAT IS MRP?

QUESTION: What I am interested in, is what you call the family home, is this the home that both spouses have lived in at the time they separated? Suppose at that time when they separated, the person that owned the home owned it outright and when they married that person just moved in and never paid a dime for maintenance or anything and then they left. Is that what they call a real home, even thou they weren't together that long?

RICHARD: The intention is for our law to be able to respond to all possible scenarios, we can not deal with any personal issues tonight. With personal experiences, the intention of the law is to capture that and to put the question back to the community, how would you like the law to respond to that situation.

QUESTION: This is what I am asking you. How do you view it?

RICHARD: We don't have anything drafted yet, we are starting this slow and we don't have a law where we can say this is how it is going to respond to it. We are starting with general concepts and we are starting with a rolling draft that is simply right now just headings of the major sections. We are looking for your input if there is an issue there that you think needs to be addressed by this law, which from your comments there is. Then we also want to hear your comments, as to how you think that should be addressed. We don't have a law yet developed.

CARL: If we don't do this we would follow under legislation, which could go over to the provincial side, then they could get a foot into the territory. If we don't do this, it is going to be imposed on us. I am looking at the provincial side, which is being done now; they go off the territory and go to the Provincial Court. I think we really need to make our own law. Questions like you asked, we could put into this and revamp it and make it work for us.

RICHARD: I attended one meeting with Indian Affairs. Indian Affairs has had ongoing meetings with the Assembly of First Nations, the Native Women's Association of Canada and the Department of Justice. They provided a draft of their law; they didn't provide me one because I wouldn't sign a non-disclosure agreement with them and so they only provided a copy to AFN and NWAC. I peeked over my friends at AFN shoulders and writing as fast as I could and as much as I could. The draft law is 66 sections and the bulk of it is generic. To respond to Carl's point, what it looks like they are doing is taking the 12 jurisdictions, provincial and territorial and consolidating the provincial laws and they are going to apply those against us. They are going to be applying provincial courts to enforce the orders, for example the minister appointed a ministerial representative last year, named Wendy Grant John to study the issue and report back to him. She did that back in March and she recommended that there be such things as recognition of First Nations Tribunal, recognition of First Nations alternative dispute mechanisms and recognition of First Nations courts. There is nothing of her recommendations in the draft federal legislation and from what I saw there is no recognition of First Nations Jurisdiction and no recognition of us having our own alternative dispute resolution, our own tribunals, elders councils or mediation to resolve these disputes. A lot of these disputes can be resolved through mediation, through the people sitting down together. From what I have seen, Carl is right what they are simply going to do is consolidate the provincial Matrimonial Real Property Laws and impose them on us through this generic law, that could be introduced this fall.

QUESTION: It says it doesn't apply to vehicles, furniture or cash, is there any type of mechanism developed, to deal with those things?

RICHARD: It is really meant to deal with the house and the land. The other issues or property, are not real property. They are matrimonial property, the property that can be shared. This law is only intended to deal with the matrimonial real property.

MIKE: It does come under provincial law, because some of the chattels or moveable items would be part of the family property. It is not covered directly in terms of Matrimonial Real Property, under the Indian act. There are some restrictions on the applications of provincial law under that area too. Section 89 of the Indian Act, limits the authority of provincial legislation to deal with the seizures or administration of assets on the reserve.

COMMENT: This lady was asking, if the home is owned outright by the person before they married or came together and the outside person did not own the house at all, are they going to be able to come and divide that property? The first person owned it outright and the second person had nothing to do with it, they just moved in and got married or just lived together. I don't think that outside person should have a say or we should have a say as to how to divide that house. The first person, who owned it, should keep the house and the second party has nothing to do with it, because they didn't build it. I would suggested for on our territory and for off as well.

RICHARD: Right now it is intended for our members in this community, of Six Nations of the Grand River.

QUESTION: We do have members living off the reserve and if they came and wanted us to dissolve or resolve their marriage from off the reserve, would we be doing that?

RICHARD: Right now it is just for the land that is on this reserve.

COMMENT: Some of the land off the reserve that they are living on, off reserve is our territory.

RICHARD: Is it under a CP, Certificate of Possession?

COMMENT: I don't really know.

RICHARD: The intention is to deal with right now, with the territory here at Six Nations, then later on look at expanding it larger. This is a big piece to chew off now and then later on we can look at expanding it. It is really going to be up to the community to tell us what they want, if that is what they want the law to do.

QUESTION: So we can make up our own laws, whatever we want and we have to abide by them?

RICHARD: That is the idea.

COMMENT: I don't think a lot of people are going to like that.

RICHARD: That is what jurisdiction and sovereignty is about. You make a law and you enforce it and you agree to live by it. It is either that or the federal government imposes it and says it is a one size fits all.

AVA: On the development of our own law, that is exercising your jurisdiction and we always say we are a sovereign nation that is part of it developing our own laws. Maybe you're right, people might not want to abide by it and they will go off and go to provincial court and get their decision and their divorce up there. But whatever decisions are made in those provincial courts, they can not be enforced down here.

COMMENT: You could have a prenuptial agreement, before you get married. If the man or woman holds the house before they get married, after they split up the person who owned the house would keep the house. All of the moveable property, the cars, refrigerator and couches are divided evenly, but the house would still remain in the original owner's name.

RICHARD: There are sample copies of a prenuptial or marriage agreement available at the back table, which was provided by Mike Sherry, our legal advisor. The other example that I know that it is being used is the Aundeck Omni Kaning First Nation. Chief Madabee came down here and did a presentation and they are the only First Nation in Canada that I am aware of that has enacted its own Matrimonial Real Property Law, under its own inherent jurisdiction. One of the things that they are doing, is they provide couples who are contemplating marriage with a copy of a prenuptial or marriage agreement. They provided in their law, that marriage agreements have the full force of law once it is entered into and signed. The second thing they have in their law is that the mediation when they split up is mandatory, so they automatically have to go to mediation. Their law has been operating for two years and they have not had anyone challenge it or have anyone taken it to outside provincial court. In the Aundeck Omni Kaning First Nation. MRP Law, they provided for a court of competent jurisdiction, because at this time they do not have their own court, they have name the provincial courts that can enforce court orders. At this point none of the disputes have gone outside of the community. They have all been mediated by mediators, which they have appointed within the community.

QUESTION: Does this mean this law will go into affect if and when the partners in the marriage or the former marriage can not reach their own settlement?

RICHARD: If our law is in place at the time that they entered into an agreement and within our law we have provided that marriage agreements will be enforced by our law, then at the time when they split up, that would be the time when it comes into force. The law is enforced whenever it is ratified by this community and that process still has yet to be decided on. Once the law is in place it provides for when they split up, the mediation and the marriage agreement.

COMMENT: Should there not be a provision in the law that says, if the pair of spouses can reach an agreement without having to enact the Real Property Law, that they may do so and the law comes into force only when they can't agree, that is what I am suggesting.

RICHARD: So they resolve it without having to go to that point.

COMMENT: Within the MRP law, will it say how long common law will be? Will we decide how long it will be?

RICAHRD: That is the idea, common law off the reserve is normally determined within each province and it differs from province to province. I think Ontario is 3 years, unless they have a child. But it is up to this community to decide what common law is, what that length of time is.

2. WHY A SIX NATIONS LAW?

QUESTION: I think provincial law precedes municipal law and federal law precedes provincial law. How do we as Six Nations Haudenosaunee people, ensure that our law precedes federal law?

MIKE: That is correct the provincial laws precede municipal laws. Municipalities are sometimes described as the creatures of the province. Federal law does not always precede provincial law, because they have different areas of jurisdiction. For example if you have a provincial law under your education, the federal law can not pass a law to precede that law, because they have different areas of jurisdiction. If they both have jurisdiction on a particular topic, which does happen, then the federal law would precede in that particular case. On the issue on how do we ensure that the Six Nations Law will precede federal law, we can't. No matter how careful a process is, how deliberate, how much community input and legal opinions and so forth, no one can really provide a guarantee that it will precede federal law? It is basically a clash of jurisdictions and so far the Canadian court, which is probably not surprising, has not said that First Nations have independent jurisdiction over family law or other matters.

So this position being advanced as far as I understand it, it is a very positive and aggressive in terms of First Nations Jurisdiction, I think that is the right way to go. The task is to do the process very carefully in terms of community development and legal development and do everything right in terms of passing the law. Given the nature of these kinds of issues, which are very difficult sometimes with property, money, family feelings, there will probably come a day where probably a Six Nations citizen will challenge the Six Nations Law. They would prefer to be under the federal law, probably because they feel that they will get a better result, in terms of property and money. Then when that day comes, there will be a challenge in the courts, probably the Canadian courts in terms of which law precedes which. We can't really provide a guarantee that we will win. We can do everything possible to maximize the chances of success, but we can't really provide a guarantee.

RICHARD: In 1992 there was a negotiation of something called the Charlottetown Agreement negotiation of all the provinces, the federal government and all the territories and the document that was agreed too. Although it wasn't ratified by a Canada wide referendum, there was a section in there that said First Nations are one of three constitutional powers in Canada. Right now you have section 91 and 92, federal and provincial jurisdiction, respectively. What Canada did when they came here, is they carved up all the jurisdictions, they didn't allow for the newer ones, like computers and internet and all that stuff. The way they are structured constitutionally they only had two jurisdictions - but we said that our government still exists; we never gave up any jurisdiction, none of the treaties talk about self government, all those areas you have on your federal provincial list, we weren't part of your deal, those are still ours. That was the basis of the negotiation, to put a third pillar in there, we will negotiate and talk about which jurisdictions we want to occupy. There was some pretty deep conversations, because some people simply said no we already have all of the jurisdictions, and some people said we really don't want jurisdictions like penitentiaries, we really don't want postage stamps, we really don't want navigation - but all of those topics are under those jurisdictions.

That agreement was a pretty comprehensive agreement and I was fortunate to work with AFN during the negotiations and at one point we had 47 tables of negotiations going on. That was that six month process, where they went to 10 different cities across Canada and concluded that agreement. That is really what we are talking about. The fundamental questions you are asking is do we recognize our jurisdiction, because ultimately you are asking the question do their

(Canadian) courts determine our rights. Their courts, people are arguing that section 35 in the Canadian Constitution to where it says “The Existing Aboriginal And Treaty Rights Of The Aboriginal Peoples Are Here By Recognized And Protected”, people from the sovereignty side say that means our sovereignty still exists and the federal government says that means whatever we put in the Indian Act or Federal legislation exists - that battle is still out there. The ultimate question is a negotiated one; it is a legal one, if we agree that their laws preceded our laws. If we agree that the Canada Supreme Court and the Canada federal courts and provincial courts precede our laws, then we can't get there because their laws already say we don't have any sovereignty or jurisdiction. But it is also a political agreement or negotiation, which was achieved in Charlottetown.

We know that can be achieved at a political level, because we did it, we just didn't get the Canadian Population to support it at a national referendum. It is a real political question that you are asking, at the end of the day are we going to get them to recognize our jurisdiction and our authority? We are going to have legal challenges, we are going to have to come down the road and fight them all the way up to the highest levels. Mike will know about this better than I, this concept about you can only go to the UN or international level once you exhausted what they call “domestic remedies”, in other words you have to fight it all the way, as far as you can within Canada's courts and lose, before you can even take it to an international level. It is a very political question and it is something the community has to have a discussion on, because we are talking right now about matrimonial real property, but we are also talking about essentially, are we going to exercise jurisdiction and other areas education, health and justice. When did we give those up to the provinces and the federal government? It is a good question and it is a discussion we have to have in the community.

COMMENT: If the federal government produces their law in the next four months and it is enacted on, on their part and our law that we are developing isn't done until a year from now, you have a 8 month difference, what are we going to do as Ogwehoweh people here for 8 months until we get our law developed?

RICHARD: The immediate thing to try and do is to derail their law. Part of the job I was hired for in Ottawa, was to set up lobbies against legislations that is going to effect us and we did that before parliament tabled a Bill called C-44, it was a amendment to the Canadian Human Rights Act. We were 1 of 21 groups that appeared before the Standing Committee and we were able to get it delayed enough that it supposedly died on the order paper. The Standing Committee put in a clause that they had to have at least 10 additional months of consultation, before they could reintroduce it. There is another similar process for the Senate Committee, but the best we can do is delay it, because it is their process and we participate in their process. We would have to go through the same thing with this, once it is tabled - it is a delaying tactic. Now we have something on our side, which we may be successful with and that is called a “duty to consult”. Recently two Supreme Court of Canada decisions recognized that there is a duty to consult on the Federal and provincial government. It says it is on the Crown, that when they are going to do something that affects our aboriginal and treaty rights, they have a legal duty to consult, accommodate and sometimes obtain our consent – depending on the circumstances, which differ depending on the details of what they are doing. If they proceed with this, we need to take a serious look and the new Council will need to take a serious look at a legal strategy to challenge them on the duty to consult. The duty to consult is with First Nations and their citizens. Canada is going to say that they have been consulted with the Assembly of First Nations, and the Chiefs of Ontario, but they have not consulted with Six Nations of the Grand River, they have not consulted with any other First Nations directly. They are going to say that it is too expensive and too comprehensive and we will say that is too bad, but the Supreme Court of Canada - your

highest Court – says you have to consult with us, in a meaningful way and we have to help and be part of that. That’s part of a long term, it is more of a delaying, but if we are successful they have to back this thing off for the MRP. Now lets say it goes through in four or six months and even if we take a year, that is one of the decisions that the community and the Council has to make, is how do we respond to that. In their law, they are allowing for when First Nations pass a MRP Law, although the scope of what they want us to be able to pass is much more limited then we are contemplating. Their law is saying they will recognize our law, whenever enacted and in the interim you have general provincial laws that are going to apply to you. That is a question we are going to need to put to the community, a question that the new council going to have to deal with on this issue.

COMMENT: You said you didn’t think they knew about jurisdiction in the courts, traffic court sure knows about jurisdiction, they mentioned it while I was sitting there. The other one is on section 25, (of the Canadian Charter of Rights and Freedoms) where they can not abrogate or derogate from any of our laws.

RICHARD: That is in the constitution Section 25.

COMMENT: If this is a clear move towards jurisdiction and there is going to be a Six Nations Law, will this Matrimonial Real Property Act be strong consideration for some kind of judiciary. What is the judiciary part, so that somebody will have the responsibility for applying the law?

RICHARD: That question did come up at the last meeting. Roger Jonathan addressed it and there is a judiciary committee. In my view what the long and short of it is we have to merge the two, what we are doing in terms of justice. A justice system obviously has to be compatible with our laws that we are developing. We need to start working together with the different components of Six Nations administrations, so that the left hand and the right hand know what they are doing. Roger will respond to what the Justice committee was doing or is doing.

ROGER: We did mention at the last meeting, the Justice and Law Committee this term has been trying to get its structure together and how it’s going to work. What’s on the top is all structures and how it goes out to the community and one of the boxes that is going to eventually be, will be this law. We have to have something in place as to where do you go, for mediation and where do you go for the final decision if they can’t agree. If the husband and wife can not agree then it has to go some place and it will have to be some kind of a court of the community that will be the final decision made at that time. That is just one of the many boxes that the structure is going to be and all of the things that Richard is just commenting on and eventually fill it up. But sadly to say, we don’t have our resources core funding for that area right now. So we have to depend on Council to allocated funding to that area and that will be up to the new council to see how important this area is to the community, to allocate sufficient funds so that the work can continue.

Thank goodness for the other committees, they have Rama Casino Dollars and since they didn’t use them they allowed us to use them. Thanks to Carl on the Arts and Culture, we got some money from their just to keep going, since they didn’t use them. We have a coordinator being advertised right now to be hired, because our coordinator became ill and had to leave, but we depend on the will of council, there is no area that we can apply to, our committee has applied the Ministry and they told us they will not look at any funding for First Nations in Ontario, until they have the Aboriginal Justice Strategy in place. Which we have been working on for three years and the last meeting they called, was over a year and a half ago. So the province is just playing again the game of until the strategy is in place you will not get money and has long has

they can hold you off, you don't have any money to do anything in your community. It will be the will of Council, on how important this issue is and to put money aside as to what is needed.

RICHARD: One of the ideas that was kicked around by the MRP Planning Committee, was the idea of an Iroquoian, tribunal or court or Alternative Dispute Resolution, but the idea of using the seven Iroquoian communities, as sponsoring like a traveling judge or tribunal that could go to different communities, that could help resolve MRP disputes. It was an idea that was kicked around, it was also an idea that was recommended by Wendy Grant John in her recommendations to the Minister - that they look at regional First Nations courts or tribunals to help resolve MRP disputes. It is an idea that we can look at.

COMMENT: I looked at the Indian Affairs website today on this new law that they are doing and I find it very bothersome that they have all the resources that they need and we have none. Maybe they should shut down their organization and give the money to us, because we can make our own laws, we don't need them.

RICHARD: I totally agree, in fact that is certainly a representation that could be made through the political channels, through the Chief and Council. Again it was a recommendation of Wendy Grant John, that the First Nations that develop their own laws be adequately resourced. Because they haven't tabled their legislation yet, we don't know officially what their response is.

COMMENT: I am reading where the Federal government will impose its laws if we don't. Suppose a person is to start their proceeds for a divorce, say like next week, can the federal government come back again and say this is what we have in place and you have to follow it? Although it is not enforced right now and ours as you said, it is going to take over a year, so if a person is to start their divorce and it is already in the courts can they come back and enforce their law?

MIKE: The issue around retroactivity, especially in area of property rights which is very important. Generally speaking there is a principle in a law, that when a new legislation comes in, it does not have retroactive affect, especially on properties. So the basic answer would be that if divorce or separation appeared under the previous law, where currently there is kind of a gap, that would be the law that would determine the property division. I think the only way the feds could get around that, is if they put a specific prevision in their legislation that clearly said the intention is to have a retroactive effect and that is probably unlikely they would do that, because that would invite constitutional challenges.

COMMENT: If we make these laws and it comes into effect and everybody doesn't like certain rules of it, are we going to be adding and taking away? Say we set up the law and things aren't working for somebody here and another rules is working out for this person over here, are we going to be adding and taking out all along, in the next how ever many years it is going to be enforced? Can they do that?

RICHARD: Generally the idea is, that it is up to the community, but the idea generally is that you have to be able to amend your laws form time to time. Every other government is able to amend their laws; I don't see why Six Nations wouldn't be able to adjust, if things weren't working out.

3. WHO WILL THE LAW APPLY TO?

QUESTION: What about the children under age that might be involved in this divorce?

RICHARD: Well the law is contemplating to apply to all First Nations members. I would assume that it is contemplating with dealing with the children and the mentally handicapped and disabled. I would assume most laws would encompass that, I wouldn't know why that would be left out.

MIKE: The provincial law, which does apply towards children in terms of custody and support and issue like that, the Canadian Courts have held that part of the provincial part does apply on reserves. It is kind of ironic in a way, because children of course would seem more important then property, but that do apply because there is nothing inconsistent with those provisions in terms of the Indian Act. That is the current situation. The issue about the Six Nations Law, it depends on the community decision on how comprehensive you want to make the law. You can be very focused on the family home, but if you want to expand on that and cover the kind of things that the provincial law applies, then that you can do that as well, the more comprehensive you are, it would seem the better because you are replacing more and more provincial law with your own law, but that is a decision to be made in how comprehensive you want to be.

RICHARD: There has been some discussion at the Planning Committee level, of just that. Obviously this is going to touch on children, child custody and issues of wills and estates. So that question has come up and we need to deal with that question of how comprehensive do we want to make it. We want to make sure that it covers the children and protects the children; we want to make sure that it covers wills and estates matters, if someone dies after they split up and it is a unresolved issue. That is something we can obviously do as part of our jurisdiction, but it is one of the questions that we have to answer.

QUESTION: We have people in our territory that don't believe in divorce, but they still have irreconcilable differences. If they don't believe in the law that is going to be made on our territory, are we going to push that on them, even though they don't want anything to do with divorce? How will that work for people like that, in order to distribute their assets and things like that?

RICHARD: How would they deal if they don't divorce, if they just separate, how would they deal with division of property?

COMMENT: Is it going to be imposed on them, even thou they don't believe in that system themselves? Are we going to make them do it, whether they want to or not just because we made the law?

RICHARD: Generally that is how laws work, either they apply to people or territory or both.

COMMENT: I can't see us imposing something on somebody that not everybody wants, but I don't think we should be pushing it on somebody if they don't believe in that kind of system. How can we do that? It is like me telling you something, you got to do this because it is the law. How can we make them do that when they don't believe in that kind of system?

RICHARD: The opposite to that question is, can you have a law where people can pick and choose whether that law applies to them or not. Then if you can decide whether it applies to you

when it is to your advantage, is it a law? I don't know how you could do one or the other. If you could tell me that would be good, but I don't know how you would do it.

CARL: Whether we like it or not, it being done to us now. The federal government is doing it now, imposing their laws on us, whether we like it or not. When push comes to shove, we just make our own and we abide by it. I know if we don't, it is going to be imposed on us anyways, it is going to happen whether we like it or not. I am looking at it as a community; we put our own input into it. I think the majority will get on board, as long as we get out there and do it right, slowly and get all the input we can and just kind of work from there.

COMMENT: I think that if people can sort out for themselves what they want to do, without anybody feeling that they didn't get their share. A lot of people in the province do that, they divide up without having to enact the law; people can give all their property to their dog if they wanted to and nobody complains then so it happens. In the case if there are people who don't wish to enact and can make their own decisions then why should it be forced upon them? If both member of the ex spouses never disagree on how they make their own decision, then the law shouldn't apply. There will be no need.

My other comment on who will this law apply to, we all know there are a lot of non-native people, non-band members residing on the reserve and many have lived together for many years and they have children. If there was a divorce in that instance, if the law only applies to band members, then one of the parties might go to the provincial law, then what happens?

RICHARD: The law is simply meant to deal with those situations, as I understand it where you can't get agreement. The law is there as an umbrella, to be available to yourself if you need it. But obviously if you don't need it, it doesn't have to kick in. It is just like federal and provincial law, if you don't need it. This is for when you can't reach agreement and someone else has to intervene, a mediator or third party. Third Party in most cases in the provinces is courts. The best issue is wills and estates, which our family had to deal with quite a bit, but things got settled by an agreement, by family understandings and in some cases our parents who passed away, simply gave things away. We didn't need to go to court, the law was there to protect but it got settled. So I would assume that is the intent. The intent isn't simply to impose something; the intent is that if people can't agree what our process for resolving it is. But if people can agree, there is no need to intervene or to get involved.

COMMENT: In regards to, it would be there only if we needed it, if we don't want to use it then we wouldn't use it. Another one would be, if you married traditional you are not allowed to divorce, so, does that mean we would have to put in there for something like separation, would you be able to use this when you are just separating?

RICHARD: The question came up at the last meeting as well and there were several other suggestions as to incorporating principle from the Great Law into this. Our intention is to be able to deal with that, but we need more expertise from the confederacy to tell us how that does work. We are actually hoping to have someone from the confederacy participate in the MRP Planning Committee, as well as attend these meetings and there has been an invitation extended, but they just can't seem to make themselves available or they are too busy. We are not experts on that so we want to bring in the confederacy, who can tell us what is marriage, what is divorce and how is it suppose to work, when the husband and wife split up under their Haudenosaunee laws. That can guide us in how we develop this. So, the intention is to try and encompass it.

MIKE: The current provincial law doesn't force anybody to get divorced, nor to apply for support and a division of the assets, separation is sufficient. In terms of the Six Nations Law, that depends on what the community consensus is.

MELBA: Every meeting we go to there is provincial and federal laws and as we know that's what happen to us, what we are talking about here is Indian Law, not provincial or federal law and I think that should be really clear to us. I know it can be very confusing, because of our impositions that we had put upon us over the years.

I wanted to mention the children, that is a real major concern and maybe the heading should be Real Property for Children. The children are the ones that are innocent and certainly need to be taken care of. I think of all kinds of situation, such as the school, if parent separate and there is problems of who is going to live in the home, children need continuity and the children must remain in their district school. We have problems with that right now, because some of the schools get really crowded. So when they separate they need continuity and that is where the overall concern should be for children, so that some kind of law should be put in there that they are number one. I think of the step children, if the man for example owns the house, will he be keeping his own children and will their children or her children, be forced to move off the reserve or into another district.

When it comes to justice, I think it is really important to look at justice in various ways. We are certainly looking at what is justice, is it child welfare, is it traffic violations and in this case, is it justice for children for where they should live, where they are comfortable when it comes to living in their home, as well as the school that they should attend or their health care. Something that is excisable always to the children and we are sitting here and talking today, because we have that responsibility to make those decisions for the children number one.

HELEN: The children, that is going to be the biggest issue when it comes to Matrimonial Real Property, because if the wife is non-native or the mother and her and the kids are awarded the home, that is going to be a big issue for our community. She can't live here, because of the residency by-law. So, what happens to the kids, are we going to kick them off too, like we do now anyway? It is not right the kids are entitled to that house, but just because the mother maybe non-native and our residency says she can't live there. Somebody has to speak up for the children, I really don't know what is going to happen there. From what I know of the traditional law, whenever a couple breaks up the home is suppose to go to the mother and children. The man is suppose to leave, but of course we know that doesn't happen, but what if the mother is non-native. That is something that we are really going to need to be addressing.

RICHARD: What I am hearing clearly, is a desire for the law to deal with and protect children. The other comment of what I am hearing around who the law will apply to is that it should apply to anyone residing within the territory.

COMMENT: I think you have to keep in mind, the number of times people have been married. If you have been married 3,4,or 5 times and you have that property split up and you have 5 different families and different children with different people, they all have rights too. So, I think we have to have some wisdom here.

COMMENT: Are we going to be selling marriage licenses and where would they be registered? First they have to get married before all of this stuff applies.

RICHARD: The definition of spouse is something we have to deal within this law. There is the full range out there of over definitions being used, common-law, official marriage, legal marriage by clergy, Traditional Marriage and same sex marriages. We have to decided what our definition of spouses is, what it encompasses, so that is one thing that has to be dealt with. In terms of marriage licenses, this isn't contemplating dealing with marriage licenses, this is dealing with what happens when a couple splits up, how the property is dealt with.

4. WHEN WILL THE LAW APPLY?

RICHARD: That is an important discussion we have to have, once we get through this whether it takes one year or two years, how do we show it has community support? That is normally called ratification. . We have to very conscious that there are Elected Band Council supporters and there are confederacy supporters. In the Confederacy most people don't vote. It is an important question that we are going to have a decision on and try to come to some determination.

COMMENT: Put the Federal Law beside it and they will change their mind.

QUESTION: Have you decided what the process is or anything?

RICHARD: No, this is just the second meeting so we have yet to determine that. For an example, Akwesasne, which is an Iroquoian community, was involved 10 years ago in the Federal Self Government process. At that time the federal government told them that for them to receive money to be involved in the process; they had to show that they had community support to enter into the process. Akwesasne has the same dynamic that we have, they have council supporters and they have Longhouse people who wouldn't vote. What they were able to talk the Federal Government into accepting, was for those who vote they had a voting ratification, but for the longhouse supporters, they gave a resolution or letter from the Confederacy saying they supported the initiative, without voting. That is how they were able to do it and that was accepted by the Federal Government.

COMMENT: On what you are saying, we voted before on something and it still hasn't been done now. We can still do all of this and have a ratification, but how do we know it is going to get done? How long of a process are we going to take, before it really does get done? Whether this takes us two years or not, is this really going to come into effect, because the other things we have voted on, hasn't come into effect. So why should we believe this is going to happen.

RICHARD: What you are talking about is enforcement. How do we enforce it? I assume you are talking about the residency by-law that is a question I can't answer. I don't know why that is not being enforced.

AVA: We have extended an invitation to the Confederacy to take part in this process and I am hoping they come on side. They took it to Council, but they haven't had a chance to agree on it, but I have been talking to them on individual basis. We are hearing a lot that the two Councils have to work together and we also have to involve the Mohawk Workers. If we can get all of these groups together and start talking and start jointly developing something, then we have a better chance of getting some kind of process in place, to help get something ratified. That is one of our goals over the development of this, is to get all of the groups involved, so that and if the community can see it is being supported by everybody, the Confederacy Council, Band Council and the Mohawk Workers, it will be stronger to get it ratified.

HELEN: I don't see it as a necessity to enforce it; people are going to use it if they need it. It has nothing to do with enforcing and if they want to go to the provincial court, the provincial Court judgment isn't going to apply on the reserve. We are not going to force people to use this law, because it is there if they need it. They are only going to need this law, if they can't settle things amongst themselves.

RICHARD: An example when there maybe enforcement provisions in our law, right now when a couple splits, someone has to determine who stays in the house under Provincial Law those are called interim orders. An Interim Possession Order is your first Issue, if we have a tribunal that says the wife and children stay in the house and the husband doesn't want to leave, there is an enforcement issue that we will have to deal with. The second thing is, if there is domestic violence, you have issues of restraining orders, as an example of where an order is required; enforcing it if there is domestic violence.

HELEN: So are restraining orders going to be part of this law?

RICHARD: They are part of Domestic Law and restraining orders under Provincial Law.

HELEN: So we are having all that under here too.

RICHARD: How else are you going to deal with it?

MIKE: When you get into domestic violence, it does go in to the Criminal Law area, which is a whole different area of jurisdiction, it is Federal. Again it is an issue of how comprehensive you want to get, but when you get into the Criminal Law area that raises a lot more complicated issues, in terms of competing Jurisdictions.

COMMENT: She thinks that we don't need to enforce it and just by the things that you said, it has to be some kind of a law. We can't just make all of this up and not go by all of the things that you just said, and why should we enforce it just for them reasons. That is what I was asking before, how are we going to do that when a lot of people don't want that.

COMMENT: How about when a Indian man owns the land and he has a white woman and they have children and he has to go and she is not allowed to live here. That is a time when you would have to enforce it.

COMMENT: They are talking about Band Members, we have non-native woman who are band members.

COMMENT: Will I was just giving you that suggestion, if he is married to a non-native then they would have to go there, because she can't live on our land.

COMMENT: You are talking about non-band member.

COMMENT: Right.

COMMENT: Ok, I understand that, but he is talking about band members, here that is what we are talking about.

RICHARD: I just want to clarify what I said in the previous sections, was what I am hearing is that people are talking about this applying to everyone who resides on the reserve. So it isn't restricted to band members, because we do have to deal with those situations, where there are non-band members. You can have a Indian and non-Indian married, those kids are going to be half and those kids are going to have some rights that you are going to want to protect. So we are going to have to try and deal with all of the possible scenarios with our law. So it is going to contemplate more than just band members.

5. WHERE WILL THE LAW APPLY?

RICHARD: The idea right now is to simply deal with the reserve right now and have that discussion of the larger application, later on.

COMMENT: You are talking about the Six Nations Territory we have right here, but in the way things are going, are we going to add more Six Nations Territory? So are you going to include all that territory we supposedly getting back or just all of this property we have here?

RICHARD: Immediately, the intent is to just this, but obviously you would think that we have to include any territory that was added to the reserve. Also there is a question of how that land will be added, how that territory will be held once that land is added. Will it continue to be Certificates of possession, because there are other types of land holdings on other reserves? There are some reserves that have no CP's at all and they have what is called custom allotments, they have other reserves what they call family allotments, where it is family determine. If territory is added, how well those pieces or parcels are divided among the citizens, is a larger question. But right now the intention is to deal with this reserve and then deal with that question. Obviously we would have to allow for it in the law, to say when territories are added later on, this is how we are going to deal with it under the law.

COMMENT: I have a suggestion, it might be a little different and I don't know what laws might have a barring on it, but it seems to me when I hear people talking about the children, which I think is really important. I am wondering if in this law, if a couple splits and they can't decide who is going to have the house, could it go into names of all the children and then there could be a custodial parent appointed. That might help in keeping the children in their own family home. It might just delay the inevitable, but it might just at least help them for the time being.

MELBA: Wills are going to be very important and how the homes are handed down to individual family members. You can think about what you done in your will or what you plan to do in your will, it is going to be really important. Is that going to be law, are they going to be recognized they way you make out your will? Right now that is the way it is, I think it is honored in most situations. Maybe something could be stipulated in those wills that children are always taken care of and that they are number one in those wills.

COMMENT: I agree with her on that and I think another clause that would have to be in there is for domestic violence.

COMMENT: I am a family lawyer who practices law here on the reserve. I wanted to point out one of the issues that I see in my practice quite a bit, is when we are talking about protecting the children in the situation where the couples separate and only one person owns that house and they lock the doors. It is usually the mother and the children that are put out, they are not given

anytime to find a proper place, it is immediate, they are virtually put out on the streets and there is no consideration as to whether or not they have money to rent a place or whether they have family to go to. Those are the issues that need to be addressed as well. If it can't be a resolution or this by-law never comes into place, it is how we address those issues.

RICHARD: To be clear, it is not intended to be a by-law under the Indian Act, this is intended to be a Six Nations law.

COMMENT: I know you want us to tell you what we want done, but I think you need to give us more of all the things that you are saying, because everybody doesn't know. I think you guys need to come up with more information, as to exactly of all these things that are going to happen. We don't know and we are not doing a whole lot of talking, because you are explaining a whole lot of things that we don't know. I think you need to come up with more or we get legal advice from these lawyers, before we make all of these suggestions and rules. We need to know more ourselves, because we can say all of these things, but we don't know if they are the proper things. We need more legal advice or even if you tell us what is going on, off the reserve. We know what happens there, but we might need a report on that, as to how they deal with it. We don't have to go with everything that they say, but we can look at how things are handled so that we might be able to work it into here and do it better for us at Six Nations. I think we need more information coming from you, instead of just saying what do you want. There is more questions than answers, we don't have enough answers, before we do all of this.

AVA: We can do that, if you want. We were taking the approach, that because so often we get accused of oh you just wrote this thing without asking us and now you are trying to impose it on us. That is why we are trying to turn it around and said to let the people tell us what they want in it. Instead of us saying, this is what it is going to be, but if you want us to go back and start working, we can. We have a rolling draft and we have comments on some of the sections. If you want the committee to start developing that or even the working committee with the confederacy and the community reps, we can do that. We can start putting information into it and bring it back to the community and then start going through it. But we thought we would do it the other way around, so that we don't get accused of presenting a document that is already done, without input.

COMMENT: I am not saying don't do that, don't give us anything. I agree we need to give input, but we need more from all the questions we asked. We need legal things and I am not saying set everything up so that we go by what you say, but give us some ideas on some of the things that are happening off the reserve. That way we would know the reality of things that are happening and then we can go pick out and choose and make our own rules by that. I am not saying go ahead and do everything.

RICHARD: I sense your frustration. At the beginning of a process like this, there are going to be more questions than answers. We had to make a choice. There are about 10 different examples out there right now that exist. Bands that entered into the First Nations Land Management Act have a year once they entered into that legislation, to have a MRP code put in place. For those who don't know, the First Nations Land Management Act is, it turns over the Land Management powers under the Indian Act to the Band. Those exist for something around like 14 communities. Self Governing Bands for First Nations, who have self governing agreements there are examples where they have there own MRP Laws in place. We also have the models of the 10 to 12 provinces and territories, which obviously have comprehensive MRP Legislation. One of the choices we had to make at the beginning of this process, is we could have simply taken the law and filled in Six Nations and it is done. But we decided to take a slow

process. We captured all the main headings and we captured for the examples that we have. We have the same headings and we are hitting all the key points. The question is what is going to be in it. You are asking for more examples of what is out there and we can begin to do that with the rolling draft. You didn't get to see the comments from the first meeting, but what I have done is inserted them into the rolling draft and the same thing will happen with this. At some point, we have to decide on how we achieve consensus. We are getting a lot of comments, but at some point we have to decide, that this is what we want in there, based on those comments and when so we leave something out. We can provide samples or examples of under this section how is it being done. Just some examples, it doesn't mean you have to choose that way. I sense your frustration, because you are shooting in the dark and that was intentional, because we didn't want to come to you with a prepared law that says here it is now just endorse this for us. We will try and go back to put more meat on the skeleton and provide more examples, that already exist out there. There is quite a few that we can use and start putting more into it. Next draft you will see and we will start to have more meat. What we may do is have secondary document or referral document, it may not be in the actual rolling draft, but it may be a reference document that we can use with dealing with some kind of an order. For example, custody order, here is an example of what would normally be in a custody order. We won't make the decision of what is actually in the law, but you will have an example of what you can look at under that section.

HELEN: It might be a good idea to give some examples, of some of the things that people have went through, the different things that can happen. We could give examples without using names, as to the different things people went through in the provincial system or went through without anything. Like woman getting kicked out of the house with the kids and desuetude and then we can show people things what we want to try and fix. When I got divorced we went through the Provincial system, the house was in my husband name only and I didn't know that until I went to get a divorce, the judge awarded me and the kids the house until my youngest child was eighteen, she was three years old when I got divorced, after that I either had to move out of the house or I had to pay my husband off, so I paid him off.

That is one of the things that I went through, but I know of some people who went through horrendous things trying to get the house and properties. If you own a house before you get married and you marry somebody they are entitled to get half of that house, whether you owned it or not, once you get married they are entitled to half, unless you have a prenuptial agreement in place. Maybe it would be good to include some of the examples that people went through in the provincial court system or even traditionally. A friend of mine did get a divorce from the traditional system, but it took her twenty years. So, that we can show people, what can happen and what we want to fix.

RICHARD: How do we want to proceed with the next meetings and our approach?

COMMENT: It looks to me that we are doing one in a significant series of laws. Once we develop this kind of law, there will be many other areas that will be affected that will have to go forward on. I was just wondering, if that as you write up this summary if some where it can be identified what other kinds of laws need to be developed on the heels of this one, so that we ensure we cover everything. We are talking about jurisdiction here and we are talking about deciding what our whole legal system looks like. There will be many more to come and if we can identify them now, we wont be sort of scratching around when the time comes. We may have to move faster, in new instances.

RICHARD: We certainly can do that, because we have the benefit of Mike's knowledge here too. On the outside system, how are they interconnected and how do they interplay in terms of

MRP. We started the discussion on how it interacts with the justice system and what our justice system is going to look like.

6. HOW WILL THE LAW BE DEVELOPED?

COMMENT: I like the idea of case studies, because you never know what you need to write in the law, until you hear all of the situation that have cropped up over the many years. My suggestion would be, if there are people who are willing to share their stories, to be able to sit down in some forum and get some case studies down. If people are willing to share them, no names mentioned. If we had several different forums where people were able to share them, we would have a whole set of problem areas, that would have to be addressed in this law, that we may have not thought about.

RICHARD: Ok, so some focus groups, around case studies.

COMMENT: NWAC had done the focus groups at various reserves in Canada and I have a copy of that if you want it.

RICHARD: I do actually have a copy of Native Women's Association Report. I stay in touch with Beverly as to what they are doing, and I attended several meetings that they have attended with AFN and Indian Affairs.

COMMENTS: Send out questionnaire sheets for the community to check off, sometimes they get interested that way when they see what you are doing. They wouldn't have to sign the sheet, just put there comments, and have them return to the post office box or you.

COMMENT: I like the idea of family discussions and invite your family over. If families where at a focus group, with people taking notes, that is a good way of everybody sharing there honest genuine feelings. As well if Mike had a bunch of case seniors already, of any precedence that has been set. I think it would all be a benefit.

COMMENT: To encourage people you should do what Ava has done, the other night on the Barry Hill radio show. That is the reason I am here tonight, because I listened to that show and when I heard her on there talking about what was going on, that peaked my interest. Even thou I had read about it, I didn't think it was very interesting until I heard her speak about it and I thought I want to take part and come here and find out what is going on. So if you manage to get on the radio again sometime. Ava is a good spokes person for this group and that is the reason I am here tonight.

QUESTION: How much money do these meetings cost us, do we have to pay a lot to have these kinds of meetings and nobody comes? Or are you all Band Council employees? I just wanted to know, because we don't ever get very many and I don't think we are ever going to get very many. Myself I like to sit down and look at somebody when I talk, I don't like to be given notes and told like his. All of them things that you have, the district meetings, family meetings, get on the radio, send out letters and whatever, are all good, but myself I like to sit and look at someone when I am talking to somebody.

RICHARD: I am on contract, so I am not an employee.

COMMENT: We should use the internet also, for confidentiality; some people just don't want other people, to know what is going on in their lives.

MELBA: There is a variety of ideas and I think they are all good. I think about the family meetings and how some people may have been affected by it. That is ok, because they wouldn't becoming anyway, because they probably had bad relations as a result of some situation with a home being occupied by some one, who perhaps maybe shouldn't have in the eyes of some of the other family members. It is all good, but perhaps the new Band Council, when they take office, can attempt district meetings also. I am wondering about those grown children or teenagers who may have been affected, by the separation and I am wondering if they may come forward and voice their opinions, even thou it may be difficult and maybe it is worth a try. The other part is the school teachers, I am sure they know about a lot of separations, children coming to school and being traumatized. Mommy and daddy separated last night and we are now in a motel or we are over to grammas house. Those kinds of things, maybe they will come out and certainly let us know what they think is best in a situation of separation, in a family home.

RICHARD: The intention is to start moving on the ideas that we had. The committee already had some discussions around focus groups, and we want to start firming up some of those and actually start having some of those meetings and getting notices out to the community that those meetings are going to be taking place,. We want to encourage just by word of mouth, talk to your family and friends and encourage them to participate, let them know about these discussions. Let them know there is going to be an attempt to get broader participation through district meetings, through focus groups and through large family meetings. We are going to make ourselves available, as resource people who are on the MRP committee.

We are going to try and schedule a specific week were we will all be available, to have a whole serious of focus groups. It maybe a week or two weeks in a row, but we will make ourselves available for some of the smaller meetings, so that we can have closer and intimate discussions for those people who maybe don't like to come out to larger meetings. We do intent to start moving immediately on some of these ideas and start implementing them some of them. For the next meeting, I want to ask the question, do you want to have a more general dialogue again like this around the concept of MRP, or do you want to start working again on the rolling draft? We don't have to start at the being; the idea of a rolling draft is that it keeps rolling and you just keep picking up as you go on. If you want to move back to the rolling draft and as you suggested start providing some concert examples of specific sections, we can do that and start getting into the idea of adding more meat to the bones.

COMMENT: I think that if Ava specifies when she talks on radio , that the government is going to impose these laws on us, unless we get out there and make them, they will start thinking about it and maybe we will get more.

HELEN: I know people that come don't want to hear the same things over and over, but there are always new people at a meeting that know nothing. So, we have to explain to those people, but the people who come to every meeting don't want to sit through and listen to the same thing again. What can we do to fix that, I don't know?

RICHARD: I am going to be capturing the questions and the answers, as a document that we will keep updated. That is one thing we can do, the people who weren't here can pick that up and say ok what questions where asked and answered at the first two meetings. That is going to be a document that I am going to continue to make available. We will continue to make available the rolling draft document. We have to put some of the responsibility on the people

who has been here as well and say get caught up, talk to your neighbors talk to somebody who has been here and talk to your councilors in terms to get yourself caught up to it. I agree we can't simply start at scratch every time, because we only have a limited amount of time. What I am hearing, is that we are ready to work and we need to get back into the rolling draft and that will be the intention for the next meeting. We will be letting you know, once there is a next committee meeting. The committee will have to reformulate itself, because of the new council and those decisions will have to be made. So we will be letting you know through the local newspapers and the radio, the dates and location of the next meeting.

AVA: As you can see it is a really complicated issue and that is why we thought we should kind of change focus and have a general discussion about what this whole MRP business is about. If you know of seniors and we have a comment box, or you can phone them into Teresa Longboat our secretary, case studies that we can start looking at and start seeing how are we going to deal with these things. We are going to continue to do the radio shows and we can start encouraging people to take the initiative to get caught up on. The documents are all available at the Band administration office. We are still looking for a community member, we said two but if there is more people interested we certainly can look at that. Whether it will be the same people sitting on this committee and whether I will be the chair has not been decided yet. We all go through the process of realigning the committees and appointing portfolios, so you will know about that as soon as we do.

COMMENT: When you put the ad in the paper announcing the next meeting, put one of the questions in there that he will have that night.