

**QUESTIONS & ANSWERS FROM THE MARCH 25, 2008**  
**SIX NATIONS MRP COMMUNITY MEETING –**

**QUESTION:** I am not from here, I am from New Brunswick, but this applies to everybody across Canada. The definition of First Nation Member in this act is different than Band Member. How will this affect the First Nations that have Band Membership Codes? There are a number of them out there that have Band Membership Codes. Their definition of a First Nation Member is a person whose names appears on the Band Member list of a First Nation or is entitled to have their name appear. The Band list is different from the Membership list. So, basically they are saying the First Nation Member is anyone who is on the Band List. In communities where there is a Membership Code there are two different lists. What this looks like, is this is going to override the Band Membership list. They are going to go by the Band List, right?

**RICHARD:** In the Draft Bill it says this law over-rules the Indian Act. If the Membership Codes were enacted pursuant to the existing Indian Act, my reading is that this law over-rules it.

**QUESTION:** So, then dose it make every Band Membership Code null and void?

**RICHARD:** That would be my reading of it.

**LONNY:** That is the way I read it as well, I think that anything that was passed in pursuant of the Indian Act, including the Membership Codes, which were in the Bill C-31 Legislation, is going to be subject to what is in the Matrimonial Real Property regime, so yeah it would.

**QUESTION:** It is not a big issue around here, but on my reserve all the homes are Band owned everywhere, there are no Certificates of Possession, very few. If the all of the homes are Band owned and there is a break up of a marriage, is the Band obligated to pay 50% to the non-native spouse. Would the Band have to pay the 50%, since it is a Band Owned home?

**RICHARD:** It is really unknown. That is one of the questions; I think we want them (Government) to answer. All of Six Nations land is CP.

**QUESTION:** Yeah, but ours isn't and this effects all of Canada. What affect would that have if the First Nation now, is in a position where they have to pay off 50% of that Band owned home? That is going to bankrupt a lot of small Bands, if there is a lot of breakups.

**LONNY:** There is something in there about Band Owned Land, where house are assigned by the Band to Band Members, there is a method in there about evaluation. Although it is unclear on how are going to do that. It seems like the primary purpose is to make equal, because there is an equalization scheme in there, is on that other spouse to equalize the asset. A good question, is it also going to apply to the Band? I don't know, it is unclear from this Legislation, I suppose it is going to have to be determined on down the road.

**QUESTION:** If you have a Certificate of Possession and a couple breaks up, somebody has to come up with 50% of the value of that property. Would then they have to sell their property or whatever to come up with that value, if they weren't very well off. They are certainly going to have to come up 50%, of what maybe is considered a \$100,000.00 property.

**LONNY:** It is unknown, because they could make such an order, but who is going to pay it and how are you going to enforce it? It is just going to keep properties in limbo for years to come down the road, not knowing who has a interest in it.

**MELBA:** I just wanted to respond in regards to the 50% and when a couple splits up. I think that what we are dealing with is definitely is the 1969 White Paper (federal policy paper). We have too many outside laws and the assimilation and genocide will continue. Until we come up, as we are here tonight talking about our own laws, is it going to be Legislated by Canada. Are we going to work with them or are we really going to work with our own people and come up with our own law. It is right across the board, in Child Welfare and land and this is just another area that we need to take control of, all of us as Six Nations people. I think as we go along with the meetings, we will come up with some of those answers together. We certainly need a lot of Six Nations, the majority, in order to come up with the ideas to strengthen us as Six Nations people. As we continue our questions, we will certainly get some answers that are hopefully beneficial to all of us and those that are yet to come.

**LONNY:** We have a Residency By-Law, which has been in effect now since 1986, which essentially says that only Six Nations Band Members are entitled to live on Six Nations. That would no longer be effective against this Legislation that is being passed or is contemplating being passed. I think it was in 2003, when there was an attempt to amend the Residency By-Law, but that didn't pass, because there was some exemption for allowing non-native people to live on Six Nations. It was an over whelming rejection at that time, because Six Nations people just didn't want non-native people to have that right. We expressed our opinion at that time as to what we wanted; now the Federal Government is going to come in through the back door with this Legislation and give those people that right to reside here. It just isn't a temporary right, it doesn't seem like it is time limited at all and they can stay here as long as they want upon a marriage breakdown. That is the dangerous part of this Legislation and yes it is fair and good when we are talking people who are from another reserve or another First Nation. It is fair that way, but when you start throwing in the mix that it now includes non-native people who will get to share the same rights, then that is the dangerous part of this Legislation.

**QUESTION:** You said this will affect the Land Claims that are in progress now, is that what I am hearing?

**LONNY:** No it has nothing to do with Land Claims we are just talking about the reserve that we know now, that is Six Nations. That is technically Crown Land under the Indian Act and the other Royal Proclamation (1763) Lands; we do not know the status is yet.

**AVA:** I think that was me that mentioned it; I said we are in Land Negotiations and one of the things that we are talking about is that we need more Land and what we see this Legislation doing is taking more land away from us. That is what I was talking about, not that it is going to be involved in the negotiations. It is just that we need to protect the land base that we have, in addition to try and get more land, because so many of our people is living off the territory.

**COMMENT:** As a young man with a young family, it is hard to see the government doing this to us, because we have no land has it is. For a non- native to come in and live on reserve with their spouse and they separate and the non-native gets the home and whatever, that is just like taking land away from us. I am 24 years old and I don't have any land to my name and nothing for my family and is just sad to see it going that way.

**CHIEF:** I think we need more young people to voice their opinion such as you just did. It really solidifies it for us, that is a big issue that is going to effect a lot of young families and that is where the biggest hurt is going to be.

**LONNY:** I just had a look at the legislation today and I also noticed that it even affects estates. The only time the law works is that couple have to live on the reserve for a period of time, we don't know how long that is, but they have had to live on the reserve in which that was their Matrimonial Home. In the instance where one of the parties dies and the other person is a non-native, then that person can gain rights to that Matrimonial Home. You have to read the Legislation to all the rights guaranteed to all of the non-native spouses, it is kind of really shocking when you think about it. The other two, is it sets up where their rights are going to be determined. These rights are going to be determined in Provincial Courts; under Legislation it will be a designated judge, which is the Governor in Council. The Federal Cabinet will appoint judges; it will probably be the usual judges we see up in Brantford or Cayuga and it will just be applying a whole different set of laws. Common law spouses would also gain rights to reserve land. The Provincial Legislation says that common law spouses don't get rights to the home, but under this Legislation they do. So there are a lot of things in the Legislation that go beyond the Provincial Law right now.

**AVA:** The Legislation does not state on how long you have to be together, to be declared a common law spouse.

**LONNY:** Provincial law is 3 years that you have lived together, unless you have had children in a shorter period of time than that.

**COMMENT:** My son is married to a girl from Cattaraugus and she can't get on the list, because she has to sign a paper that says she is a landed immigrant. So if my son dies, that would mean she can be on the list or what happens there?

**LONNY:** In that situation, if she is living here with your son and that is their Matrimonial Home, even thou she is not on the list, she would be in that class of a non-native who require rights to the property. She would gain rights under this legislation, but she is also subject to Canada's immigration laws. So I guess if she was a landed immigrant and in addition she lived on Six Nations for a long enough time to qualify for rights, then yes she could still live on Six Nations just like any other non-native and acquire rights that way, through Legislation.

**RICHARD:** The Legislation refers to non-band members and non-Indians acquire these rights. So it looks like they would be allowed.

**QUESTION:** Is there anyway that we can get out of having this law? Do we absolutely have to have this law? Do we need to develop a law of our own, in order to get out of that legislation?

**RICHARD:** That would be my reading of it, yeah.

**LONNY:** Yeah, that is the way I read it too. If you don't make a law, then this law automatically applies.

**QUESTION:** But doesn't that fly in the face of us always saying that we are sovereign?

**LONNY:** It does. Our inherent rights are being challenged, because the government is just totally ignoring any inherent rights we have.

**QUESTION:** Why do we keep saying we are going to play ball with you? Why don't we just say no we are not playing ball?

**RICHARD:** I think in fact that is what we are doing, with developing our own law. We are saying that we are doing this under our inherent authority. The law we are developing goes way beyond what they are contemplating or what they are allowing in this limited Legislation. The law that we are contemplating covers the whole gamut of Family Law and it is a exercise of inherent jurisdiction. It is a exercise of us and not them giving it to us. That is the difference.

**CHIEF:** I would like to add on that, Councillor Ava Hill in her own gentle way told Mr. Strahl, that we don't care what you are developing, we are developing our own.

**QUESTION:** What is the timeframe of this, when do we expect the Federal Legislation to be in place?

**RICHARD:** It can be done as quickly as six weeks, if they do a quick process through committee, it can pass in six weeks. It could be introduced at the end of April and Parliament usually breaks around mid-June, so there is time for them to pass it before summer recess. If they move fast enough.

**QUESTION:** What do you think our chances would be if we file our Human Right complaint, that is whole thing is racist, what it is being developed and the whole launching a court challenge on the duty to consult. What are our chances of us stopping it from applying to us, using those avenues?

**RICHARD:** The Canadian Human Rights Act already exists and it applies to all of Canada and all of pieces of Federal Legislation, except the Indian Act. It is in place to basically stop racism and there are 11 grounds upon which you can file a complaint if you are discriminated against. Race is one of the grounds that you can file a complaint. I think it is a good one, because there is no other example of any other government where they are restricted the ability on how they are required to enact their laws. On the Legal Challenge, there is a couple of Court decisions that came down that said the Government has to consult, accommodate and sometimes obtain the consent. The Government is taking the position that it only applies to land development and land claim areas and we are taking the position that it applies to anything that is going to effect Aboriginal and Treaty rights.

The other elements of it are the legal and political challenges. If Native Women's Association comes out against this, if the Assembly of First Nations and we got 10 First Nations in each province to file that same legal challenge, against the law saying this is against the law in passing it. That would be a 100 court challenges and that would allow the opposition to stand up in Parliament and say "you have a 100 First Nations challenging you on this law and you also have the Native Women's Association challenging you on this law, don't you think it is time to withdraw if you are on the wrong track". Those are two elements and I think that they both have to work hand in hand, but it also means that we have to work with the Chiefs of Ontario and the Assembly of First Nations to get those other First Nations across Canada to do a similar thing. It is a little costly to file these challenges, because they can take time to work through the court and there has been some discussion of doing an Iroquois Caucus challenge.

**LONNY:** I was reading Mike Sherry's analyst and he mentioned as a result of the Supreme Court of Canada and Guerin case, the Court says there is a duty to consult First Nations anytime

any legislation is being contemplated by government that affects Indian lands. This has a significant impact on Indian Lands and there has been no consultation whatsoever. Has anyone from the government come here and talked to us? Not one person that I know of and that is all across Canada. That certainly could be challenged in the Court of Law.

**QUESTION:** In this legislation who decides the market value of what reserve land would be? Would it be us? The way the legislation is laid out now, is it spelled out in there proposed legislation?

**RICHARD:** The Legislation doesn't really spell out the details, although it uses what they talk about is existing market models.

**RICHARD:** The legislation doesn't get right down to the detail on how they evaluate land. They usually set that as a separate process.

**QUESTION:** What would happen in the interim, if we don't have our own law in place and this other law comes into being and there is all this marriage breakups. Marriage breakups are not going to stop happening, waiting for some law to get developed. People are going to be influx, is there some way to just hold everything influx, just hold it so that things don't happen.

**RICHARD:** I think all that we could do is ask people to not avail themselves to this law and to wait for our law to conclude, that would be my response.

**CHIEF:** I think the quickest and easiest way to do this, is to do the lobby. The Opposition of the members of the Standing Committee is our greatest ally right now, because this is a Minority Government. If we get enough lobbies as an elected Council, I think we can convince them that this is a bad law.

**QUESTION:** I think you guys are doing a good job and I think it is the way we should be going. I would like to know in detail the Six Nations Council's steps in planning to fight this for us and how would you plan to involve the community? How do we get our youth involved? The plans to involve the Six Nations Confederacy Council and what are your Public Relations people's plan for this? Where do we get a copy of the legislation and how are the Wills going to be dealt with in this?

**AVA:** You can get a copy of the Legislation at the Band Office.

**RICHARD:** We have formed a Matrimonial Real Property Committee of Council, we are involving staff experts in it, myself as the coordinator, lawyer Lonny Bomberry as Legal. We have had three Community Meetings and we are on Rolling Draft 3. We are going to move into focus groups, smaller meetings in the community, large family meetings and any clubs or associations etc. We are developing a Community Consultation Document to get more detail and also a survey document to get peoples thoughts. One of the focus groups we were hoping for is actually a Youth Focus Group and a Elder Focus Group, so that we could target specifically those two groups, but we need someone in the community to ask to host it essentially. We would be prepared to come out to any of those groups. Public relations, we are calling it a communications plan, but it is essentially to target different communications outlets to different audiences. Our first concern is with the community and getting accurate information and timely information out to the community and we want to begin doing that using the local media, the Newspapers and Local Radio. That is the first kick at it and we are refining it to a bigger audience as we go along. Part of Public Relations is what the Chief talked about in terms to our

lobby, we want to go to Parliament Hill and to inform MP's about what our position is, on what Canada is doing. Also, get a broader base by working with the Chiefs of Ontario, which hopefully all 133 First Nations communities in Ontario will get engaged with fighting it and the broader base with the Assembly of First Nations, hoping that all 633 First Nations across Canada will get engaged in fighting it. If we can get Chiefs of Ontario and AFN to invest their budgets, because they have Communications Budgets and expertise, to develop position papers or take out ads and hopefully we can make a larger impact that way.

**QUESTION:** How are you going to involve the community in this fight, with taking it up to Ottawa and lobbying? In the past practice you have taken bus loads of people, is that going to be the same kind of game plan?

**CHIEF:** Could be, that was a lot of fun.

**QUESTION:** How will Wills be dealt with? Sometimes you would like to leave your property and hopefully you don't ever separate, to your children. That is basically what we are here for to take care of our 7 generations after us. In case there is a separation, what happens then? Are you still able to Will your property or does this take precedence over having a Will?

**LONNY:** You could probably Will it as you choose, but that right of the other spouse to actually take possession of it would be paramount over the Will. That is the other dangerous part, that even your will can be overridden by this Legislation. So it is not a fool proof method of having your property go where you want it to go.

**QUESTION:** Is there anything that you know that can't be overridden at this point?

**RICHARD:** This law says that it is paramount over other Legations.

**QUESTION:** So there is nothing?

**RICHARD:** That is the danger of this law. This legislation is really dangerous. That is why we need to get our law in place and ask people to not avail themselves to this legislation, until we get our law in place.

**QUESTION:** What are your plans to involve the Six Nations Confederacy Council?

**AVA:** I have written a letter to the Secretary Leroy Jock Hill and I mentioned it to him again yesterday again, because they haven't responded and we have invited them to be part of the MRP Planning Committee. He said that they have not had the chance to discuss it yet at their Council meeting. Hopefully they will do that, they have their Council the first Saturday of every month. I have taken the time to sit down with him and talk to him about some of this. At last committee meeting we invited Hubert Skye, who is one of our respected elders in the Community and he came and talked to us. We are trying to pick his brain on how marriage breakups are dealt with traditionally. The more we talked to him the more we found out and we have invited him to keep coming back to the meetings whenever he can. So the invitation is out there and we are going to keep working on it.

**QUESTION:** How long it is going to take to develop our own? What is our timeframe?

**RICHARD:** However long it takes based on the community process. We had three community meetings and we haven't been getting good turnouts, so we are trying to take it to the people in

the community to get them engaged with the process. Essentially the next stage is to start asking the critical questions on what are the issues that need to be dealt with right away, when a couple separates.

First question is who gets to continue to live in the house on an interim basis. We are going to take that to the Community, what is your preference? The second question is on a long term basis, who should live in the house? If they are a spouse with children, for example, should they get precedence to live in the house if there is a marriage break up? What property should be included in the Matrimonial Home? Is it just the house, the house and other structures or is it vehicles? We need community input on that.

What should be part of the property that we are talking about, when we are talking about Matrimonial Property? Identifying a few key questions like that and bringing those to the community and getting answers. That is really when we start putting meat to the bone, in terms of actually developing our own law. That is the stage we are at right now, is taking this consultation document out to these focus groups. Hopefully we will come up with the answers that we can use to write the law. Then at that point, have a draft that we then bring to the community. So for each section we will have enough of an answer to say here is what the community is saying on who should live in the house on an interim possession and here is what the community is saying on exclusive possession.

**QUESTION:** If we have our own family meeting and you came to it you would have a set of questions that you are going to ask?

**RICHARD:** Yes. We will have a document to hand out with those questions and we will be recording the responses and we will have a dialogue.

**QUESTION:** So everyone is going to get the same questions?

**RICHARD:** Yes.

**QUESTION:** The other question is the referendum, are you confident that we can get around that referendum thing?

**RICHARD:** We hope to simply avoid this law by implementing our own. When our law is passed, we have to decide for ourselves and this community as well, how do we show community support for it and do we know that the community supports it. At that point it becomes our law and it is under our inherent authority. Section 35 of the Constitution says that existing Aboriginal and Treaty Rights are hereby recognized and affirmed and the Constitution proceeds over any other pieces of Legislation. So what we are saying is this law is made pursuant to the Constitution, our rights under the Constitution our inherent authority it precede Canadian Law and that is the basis on which we are going to ignore it.

**LONNY:** I suppose there are two ways that you could avoid the applications of this law. We could find out the non-natives that are living here now, you have a time frame about when this law is going to be coming into place and have those people removed. Or you could let the people who are here stay, but any future people that want to come with their spouse and live here, they are just not going to be allowed. So there is going to be no rights for non-native people that live here at all, if they try they are going to be kicked off. They don't acquire any rights, because they have to be living in a home for awhile, before they get any rights. So you could stop it that way, but that is taking the extreme route.

**QUESTION:** Does the Two-Row Wampum Treaty come into effect or not? Or doesn't Canada recognize that, because that Treaty was made with the Crown. The Two-Row Wampum, they are not supposed to come and interfere with our laws.

**RICHARD:** My reading of it is that they are continuing to ignore it, because they are still continuing to push laws down our throats.

**QUESTION:** Is it because the Treaty was made with the Crown?

**RICHARD:** I don't think this government sees its role as the Crown in the same way that we do. I don't think this government respects or honors that duty, which its courts are saying, in terms of Honor the Crown. So I don't think it looks at the Two-Row Wampum as a Treaty that is binding on this government.

**QUESTION:** Is there any way to get a copy of what Great Britain or whoever the Crown gave to Canada to run?

**RICHARD:** That is essentially the Constitution that was passed in 1982. That is when Canada got its own independent sovereign authority to enact its own laws and to be separate from Great Britain. It is just a copy of the Constitution and you can probably get one at the Council.

**QUESTION:** How come we can't use our own laws that we have today? The Six Nations Confederacy, we all belong to this Confederacy and whether you like or not, we all do. We have our laws there and what we need to do is get everybody under the Confederacy, because that is where the protection is for the land and our rights.

**CHIEF:** That is what we would really like to do, but this is encouraged by a foreign government, saying they are going to impose this law on us. We as Six Nations people have to say no, it stops here. We have a Government sitting in Ottawa that doesn't respect who we are as people; all they say is that we are brown faced Canadians. That is the whole mentality of those people, so that is where the fight has to be.

**COMMENT:** But Six Nations is not Canada, it is not Ontario neither it s Six Nations and that is what we need to stress.

**CHIEF:** Yes we do, but they don't seem to understand that, so we are going to have to kick them in the shins and make them understand that.

**MELBA:** You have some interesting questions here when it comes to the Confederacy. I think do we not only have to kick Canada and Ontario in the shins, but we have to look at each other and nudge each other too, because that is why we have a complicated situation here. We are dealing with different sets of laws here and it is going to be very difficult to deal with all of this, because of belief system when it comes to Child Welfare, when it comes to language. I was thinking that this afternoon when Sharon Martin said, years ago they didn't really divorce. Maybe less now, I am not sure, but if they do, it means that we are using the white man's system of marriage yet. Maybe years ago we didn't divorce or whatever, because I think we had a belief system, at least in the Confederacy, that there was no such thing as divorce. That meant you stayed together and you worked things out regardless and a majority of the time the children were considered. I think that is what we are talking about here too, what are we going to leave behind for our children? If we continue to have various laws that we are struggling with, what

we are going to do with Matrimonial Real Property. I think we are doing the right thing, though it is going to take a long time to get there. It is hard to answer how long it is going to take, but if we use the Two-Row in some of the other areas, against what we are dealing with, we would probably be successful.

**AVA:** When you go home tonight, start thinking about how we are going to ratify this law. We have to make sure the community is going to accept it. We have to figure out a process to do that, which is going to satisfy everybody. When we first started off we didn't really put a timeframe, because we wanted to make sure that we did it right. One other area that I would like you to think about is the enforcement of it. How are we going to enforce it? We have the residency By-Law in place and it has not been enforced. If we are going to be making our own law, we have to enforce it. It is up to the people to ensure that it is enforced. We are working with the other Iroquoian Communities, as an Iroquois Caucus and we have a MRP Working group amongst that group as well. One of the options that were put out there was having a traveling Iroquois Tribunal. So if there was a dispute in our community that tribunal would be made up of Iroquois people from another community. So you do not get in a conflict of interest.

When we start talking to the other Iroquoian Communities about doing that, they said that then we should all have a law that is similar. So, we are working with those communities and actually we are further ahead than rest of the Iroquoian Communities, there are seven in the elected Councils that are working together and that includes the two in Quebec. There is a lot of stuff that we are looking at, but we need your input to on how it is going to be enforced, because is your law. So, we need you to tell us what you want in it. We didn't want to come in here with something already drafted and tell you this is how it is going to be. We want you to help us draft it. We have the resources here to help, but we need your ideas and your input on all of those things. How are we going to ratify it, how are we going to enforce it and how are we going to get people to respect the law. We are going to get smaller focus groups, so start talking to each other about it, even if it is your own families. Start getting ideas out there; because the more people start tossing ideas around, eventually maybe we will all end up saying the same thing.

**COMMENT:** I am sure Canada can be pretty sneaky when it comes to these laws, especially when it is pertaining to us. Seems like with this is lose, lose either way. If they impose their law on this or for us to pass our own law we need a 25% referendum of the whole community. If that 25% did come out, then Ottawa could come out and say that 25% percent came out, so that is just like you following our ways, so why not just follow us?