



Indigenous and
Northern Affairs Canada

Affaires autochtones
et du Nord Canada

Final Report

Evaluation of 1.1.2 – Implementation and Enforcement Supports for the Family Homes On Reserves and Matrimonial Interests or Rights Act

Project Number: 1570-7/16119

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Evaluation, Performance Measurement
And Review Branch
Audit and Evaluation Sector



Canada 

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Glossary

The Act: Refers to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, which received royal assent on June 19, 2013.

The Centre of Excellence for Matrimonial Real Property: The Centre of Excellence operates under the National Aboriginal Lands Managers Association and provides information and training on the Act and the implementation of a community-specific Matrimonial Real Property law to First Nations communities.

Certificate of Possession: Documentary evidence of a Band/First Nation member's right to lawful possession of reserve lands described therein pursuant to the *Indian Act*.¹

Emergency Protection Order: This Order can be obtained by an individual living on-reserve from a judge designated by the province or territory. It can contain any provisions the judge considers are necessary for the immediate protection of the person who is at risk of harm or property that is at risk of damage.

Exclusive Occupation Order: This Order can be obtained from any judge and provides that the applicant's spouse or common-law partner or any specified person who habitually resides in the family home vacate the home immediately or within a specified period, and prohibits them from re-entering.

First Nations Chiefs of Police Association: Contracted by Public Safety to develop matrimonial real property training for officers under the First Nations Policing Program.

First Nations Policing Program: A contribution program administered by Public Safety that provides financial contributions in support of professional, dedicated, and responsive policing services to Indigenous communities.

Indigenous and Northern Affairs Canada (INAC): The lead department on the evaluation and responsible for the implementation supports of the Act.

Matrimonial Real Property: The land and the family home in which one or both spouses or common-law partners shares an interest and uses for a family purpose.

National Aboriginal Lands Managers Association: The non-government organization which houses the Centre of Excellence for Matrimonial Real Property.

Public Safety: Public Safety provides financial contributions to support the development and delivery of training and education resources to police officers of the First Nations Policing Program.

¹ Indigenous and Northern Affairs Canada. "Indian Lands Registration Manual – December 2014". Appendix A. July 2013. <https://www.aadnc-aandc.gc.ca/eng/1100100034806/1100100034808>

The Royal Canadian Mounted Police (RCMP): Mandated to develop and deliver matrimonial real property training and education materials to assist RCMP Regular Members on reserves with the proper and effective enforcement of the law.

EVALUATION OF THE Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

The Evaluation, Performance Measurement and Review Branch (EPMRB), in compliance with the Treasury Board Policy on Results and the *Financial Administration Act*, conducted an evaluation of the implementation and enforcement supports for the Family Homes on Reserves and Matrimonial Interests or Rights Act. The purpose of the evaluation was to provide a neutral and evidence-based assessment of the relevance and performance of the program. The results will inform decision making in light of the planned March 31, 2018 date in which INAC, the RCMP, and Public Safety's responsibilities in relation to the Act cease.

Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

PROJECT PROFILE

The goal of evaluating the implementation and enforcement supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act* is to assess its relevance and the continued need for INAC's implementation supports and the RCMP and Public Safety's enforcement supports.

EVALUATION SCOPE AND METHODOLOGY

The evaluation was conducted in 2016-2017. It was undertaken by EPMRB in partnership with the evaluation functions of the Royal Canadian Mounted Police and Public Safety Canada.

Public Safety and the RCMP submitted component pieces to support EPMRB's drafting of the report, particularly in relation to findings on the enforcement supports of the Act.

Objectives and Expected Outcomes

1. ***INAC Program 1.1: Governance and Institutions of Government***
– Contributes to communication and outreach implementation of the Act, and supports for the Centre of Excellence for Matrimonial Real Property's activities.
2. ***Public Safety Program 1.3.2.3: Aboriginal Policing*** – Engages program stakeholders to identify means of improving efficiency and effectiveness in the provision of policing services for inclusion in a renewed Policy.
3. ***RCMP Program 1.1.1.3: Aboriginal Policing*** – Supports the priority of contributing to safer and healthier Indigenous communities.

Evaluation results are based on information collected through:

- Document, literature, and media review;
- Key informant interviews, and
- Case studies.

Implementation of the Provisional Federal Rules

The Act’s provisional federal rules came into force in December 2014 and apply to all communities that have not enacted a community-specific matrimonial real property law. INAC is responsible for reaching out to communities to ensure they are aware of the Act. For some communities, alternative dispute resolution mechanisms have become a preferred method of dealing with matrimonial real property issues on reserve, particularly if that community faces barriers to enacting a matrimonial real property law.

Implementation Support for Community Law-Making

The process of drafting a community-specific matrimonial real property law takes time and resources out of the community’s budget. INAC supports the Centre of Excellence for Matrimonial Real Property to help navigate these challenges and draft a law that fits the community’s customs and traditions. The final step to enacting the community’s law is to pass a voting threshold as established by the Act.

Police Enforcement Supports

The RCMP is responsible for developing and delivering training to increase awareness of the Act among its Regular Members. Also responsible for the enforcement component of the Act, Public Safety funds a training program for Self-Administered police service officers under the First Nations Policing Program.

Legal Enforcement Supports

If a case in reference to the Act emerges on reserve, community members have the right to present it in a provincial court. A lack of awareness of the Act among legal support staff, a low number of provincially designated judges to hear Emergency Protection Orders, and the general inaccessibility of legal support for potential clients on-reserve has made this portion of the Act difficult to enforce.

EVALUATION RECOMMENDATIONS

1. Alternative Dispute Resolution

Work with the Centre of Excellence for Matrimonial Real Property to explore methods of integrating Alternative Dispute Resolution mechanisms into First Nations community practices, particularly for those communities without provincially designated judges.

2. The Centre of Excellence for Matrimonial Real Property

Consider renewing the mandate of the Centre of Excellence for Matrimonial Real Property in recognition of its central role in informing all stakeholders (i.e., Chief and Council, Band staff, and community members) of the Act.

3. The Voting Threshold

Consider reviewing voter requirements of the Act including voting thresholds and alignment to First Nation ratification processes, as well as costs associated with the voting process.

4. Police Enforcement Supports

Continue to assess the uptake of training offered by Public Safety and the RCMP in order to monitor and report on the number of officers on reserves who are aware of the Act.

5. Designated Judges

Consider adding the Department of Justice as a formal partner to the Matrimonial Real Property Advisory Committee and Implementation Support Team to foster awareness of roles and responsibilities as they relate to the Act and the administration of justice.

Management Response and Action Plan

Project Title: Evaluation of the Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

Project #: 1570-7/16119

1. Management Response

We have reviewed the Implementation and Enforcement Supports for the *Family Homes On Reserves and Matrimonial Interests or Rights Act* (the Act) and accept the recommendations pertaining to the Matrimonial Real Property Implementation Support Program.

The findings from this report, along with information obtained through the fall 2017 national engagement on the Act, will inform the Minister of Indigenous and Northern Affairs Canada and the Review of Laws Working Group on future options. Finally, the findings of this report are timely, as the funding for the current Matrimonial Real Property Implementation Support Program sunsets in March 2018.

The following was identified as area to consider for the improvement of future evaluations and would align with the Minister of INAC's Mandate Letter and the Truth and Reconciliation Commission Calls to Action.

- Consider mechanisms to provide a cultural competency lens as a component to the methodology. This would assist in ensuring an approach that is more relevant to the target audience and the standardized assessment tools/approaches across all partners to this evaluation.

The findings of this evaluation will serve as a foundation for planned Government of Canada activities over the next two years.

2. Action Plan

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
<p>1. Consider renewing the mandate of the Centre of Excellence for Matrimonial Real Property in recognition of its central role in informing all stakeholders (i.e., Chief and Council, Band staff, and community members) of the Act.</p>	<p>We _do_ concur. (do, do not, partially)</p>	<p>Director Lands and Economic Development-Community Lands Development</p>	<p><i>Start Date:</i></p>
	<p>Activity: Develop proposals to secure continuation of mandate and resources for First Nation Centre of Excellence for Matrimonial Real Property for an additional two years.</p> <p>Deliverables</p> <ul style="list-style-type: none"> Proposals developed for Ministerial consideration and decision; Robust two-year work plan developed by the First Nation Centre of Excellence for Matrimonial Real Property; and, approved by the Matrimonial Real Property Advisory Committee. Work plan activities aligned to findings from program evaluation, other research and lessons learned to date. 		<p><i>Completion:</i></p> <p>July 2017 – <i>Already completed.</i></p> <p>June 2017</p>
<p>2. Work with the Centre of Excellence for Matrimonial Real Property to explore methods of integrating Alternative Dispute Resolution mechanisms into First Nations community practices, particularly for those communities without provincially designated judges.</p>	<p>We _do_ concur. (do, do not, partially)</p>	<p>Director Lands and Economic Development-Community Lands Development</p>	<p><i>Start Date:</i></p>
	<p>Develop proposals to secure continuation of mandate and resources for First Nation Centre of Excellence for Matrimonial Real Property for an additional two years.</p> <p>Deliverables: In addition to deliverables identified for Recommendation #1:</p> <ul style="list-style-type: none"> In concert with the First Nation Centre of Excellence for Matrimonial Real Property, launch pilot project for the development of alternative dispute resolution mechanisms in at least one interested First Nation community. 		<p>Solicit Proposal:</p> <p>Fall 2018 for 2 year pilot project.</p>
<p>3. Consider adding the Department of Justice as a formal partner to the Matrimonial Real Property Advisory Committee and Implementation Support Team to foster awareness of roles and responsibilities as they relate to the Act and the administration of Justice.</p>	<p>We _do_ concur. (do, do not, partially)</p>	<p>Director Lands and Economic Development-Community Lands Development</p>	
	<p>Pursue a formal partnership with the Department of Justice to support the implementation of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i></p>		

	<p>Deliverables:</p> <ul style="list-style-type: none"> • Department of Justice added as a formal partner and member of the Matrimonial Real Property Advisory Committee; • Two-year work plan developed identifying targeted training and awareness activities to address implementation gaps relating to administration of justice. • Work plan developed in concert with all federal partners (i.e. to identify training opportunities and access to key audiences); and, supported by Centre of Excellence who will facilitate related sessions. 		<p>Spring 2018</p> <p><i>Interim measures already identified and being implemented.</i></p> <p>Spring 2018</p>
4. Continue to assess the uptake of training offered by Public Safety and the RCMP in order to monitor and report on the number of officers on reserves who are aware of the Act.	We _do___ concur. (do, do not, partially)	Director General, National Aboriginal Policing and Crime Prevention Services	Start Date: Started
	The RCMP will continue to monitor the number of members who download the resource guide.		Completion: March 2018
5. Consider reviewing voter requirements of the Act including voting thresholds and alignment to First Nation ratification processes, as well as costs associated with the voting process.	We _do_ concur. (do, do not, partially)	Director Lands and Economic Development- Community Lands Development	National Engagement: planning June – August 2017 1st session: Halifax Sept 2017. 2nd session: Wendake Oct. 2017 3rd: Calgary Nov. 2017 4th Toronto Dec. 2017 5th TDB Jan. 2018 Analysis and draft Report to follow Winter 2018.
	Undertake national engagement on the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> in Fall 2017		
	<p>Deliverables</p> <ul style="list-style-type: none"> • National engagement completed. • Findings from the engagement, including those relating to voting requirements of the Act, presented to Minister of INAC and Review of Laws Working Group in Winter 2018 to inform on future options. 		

I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee

Original signed by:

Shannon Townsend
Acting Senior Director, Evaluation, Performance Measurement and Review Branch

I approve the above Management Response and Action Plan

Original signed by:

Sheilagh Murphy

Assistant Deputy Minister, Lands and Economic Development Sector

I approve the above RCMP Action Plan

Original signed by:

Kevin Brosseau

Deputy Commissioner, Contract and Aboriginal Policing

I approve the above Management Response and Action Plan

Original signed by:

Patrick Tanguy

Assistant Deputy Minister, Emergency Management and Programs

1. Introduction

1.1 Overview

This report presents the evaluation of the implementation and enforcement supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act). Implementation supports were delivered by the Lands and Economic Development Sector of Indigenous and Northern Affairs Canada (INAC) and the Centre of Excellence for Matrimonial Real Property, while enforcement supports were delivered by the Royal Canadian Mounted Police (RCMP) and Public Safety Canada. In addition to providing advice to the federal partners involved, the Department of Justice has contributed to raising awareness of the Act among judges and legal professionals through presentations and communication with national judicial and bar associations as well as provincial law societies.

This evaluation was led by INAC's Evaluation, Performance Measurement and Review Branch (EPMRB) in partnership with the RCMP's National Program Evaluation Services and Public Safety's Internal Audit and Evaluation Directorate. The purpose of the evaluation is to provide a credible, reliable, and timely evidence-based assessment on the relevance and performance of the implementation and enforcement supports of the Act. The evaluation is being used as a supporting document to inform decision making in preparation for the program's sunset date of March 2018.

The evaluation was conducted pursuant to the Treasury Board Secretariat's *Policy on Results*. Further, given that the program provides grants and contributions to the Centre of Excellence for Matrimonial Real Property, it was conducted in accordance with Section 42.1 of the *Financial Administration Act*, which requires that an evaluation of the relevance and effectiveness of all ongoing programs of grants and contributions be produced every five years.

1.1.1 Program

Matrimonial Real Property refers to land and the family home² in which one or both spouses or common-law partners shares an interest or right³ and uses for a family purpose. In the case of separation, divorce, or death, Canada's provinces and territories have enacted laws to protect spousal rights and interests in shared property. However, in 1986 the Supreme Court of Canada ruled in *Derrickson v. Derrickson* that certain provincial and territorial protections do not apply to matrimonial real property on reserves, due to conflict within the *Indian Act* and since this land falls under federal

² The *Family Homes on Reserves and Matrimonial Interests or Rights Act* defines 'family home' as, "a structure – that need not be affixed but that must be situated on-reserve land – where the spouses or common-law partners habitually reside or, if they have ceased to cohabit or one of them has died, where they habitually resided on the day on which they ceased to cohabit or the death occurred. If the structure is normally used for a purpose in addition to a residential purpose, this definition includes only the portion of the structure that may reasonably be regarded as necessary for the residential purpose." Section 2.1.

³ The Act defines 'matrimonial interests or rights' as, "Interests or rights, other than interests or rights in or to the family home, held by at least one of the spouses or common-law partners a) that were acquired during the conjugal relationship; b) that were acquired before the conjugal relationship but in specific contemplation of the relationship; c) that were acquired before the conjugal relationship but not in specific contemplation of the relationship. It excludes interests or rights that were received from a person as a gift or legacy or on devise or descent, and interests or rights that can be traced to those interests or rights." Section 2.1.

jurisdiction. This ruling revealed a legislative gap in which neither provincial nor federal laws existed to protect the matrimonial real property rights of residents on reserves.

This legislative gap also had potential implications in situations of family violence. Previous to the Act coming into force, a spouse or common-law partner may have been forced to leave the family home due to the lack of legal protection. The situation may have been further complicated if one spouse or common-law partner was not a member of the reserve or if there were any dependents in the matrimonial home. For example: if there is a relationship breakdown between a member and a non-member spouse or common-law partner, it can result in the non-member having to leave the family home, particularly if the Certificate of Possession is not in their name, and potentially the community as well. Without legislation to protect interests during the breakdown of a relationship, member spouses or partners may also have been forced to leave.

In order to address the legislative gap, a comprehensive consultation process with the Assembly of First Nations, the Native Women's Association of Canada, and participation from First Nation members, non-members, Status and non-Status Indians, and urban Indigenous peoples led to the development of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act), which received Royal Assent on June 19, 2013. The Act consists of two parts. The first part came into effect on December 16, 2013, and enables First Nations to pass a community-specific Matrimonial Real Property law. The second part of the Act, which came into effect on December 16, 2014,⁴ includes provisional federal rules to fill the legislative gap should a community-specific law not exist. As of January 2017, 11 communities (of more than 600 across Canada) have successfully enacted their own Matrimonial Real Property laws pursuant to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

In response to situations of family violence in homes on reserves in which a victim may feel forced to flee the family home for physical safety, the Act includes the right to apply for Emergency Protection Orders and Exclusive Occupation Orders. These orders grant the temporary, exclusive occupation of the home for an extended period of time to one spouse or common-law partner and any children, thus preventing the other spouse or common-law partner from returning to the home unescorted.⁵ Applicants can submit a request for Emergency Protection Orders by phone, email, or fax directly to a designated judge. The designation of a judge allows provinces and territories to adapt related provincial or territorial processes to the federal regime for use on reserves.⁶ As of June 2017, three provinces have designated judges, including New Brunswick, Prince Edward Island, and Nova Scotia, and no cases of Exclusive Occupation or Emergency Protection Orders have been recorded.

⁴ First Nations in the process of enacting land codes according to the *First Nations Land Management Act* were given an extension until June 2016 before the provisional federal rules came into effect. This was to allow these communities time to include rules and procedures that respond to the breakdown of a relationship and shared matrimonial interests on reserve land. As of June 2017, 35 First Nations communities have enacted matrimonial real property rules under the *First Nations Land Management Act*,

⁵ Canada Gazette. "Emergency Protection Orders Regulations". Vol. 148.15. April 12, 2014. <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-04-12/html/reg1-eng.php>

⁶ Ibid.

In order to enact a community-specific law, the Act requires First Nations to vote on the approval of its implementation. If the law is approved, the community law will apply in place of the federal rules. The drafting of the law is strictly the responsibility of the First Nation. Once it is approved by a community and INAC receives a copy of the matrimonial real property law pursuant to the Act, INAC will post the name of the First Nation on their website.

1.1.2 Evaluation Purpose

The evaluation examines the awareness raising, training, and capacity building activities supported by INAC, Public Safety, and the RCMP to support and enforce the implementation of the Act. It will focus primarily on the funding dedicated from 2013-2014 to 2015-2016.

The report structure is designed to focus on the key aspects regarding the implementation and enforcement supports, and is organized into seven sections: Section 1 introduces the program and its key stakeholders; Section 2 outlines the evaluation methodology; Sections 3 and 4 include findings related to INAC's efforts to raise awareness of the Act among community members; Section 5 focuses on the RCMP and Public Safety's enforcement support; Section 6 examines findings related to enforcement of the Act in the courts; and Section 7 provides a summary of the conclusions and recommendations arising from the evaluation.

1.2 Program Profile

The program profile includes information on: the background and description of the program; its objectives and expected outcomes; program management, key stakeholders and beneficiaries; and program resources.

1.2.1 Background and Description

Implementation and enforcement of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* is shared by three federal departments, namely INAC, the RCMP, and Public Safety.

INAC⁷ is responsible for the implementation of public education and awareness-raising of the Act. INAC created and provided funding to the Centre of Excellence for Matrimonial Real Property, which is hosted by the National Aboriginal Lands Managers Association and operates at arm's length from the Government. The Centre of Excellence for Matrimonial Real Property is an information resource for First Nations looking to implement community-specific laws. It also provides information to communities across Canada on the federal provisional rules. The authority to provide funding for the Centre of Excellence for Matrimonial Real Property is due to sunset at the end of the 2017-2018 fiscal year along with funding for the implementation and enforcement supports offered by INAC and Public Safety. RCMP's funding is reallocated internally.

⁷ Due to the interest in matrimonial property on reserves, there are strong links between the Act and land management. INAC's program is housed under the Lands and Economic Development pillar of the Department.

The role of the RCMP is to develop and deliver matrimonial real property training and education materials to assist front-line RCMP Regular Members on reserves in their awareness of the Act and its provisions. Public Safety's role is to provide financial contributions to support the development and delivery of a separate training and education resource for police officers of the First Nations Policing Program.

INAC's implementation efforts are intended to benefit First Nations members across Canada who may not otherwise be aware of their rights under the Act. The RCMP's training and Public Safety's training, while designed to inform RCMP Regular Members and eligible recipients of the First Nations Policing Program respectively, have the end result of increasing awareness and understanding of matrimonial real property laws and social issues on reserves.

1.2.2 Objectives and Expected Outcomes

Implementation for the *Family Homes on Reserves and Matrimonial Interests or Rights Act* supports INAC's strategic outcome, "The Government: Support good governance, rights and interests of Aboriginal Peoples." The initiative is situated under the Department's Program Alignment Architecture as Program Activity 1.1 *Governance and Institutions of Government*, and is a component of the sub-Program, 1.1.2 *Aboriginal Governance Institutions and Organizations*.

The RCMP's work on the *Family Homes on Reserves and Matrimonial Interests or Rights Act* supports one of their five strategic priorities of contributing to safer and healthier Indigenous communities. This initiative is situated under the RCMP's Performance Activity Architecture sub-sub program 1.1.1.3 Aboriginal Policing.

This initiative falls within Public Safety's Performance Activity Architecture under the Countering Crime program and the sub-sub program 1.3.2.3 Aboriginal Policing. Its planned initiative is to engage program stakeholders, including First Nation and Inuit communities and provincial/territorial partners, to identify means of improving efficiency and effectiveness in the provision of policing services for inclusion in a renewed policy.

INAC, in collaboration with the RCMP and Public Safety, developed evaluation questions in accordance with the 2014 *Family Homes on Reserves and Matrimonial Interests or Rights Act* Performance Measurement Strategy. The logic model, which depicts the three partners' expected outcomes, is provided in Annex D.

1.2.3 Program Management, Key Stakeholders, and Beneficiaries

The implementation supports for the Act are delivered primarily by INAC and the Centre of Excellence for Matrimonial Real Property. INAC is responsible for communication and outreach and the Centre of Excellence receives contribution funding to complete these activities as well as offer training, information support, and guidance to First Nations on both the provisional federal rules and the enactment of a community-specific law. INAC regional office staff are also regularly involved as they are often the first point of contact for First Nations looking for advice and clarification on the Act.

The RCMP is responsible for developing and delivering training to regular members on reserves, while Public Safety provides financial contributions to support the development and delivery of training for other policing services in Indigenous communities. Both initiatives have the intension of increasing understanding among police of reserves of the provisional federal rules and accompanying processes, as well as First Nations' matrimonial real property laws, in order to fulfill their roles of enforcing federal laws on-reserve.

1.2.4 Program Resources

The overall allocated amount for the Act's implementation and enforcement supports was approximately \$11.8 million from 2013-2014 to 2017-2018, with the majority devoted to INAC's implementation supports. As recorded from 2013-2014 to 2016-2017, approximately \$2.7 million was used to fund the efforts of the Centre of Excellence for Matrimonial Real Property and its various implementation activities. From 2013-2014 to 2017-2018, Public Safety allocated \$514,050 for training support to the First Nations Policing Program, while from 2013-2014 to 2015-2016, the RCMP internally allocated \$2.7 million for training of RCMP officers.

Table 1 illustrates INAC's actual spending amounts for fiscal years 2013-2014 to 2016-2017, while Table 2 details Public Safety's allocated spending from 2013-2014 to 2017-2018, and Table 3 lists the RCMP's allocated and actual spending from 2013-2014 to 2015-2016. Funding to INAC supported operation and maintenance costs, grants and contributions to the Centre of Excellence for Matrimonial Real Property, and a reserve fund for accommodations. Funding for Public Safety supported grants and contributions to the First Nations Policing Program, and funding for the RCMP supported internal training for employees.

Table 1: INAC Actual Spending for the Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*: Fiscal Years 2013-2014 to 2016-2017 (dollars)⁸

INAC	Actual Spending				
Fiscal Year	2013-2014	2014-2015	2015-2016	2016-2017	Total
Personnel	141,789	319,022	319,022	319,022	1,098,855
Operating and Maintenance	0	32,502	5,153	145,124	182,779
Employee Benefit Plan (20 percent)	28,358	63,804	63,804	63,804	219,770
Grants and Contributions	529,200	1,275,700	1,104,420	1,175,700	4,085,020
Accommodation	18,433	41,473	41,473	41,473	142,852
Total	717,780	1,732,501	1,533,872	1,745,123	5,729,276

⁸ From 2013-2014 to 2017-2018, INAC was allocated approximately \$2.6 million for operations and maintenance, \$5.4 million for Grants and Contributions, and \$184,000 for reserve funding.

Table 2: Public Safety Planned Spending for the Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. Fiscal Years 2013-2014 to 2017-2018 (dollars)

Public Safety	Allocated Spending					Total
	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	
Grants and Contributions	0	0	156,400	182,275	175,375	514,050

Table 3: RCMP Planned and Actual Spending for the Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. Fiscal Years 2013-2014 to 2015-2016 (dollars)⁹

RCMP	Planned and Actual Spending
Operating Expenditures	2013-2014 to 2015-2016
Planned	2,700,000
Actual	245,400

INAC's program staffs four fulltime equivalents, while the Centre of Excellence for Matrimonial Real Property staffs six. The RCMP program allocated two fulltime equivalents to develop the training tool, and Public Safety allocated one full time equivalent to administer the contribution to the First Nations Chiefs of Police Association.

The Centre of Excellence's budget is part of INAC's funding. Its planned and actual spending from 2013-2014 to 2016-2017 is outlined in Table 4.

Table 4: The Centre of Excellence for Matrimonial Real Property Planned and Actual Expenditure Amounts for the Implementation Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. Fiscal Years 2013-2014 to 2016-2017 (dollars)

The Centre of Excellence for Matrimonial Real Property	Planned and Actual Spending				
	2013-2014	2014-2015	2015-2016	2016-2017	Total
Planned	529,200	1,150,700	1,050,700	1,050,700	3,881,300
Actual	353,736	363,041	1,040,675	997,776	2,755,228

⁹ From 2013-2014 to 2015-2016, the RCMP spent \$245,400 of the estimated \$2.7 million total dedicated to the initiative to staff two full-time equivalents responsible for developing the tool and providing consultation services to RCMP Members.

2. Evaluation Methodology

2.1 Evaluation Scope and Approach

This evaluation measures program performance against the intended results articulated in the logic model (Annex D). Specifically, the evaluation examines the awareness raising, capacity building, and training supports for the enforcement and implementation of the Act, and focuses on funding dedicated from 2013-2014 to 2015-2016.

This evaluation does not evaluate the *Family Homes on Reserves and Matrimonial Interests or Rights Act* itself. Engagement sessions to discuss the Act and the implementation program are scheduled for the fall of 2017. Rather, the evaluation scope focuses on the relevance and effectiveness of the implementation and enforcement supports associated with the Act. The evaluation provides information covering the period of fiscal year 2013-2014 to April 2017.¹⁰

As the Act is a new initiative as of December 2013, there have been no previous evaluations conducted. The evaluation was led by INAC's EPMRB and information gathered with the support of evaluation representatives from Public Safety and the RCMP. Evaluators worked with their respective program representatives who, together with the Evaluation Team, formed the Working Group. The consulting firm, Donna Cona,¹¹ was hired to assist in the development of the methodology and to undertake case study work as part of the collection of information on the effectiveness of Implementation and Enforcement from a community perspective.

The Terms of Reference prepared by the Evaluation Working Group was approved by all three departments in June 2016. Each department interviewed their program staff and key officials, and reviewed information directed at their department's responsibilities. The RCMP and Public Safety were each responsible for completing a component piece providing neutral and evidence-based information on the agreed upon evaluation questions and methodology. The component pieces were used to inform and support the broader horizontal evaluation.

As per the Terms of Reference, the RCMP evaluated program data collected between the fiscal years 2013-2014 and 2015-2016. Public Safety and INAC reported on data released up until March 2017 in consideration of newly released information that could inform decision making. Public Safety's training was not made available to officers until its trial phase in January 2017, which delayed data on user uptake. Also going beyond the scope, INAC included information from March 2017 on the appointment of a Nova Scotia judge to hear Emergency Protection Orders.

¹⁰The Terms of Reference identifies the period of evaluation as 2013-2014 to 2015-2016. This was largely a planning decision to support reporting for March 2017.

¹¹ INAC used the services of a consultant to assist with case studies, specifically reaching out to communities, facilitating interviews, and compiling technical reports that informed the evaluation.

Analysis and report-writing was undertaken between March and June 2017. A first draft of the final report was presented to the Working Group in June 2017. As per the Treasury Board Secretariat's *Policy on Results*, the evaluation looked at issues related to relevance, efficiency, and effectiveness. Please see Annex B for a list of the specific evaluation issues and questions.

2.2 Evaluation Methodology

To evaluate the implementation and enforcement supports of the Act, the evaluation employed the following lines of evidence: document review, literature and media review, key informant interviews, and case studies. This section also notes the considerations, strengths, and limitations surrounding the evaluation process.

2.2.1 Lines of Evidence

INAC was responsible for undertaking most of the document review, media and literature review, interviews (with INAC staff and external stakeholders), and all case study work. The RCMP and Public Safety submitted component pieces of their respective departments reflecting the agreed upon evaluation questions and methodology to INAC as the lead department. Information resulting from this work was then shared with the Evaluation Working Group, including program representatives. More detail on the lines of evidence is provided below.

Document Review: INAC undertook a comprehensive document review and analysis. This largely included a review of information pertaining to the Act, such as: community-implemented matrimonial real property laws; studies commissioned by INAC; INAC discussion papers; materials published by the Centre of Excellence for Matrimonial Real Property, including a training toolkit and resource binder; letters from the provinces regarding the appointment of judges; information on a pilot project undertaken by the Centre of Excellence to provide funding to First Nations to enact their own matrimonial real property law; and internal planning documents. Additionally, EPMRB reviewed publicly available documents pertaining to enforcement activities, including publications detailing Emergency Protection and Exclusive Occupation Orders, and court decisions relating to the Act. Some additional documentation was provided to EPMRB by Public Safety to be included in the document review.

Media and Literature Review: A media review was conducted by INAC to gather information on the Act from the perspective of the general public and focused on situations of family violence on reserves where the Act may have been applicable. The literature review focused on academic publications to gather contextual information about the issue of Matrimonial Real Property and applying matrimonial real property legislation on-reserve, as well as the appointment process of provincial judges. Further information was sought via the literature review in order to address information about provincial legal codes of law and their compatibility with the Act.

Key Informant Interviews: Interviews were conducted between September 2016 and March 2017. The purpose of the interviews was to explore issues related to the design, delivery, and effectiveness of the implementation and enforcement supports. INAC, Public Safety, and RCMP conducted interviews with their respective departments. Interviews included representatives of INAC, Public Safety, and the RCMP; INAC regional staff, including estates officers and lands officers; legal experts; RCMP Regular Members; and the staff from the Centre of Excellence for Matrimonial Real property. Table 5 details how many key informants were interviewed by category.

Table 5: Interviews by Category

Interviewees by Category	Number of Interviewees
INAC Staff	18
Public Safety Staff	2
RCMP Regular Members	4
Department of Justice	1
Legal experts	3
The Centre of Excellence for Matrimonial Real Property	7
Commission de la santé et des services sociaux des Premières Nations du Québec et du Labrador	1
National Aboriginal Circle Against Family Violence	1
First Nations Communities	10
Total	47

Case Studies: In order to assess the effectiveness of the Act’s implementation and enforcement supports among target audiences and end-users, the Evaluation Team conducted seven case studies between October 2016 and March 2017. Participants interviewed included: Chief and Council members; Band administration; committee members for the matrimonial real property community law process; land managers; and elders. Among the seven case studies were four communities that have enacted their own matrimonial real property laws. INAC compared these communities to those under the provisional federal rules, noting their differences in community-level priorities and current capacity to take on new projects.

Table 6 illustrates the communities visited for case studies. It also specifies which of those communities have enacted a community-specific law.

Table 6: Case Studies Conducted by INAC

Community Visited	Communities that have Implemented a Community-Specific Law
Brokenhead, Manitoba	
Tsuu T'ina, Alberta	✓
Glooscap, Nova Scotia	
Millbrook, Nova Scotia	✓
Membertou, Nova Scotia	✓
Tk'emlups Te Secwepemc, British Columbia	✓
Whitefish River, Ontario	

INAC also included interviews with a group of Quebec First Nations land managers to gather their perspectives on the implementation of the Act in relation to the *Quebec Civil Code*. The Act recognizes couples living in common-law after one year and provides them with the same rights as married couples. However, provincial codes of law, such as the *Quebec Civil Code*, have their own definitions of common-law relationships that do not consistently align with the Act. First Nations land managers, as those who administer land on reserves, are well-situated to understand the implications of the Act for communities in their regions. INAC interviewed land managers from Kitigan Zibi, Kanesatake, Gesgepegiag, and Kahnawake.

2.2.2 Considerations, Strengths, and Limitations

There are several considerations to note. The program launched in December 2013 and had been active for just over two and a half years when the evaluation began in June 2016, resulting in the evaluation covering a relatively limited period of time. While there are lessons learned from First Nations that have implemented community-specific laws and those that have not, the program continues to work on communicating the details of implementation and the option to enact a community-specific law.

The other consideration is the approach taken to include the RCMP and Public Safety's component pieces into the broader horizontal evaluation. INAC, the RCMP, and Public Safety agreed that data collection for this report would be undertaken individually, based on departmental responsibilities in relation to the Act. While this method of collection provided efficiencies in terms of data collection, it created challenges during the analysis and report writing stage. As a result, the evaluation focuses on the outputs produced by the program rather than on more subjective aspects of the programming. The final report includes information from the RCMP and Public Safety's approved component pieces, based on the evaluation questions and methodology, as well as information collected by INAC from key informants, case studies, document review, and literature and media review.

3. Implementation of the Provisional Federal Rules

This section focuses on the implementation of the provisional federal rules component of the Act, which came into force in December 2014, and INAC's outreach to community members. These rules apply to all communities that have not enacted a community-specific matrimonial real property law according to the first part of the Act. The findings below address the relevance question: Is there a continued need for INAC to provide awareness-raising, training, and capacity building activities to support the Act? It will also examine the program's effectiveness and its achievement of outcomes, specifically the extent to which First Nations communities and individuals are aware of their rights under the Act.

3.1 Awareness-Raising, Training, and Capacity-Building

Finding: There has been some success in informing First Nations communities of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. However, challenges with awareness-raising and training remain.

After the first part of *Family Homes on Reserves and Matrimonial Interests or Rights Act* came into force in December 2013, INAC, Public Safety, and the RCMP assumed responsibility for providing awareness-raising, training, and capacity building activities to support its implementation and enforcement. INAC undertook the responsibility to support the implementation of the Act and ensure that "First Nation communities and individuals are aware of their rights concerning law-making and protections under the Act".¹²

The INAC program provides awareness-raising of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* through the delivery of electronic fact sheets and pamphlets in partnership with INAC's Communications Sector. The Program is also a direct line of information for First Nation community members seeking advice or answers in relation to the Act. For First Nations communities wishing to enact their own matrimonial real property laws, INAC provides funding to the National Aboriginal Lands Managers Association to host the Centre of Excellence for Matrimonial Real Property. The Centre provides awareness-raising, training, and capacity supports to First Nations communities looking to enact their own Matrimonial Real Property laws, and provides information on the provisional federal rules to First Nations and First Nations individuals. Their efforts in relation to community-law making are discussed further in Section 4.2.

Interviews with community and INAC regional office key informants confirmed that officials such as Chief and Council are, in most communities, aware of the Act. This is largely attributed to INAC's outreach, communications, and presentation efforts as well as the training services provided by the Centre of Excellence for Matrimonial Real Property.

¹² Performance Measurement Strategy 1.1.2 Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

Importantly, community and INAC interviewees also noted that community members who are not closely involved with Band Administration or governance decisions are not as well informed. For some remote First Nations communities, especially those without internet access, accessing information about the provisional federal rules can be challenging. While INAC has sent information postcards via the Centre of Excellence to over 600 communities, departmental requirements state that mass printouts on this level require director general approval in order to bypass INAC's Go-Green, paperless initiative. Additionally, while the postcards are a solution to the lack of internet access, they do not consider members whose first language is not English or French, nor do they account for members who cannot read.

In several communities, there is also a high level of turnover among Chiefs and Council. Band staff that attended a presentation on the Act may only be in their position for a short time, leaving a fresh gap in awareness among new employees. With high turnover rates among Chiefs and Council, Centre of Excellence staff do not have the capacity to return for frequent repeat presentations.

INAC regional office staff, program staff at Headquarters, and the Centre of Excellence for Matrimonial Real Property received 663 enquiries and referrals between 2013-2016¹³ asking for clarification on the Act and how the provisional federal rules affect community members. Key informants referenced the intricate language of the Act and its many nuances, and indicated that First Nations require further communication from INAC in order to become comfortable with the legislation. Beyond that, several regional INAC key informants indicated a personal lack of understanding in relation to the Act and how it affects communities within their jurisdictions, and stated that they are often unable to answer questions when contacted by community members. While the Centre of Excellence for Matrimonial Real Property is highly praised for sharing information with communities, they are not contracted to train federal officials on the intricacies of the Act as well.

As a best practice, one community that has successfully implemented its own matrimonial real property law found that a successful way to disseminate information is through regular family meetings, where a representative from each family attends community sessions and reports back to the family group. This system allocates the responsibility for sharing information to individual members, and in the case of drafting a new community law it ensures that changes during the drafting phase are communicated to all members, not just key officials.

3.2 Communities under the Provisional Federal Rules

Finding: While the majority of communities are under the provisional federal rules, this is generally by default. There are several factors that inhibit a community from proceeding with the development of a community-specific law, including competing priorities and unique land administration practices.

¹³ Data provided by the Centre of Excellence for Matrimonial Real Property.

As of June 2017, 11 communities (roughly one percent) have enacted a community-specific law in accordance with the Act, leaving just over 600 First Nations¹⁴ under the provisional federal rules. The Act, however, is not the only way in which a First Nation community can pass specific laws to address matrimonial real property interests on reserves. Other than the Act, First Nations communities are able to opt out of land provisions under the *Indian Act* by enacting community-specific land codes. As part of these land codes, the *First Nations Land Management Act*, which received Royal Assent in 1999, enables First Nations to enact rules and procedures that respond to the breakdown of marriage as well as the use, occupation, and possession of land in First Nations communities.¹⁵ When the *Family Homes on Reserves and Matrimonial Interests or Rights Act* came into force, communities that were pursuing the process under the *First Nations Lands Management Act* were permitted to delay the implementation of the provisional federal rules from December 2014 to June 2016 to allow them more time to enact land codes that would address the matrimonial real property legislative gap. As of June 2017, 35 First Nations communities have enacted matrimonial real property provisions under the *First Nations Land Management Act*.

First Nations communities are also able to enact their own matrimonial real property laws if they have a comprehensive self-government agreement.¹⁶ For all other First Nation communities not under either of these agreements, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* applies.

Five of the 11 communities that drafted their community-specific laws in accordance with the Act chose to do so during the one-year window between December 2013 and December 2014, before the provisional federal rules came into force. For the First Nations that remain under the provisional federal rules, varying factors, including a lack of awareness, competing priorities, and unique land administration practices have deterred them from the community law-making process.

INAC interviewees suggested that in some cases, communities operate based on custom allotment rather than registering formal land transactions through the Indian Land Registry. As these communities tend to not use the formal documentation required for land administration, they have not experienced the frustrations that others have articulated regarding completing the forms needed to fulfil the requirements of the Act, and therefore may not feel much incentive to transition out of the federal provisional rules.

Additionally, community and Centre of Excellence key informants added that communities have not made enacting a community-specific matrimonial real property law a priority because they perceive provincial judges to be unfamiliar with the legislative gap and the lack of legal protections concerning matrimonial real property on reserves.

¹⁴ 617, based on 2014 data from <https://www.aadnc-aandc.gc.ca/eng/1303134042666/1303134337338>. This number includes bands as defined by the *Indian Act* as well as self-governing and modern treaty First Nations. However, the Act only applies to *Indian Act* bands.

¹⁵ INAC. "History of Measures to Address the On-Reserve Matrimonial Real Property Issue". 27 September 2011. <https://www.aadnc-aandc.gc.ca/eng/1317141855703/1317141892099>

¹⁶ INAC. "Information on the Proposed *Family Homes on Reserves and Matrimonial Interests or Rights Act*". 28 September 2011. <https://www.aadnc-aandc.gc.ca/eng/1317230208494/1317230275461>

The Centre of Excellence for Matrimonial Real Property began offering English training sessions in July 2014 and French sessions in September 2014. Still, many communities are unmotivated to expend the time, cost, and resources needed to draft a community-specific law. If a community is struggling with clean drinking water or an on-reserve housing shortage, drafting a Matrimonial Real Property law may not be a top priority. Additionally, accessing the First Nation law-making mechanism requires that legal aid be easily accessible and that support services are familiar with its intricacies, which, at the time of this evaluation, was not the case.¹⁷

Similarly, INAC key informants and representatives from the Centre of Excellence for Matrimonial Real Property indicated that communities are strongly encouraged to seek legal advice during the drafting phase. However, hiring the services of a legal expert is not only expensive but also difficult for remote communities who may not have easy access to such advice, or whose nearest legal expert is unfamiliar with the Act. This issue is further discussed in Section 5.2.1. While the Centre of Excellence for Matrimonial Real Property can provide funding to First Nations communities to hire legal aid, there is no similar support for First Nations land managers who lead the law-making initiative.

3.3 Alternative Dispute Resolution

Finding: Before appealing to the provincial court system, there is a preference to resolve disputes related to the *Family Homes on Reserves and Matrimonial Interests or Rights Act* either internally or through Alternative Dispute Resolution.

Key informants suggested that some First Nations may not wish to enact their own matrimonial real property laws because of the attention the process brings to marriage problems within a community. This is a sensitive subject that not all communities wish to discuss openly at band council meetings and consultation sessions.

Typically, community key informants indicated that they prefer to pursue alternative dispute resolution mechanisms rather than bring such personal matters to a provincial court. The Centre of Excellence for Matrimonial Real Property researched alternative dispute resolution mechanisms, including mediation, negotiation, arbitration, and collaborative law.¹⁸ As each community follows unique rules and traditions, key informants indicated that internal supports are better situated to try and resolve a case of marital breakdown than a superior court that is far removed from the community.

¹⁷ The Conference Board of Canada. “Assessment of Select Non-Legislative Policy Issues associated with the *Family Homes on Reserves and Matrimonial Interests or Rights Act*”. Draft March 24, 2017. p. 26

¹⁸ Centre of Excellence for Matrimonial Real Property. “A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution”. Indigenous Law Research Unit, Faculty of Law, University of Victoria. 2015. <http://www.coemrp.ca/wp-content/uploads/2015/12/on-reserve-matrimonial-real-property-dispute-resolution-toolkit.pdf>

The Centre of Excellence for Matrimonial Real Property provides three examples¹⁹ of tribunals that have successfully adopted alternative dispute resolution mechanisms. For the Anishina-bek Nation Tribunal and Commission, alternative mechanisms are used for issues of governance, administration, citizenship, and matrimonial real property. It can be accessed by both First Nations citizens and non-members of the Anishina-bek Nation.

Another method of alternative dispute resolution, according to the Centre of Excellence's toolkit,²⁰ is the circle process. In this practice, participants agree to take part in the process led by a trained facilitator. While they can invite family, community members, or professionals to participate if they choose, there are high expectations of confidentiality concerning what happens during the process itself. The circle process can include a First Nation community's own legal, cultural, and spiritual principles and practices, and can lead to a written agreement or plan. This is particularly the case for sentencing circles connected to the criminal justice system, which often conclude with advice to a judge on the appropriate sentencing plan for an individual offender.

Alternative dispute resolution mechanisms can facilitate the process of protecting a family member's interest in the matrimonial home on-reserve. They can also produce sentencings that recommend certain actions to a provincial judge, which will protect family members from situations of family violence. Circle processes may not be as efficient as Emergency Protection Orders, in theory,²¹ however, they offer a community-specific response to a difficult, private situation. This is especially pertinent to First Nations living in provinces where an Emergency Protection Order is not an option due to the absence of a designated judge.

The Centre of Excellence for Matrimonial Real Property encourages communities drafting matrimonial real property laws to consult with their provincial justice system and plan how their law and provisions, including Emergency Protection and Exclusive Occupation Orders, will be received. This is especially the case for communities that use the provincial court system as their preferred dispute resolution mechanism. In the absence of a designated judge (as of June 2017, three provinces have designated judges), the community's law must find an alternate way to have these Orders officially heard, passed, and enforced on-reserve.

Recommendation 1: Work with the Centre of Excellence for Matrimonial Real Property to explore methods of integrating Alternative Dispute Resolution mechanisms into First Nations community practices, particularly for those communities without provincially designated judges.

3.4 Common-law Couples

Finding: The Act's definition concerning common-law couples has created a general unease among First Nations members who were accustomed to provincial definitions of common-law relationships.

¹⁹ Ibid.

²⁰ Ibid.

²¹ As of June 2017, no cases of Emergency Protection Orders have been recorded in Canada.

The Act defines a couple to be in a common-law relationship after at least one year of co-habitation. Should a couple that have been living together for one year or more decide to separate, the provisional federal rules of the Act state under Section 28 that each is entitled to half the value of the home,²² among other rights such as Exclusive Occupation Orders, and Emergency Protection Orders, and spousal consent to sell the home. However, each province's definition of a common-law relationship does not necessarily align with the Act's definition of one year or more. For example, British Columbia defines a common-law relationship as a couple who have lived in a marriage-like relationship for at least two years,²³ while in Ontario, under certain circumstances, the couple are considered spouses if they have "cohabited continuously for a period of not less than three years."²⁴ Under Quebec's Civil law, de facto spouses receive benefits (under certain conditions) similar to those of common-law couples in other provinces.

With the enactment of the Act's provisional federal rules, unmarried couples (of at least one year) sharing a family home on First Nations reserves across Canada became entitled to half the value of any interest or rights held by one or both of them in or to the family home (as defined by the Act) upon relationship breakdown. Community key informants in Quebec indicated that this provision came as a surprise. They added that some First Nations couples were uncomfortable being categorized as common-law under the Act's definition, and preferred the provincial arrangement that a breakdown in relationship would not necessarily result in being responsible for half the value of the family home. With the enactment of the provisional federal rules under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, these couples became entitled to a division of the value of the home on application by one or both of the partners after relationship breakdown.

However, the evaluation found that First Nations have not been prompted to enact community-specific laws in order to counter this definition of common-law relationships. Community key informants indicated that, for the most part, interest in pursuing the drafting process is low compared to other more urgent priorities. Additionally, there were further doubts that drafting a law would largely impact the final court ruling, since the case would be taken to a provincial judge who has more experience ruling according to the province's legal code and its unique interpretation of common-law relationships.²⁵

3.5 Impact on Land Administration

Finding: Frequent updates to land registration forms related to matrimonial real property have created confusion and challenges for on-reserve land transactions.

²² Section 28 of the Act states, "When a conjugal relationship breaks down, each spouse or common-law partner is entitled, on application made under section 30, to an amount equal to one half of the value, on the valuation date, of the interest or right that is held by at least one of them in or to the family home and to the amounts referred to in subsections (2) and (3)."

²³ British Columbia. "I am in a common-law relationship. Do we divide our property or debt." <http://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/family-law/dealing-with-property-and-debt/common-law>.

²⁴ Ontario. "The Family Law Act, R.S.O." 1990, c. F.3. s.29.

²⁵ Outreach and training for provincial judges will be discussed further in Section 6.1.

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* has an impact on the administration of reserve lands. Specifically, permits and licenses, transfers of property, mortgages, assignments, leases, and sub-leases are transactions that require an attestation form by the spouses or common-law partners to confirm that matrimonial interests are not being encumbered.²⁶ The form is a requirement for the above land transactions on-reserve, regardless of whether the title holder has a spouse or not. INAC lands and estates officers describe the form as complicated and extensive. Document review from a previous evaluation of land administration²⁷ indicates that regional offices and communities noted that the new paperwork that accompanies the legislation causes delays. The initial form caused confusion, however, even with the development of a new version, in some instances, earlier applications for registration had to be revised. British Columbia region in particular noted that in 2016-2017, these changes were the source of some registration backlogs.

Key informants noted that changes to matrimonial real property forms have created added work for administrative staff. Forms are frequently updated to include additional information related to the Act. As a result, those in band offices and INAC lands and estates offices may not know which forms are the most current, how they should be completed, or if the office can accept old versions.

Additionally, forms require a statutory declaration in order to ensure the accuracy of information; however, key informants expressed concerns that the verification process is not strong enough. They add that community members may submit false information, particularly where it concerns a spouse or common-law partner who may share interest or have rights in the property since there is no requirement for the spouse or partner to sign the form as well.

INAC key informants shared the frustrations of some of their clients who have been involved in the land transaction process for a number of years. In one specific example, a community member attempted to gather the divided portions of a Certificate of Possession on which they were the principle shareholder. However, when the provisional federal rules of the Act came into force on December 16, 2014, the Act required the member to contact everyone who had already transferred their shares for a new signature on the matrimonial real property form. In cases such as this, the member had several dozen partial certificate holders to track down, which took years to collect. Gathering signatures becomes even more complicated when a holder, who transferred their certificate of possession before December 2014, is recently deceased. This leaves the member who requires new signatures with few options, and INAC key informants state they do not know how to advise in such cases. Internal interviewees argued that the requirement to sign these forms in order to process land transfers is not an explicit requirement of the Act, but is a policy choice designed to protect INAC from liability. They suggested that this level of administration is unnecessary and presents a barrier to communities' and INAC's land administration work, leaving a number of files that predate the Act in the lands department that cannot be actioned.

²⁶ INAC. "Administration of Reserve Land Evaluation Report 2016." Pg. 43-44

²⁷ Ibid.

4. Implementation Support for Community Law-Making

Some communities already had matrimonial real property laws in place before December 2013, although in order for Canada to list the First Nation on its website as having enacted the law pursuant to the Act, they need to pass a community approval process by vote. Drafting a law that fulfills the Act's requirements takes time, resources, and money out of the community's budget, and in some cases communities feel they are redrafting a law that is already upheld by members. Due to these factors, community key informants indicated that some First Nations continue to follow their pre-Act community law, even if it was not enacted pursuant to the Act or listed on INAC's website.

4.1 Gender Considerations

Finding: The Act includes protection of the rights of men and women on reserves in the case of matrimonial real property interests. Community law-making has, however, allowed First Nations communities that have enacted their own laws to extend protection to include the rights of children in the community.

The Act is designed to protect men, women, and children on reserves from situations of family violence through the enforcement of Emergency Protection and Exclusive Occupation Orders. It also prevents one spouse or common-law partner from having to forfeit the family home in the event of separation, divorce, or death. Documents reviewed show that INAC consulted with women's groups, including the Native Women's Association of Canada, before the drafting of the Act in order to understand how men and women may be negatively impacted by the legislative gap.²⁸ INAC key informants stated that women's rights were at the forefront of the drafting process and led to the creation of Emergency Protection Orders and Exclusive Occupation Orders. However, in order for the Act and these Orders to be culturally specific, the Act creates a mechanism for communities to draft their own matrimonial real property law.

While the Centre of Excellence for Matrimonial Real Property provides advice and guidance on the method of drafting a law, the content comes entirely from the community. This includes the option to provide Emergency Protection or Exclusive Occupation Orders for family members on-reserve experiencing situations of family violence. Considering that as of June 2017, only three provinces have designated judges to hear these Orders, there is a lack of protection for families on-reserve who face situations of family violence. As discussed in Section 3.3, the Centre of Excellence promotes communication between communities and their provincial judicial systems well in advance of drafting the community matrimonial law. This allows for time to discuss ways in which these Orders can be heard and enforced to ensure that families are able to benefit from the protection they offer against family violence. Key informants from community case studies indicated that, during the drafting of their community-specific law, the main focus turned to protecting the best interests of the family at large. Specifically, legal protections focused on any children who, without the law,

²⁸ Some key informants in communities discussed how certificates of possession are traditionally owned by men. In some cases, this forces women to leave the home after a breakdown in relationship. Other cases involving family violence typically forced women to flee the community as no law existed to protect their equal share in the family home.

would have to leave the home or the community with their principle guardian. For instance, in cases of marital breakdown, a non-member spouse or common-law partner whose right to the family home on-reserve had no legal protection before the existence of the Act could have been required to leave the community with any dependent children. Overall, community interviewees felt that the most important motivation for creating their law had less in common with issues of gender, and more with the best solution to keep children close to the community with which they identify. The flexibility in content that is afforded by the community's control in the drafting of a community-specific law enables a First Nation to choose which issues will be at the forefront of their matrimonial real property legislation.

4.2 The Centre of Excellence for Matrimonial Real Property

The National Aboriginal Lands Managers Association received a contribution from INAC to create the Centre of Excellence for Matrimonial Real Property to assist with implementation and outreach of information related to the Act as of December 2013. As they are hosted by the National Aboriginal Lands Managers Association, the Centre of Excellence operates at arm's length from INAC. Providing outreach connects directly to the immediate outcome, "First Nation communities and individuals are aware of their rights concerning law-making and protections under the Act," as found in the Performance Measurement Strategy.²⁹ The Centre of Excellence for Matrimonial Real Property assists communities with understanding the provisional federal rules as well as with a detailed process on how to draft a community-specific law. They provide training sessions to all levels of community, are available for questions by phone and email, update their training materials regularly, and offer a pilot project that financially assists communities with the cost of enacting a matrimonial real property law (these support services will be examined further in Section 4.3.2). The Centre of Excellence has six full time equivalents and receives approximately \$1 million per year from INAC.

4.2.1 Outreach and Capacity Development – Toolkit

Finding: Users view the Centre of Excellence for Matrimonial Real Property's toolkit on how to create a law as a highly effective resource in support of the creation of a community-specific law.

In December 2013, the Centre of Excellence for Matrimonial Real Property, initiated outreach to communities to announce the implementation of the provisional federal rules and the option for communities to enact a community-specific matrimonial real property law.

The Centre drafted a [toolkit](#), including a step-by-step process on how to implement a law, and distributed it to all interested communities in addition to those that were distributed during their training sessions. The toolkit includes a summary of the Act, the nature of the provisional federal rules, the basics of family law and alternative dispute resolution, sample scenarios, and additional resources. It has been developed in both official languages and is frequently updated to help users understand related aspects such as estates management on-reserve. It is available directly from the Centre of Excellence or on their website.

²⁹ Performance Measurement Strategy 1.1.2 Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

Many community key informants affirmed that the toolkit’s process map, directions, and helpful suggestions regarding how to draft a law can be applied to future law-making operations unrelated to matrimonial real property. Among those interviewed, key informants were unanimous regarding the usefulness of the Centre’s toolkit.

4.2.2 Outreach and Capacity Development – Workshops

Finding: The Centre of Excellence for Matrimonial Real Property is seen to be effective and efficient at providing outreach in the form of workshops. However, the Centre’s ability to reach more communities is limited by capacity levels and the program’s upcoming sunset date.

In addition to the toolkit, the Centre of Excellence for Matrimonial Real Property also conducts training sessions and workshops to provide more detailed and targeted information. Table 7 demonstrates the number of First Nations and Tribal Councils that attended presentations and training sessions by the Centre of Excellence from 2013-2017. As the toolkit training was in development in 2013-2014, there were no training sessions offered during this time, however, the Centre had begun offering sessions for information. Table 7 also demonstrates the number of enquiries and referrals the Centre received from 2013-2017 relating to matrimonial real property and the Act.

Table 7: Number of First Nations and Tribal Councils Reached by the Centre of Excellence

Centre of Excellence for Matrimonial Real Property Outreach	2013-2014	2014-2015	2015-2016	2016-2017	Total
First Nations and Tribal Councils that participated in presentations	61 (approximately)	335	71	103	570
First Nations and Tribal Councils that participated in toolkit training sessions	N/A	60	147	58	265
Number of enquiries/referrals from communities and members	26	238	238	161	663

Interest in the Centre’s work has expanded, as indicated by the increase in the number of people who have accessed their website from 768 views in 2013-2014, to 25,071 views in 2015-2016. This represents a 73.2 percent increase in new visitors.³⁰ Since the introduction of the Act, 11 communities have enacted community-specific laws. Table 8 details the communities and their dates of enactment:

³⁰ Data from the Centre of Excellence for Matrimonial Real Property. “MRP- Performance Measurement Strategy Collection of Data.”

Table 8: Communities with a Community-Specific Matrimonial Real Property Law and Dates of Implementation

Community	Province	Date of Implementation
Algonquins of Pikwàkanagàn First Nation	Ontario	8 April, 2014
Pictou Landing First Nation	Nova Scotia	16 December, 2014
Millbrook First Nation	Nova Scotia	1 December, 2014
Bear River First Nation	Nova Scotia	16 December, 2014
Paqtnekek Mi'Kmaq Nation	Nova Scotia	18 December, 2014
Whitefish River First Nation	Ontario	6 March, 2015
Tk'emlúps te Secwepemc	British Columbia	30 July, 2015
Sipekne'katik First Nation	Nova Scotia	25 September, 2015
Mohawks of Akwesasne	Ontario/Quebec	26 November, 2015
Salt River First Nation #195	Northwest Territories/Alberta	6 December, 2015
Membertou First Nation	Nova Scotia	30 April, 2016

When key informants were asked about the future of the Centre of Excellence for Matrimonial Real Property, many were firm that its role should not only continue but could be expanded. For example, the Centre of Excellence for Matrimonial Real Property could offer information on the Act to stakeholders beyond community groups, such as INAC officers, legal representatives, police organizations, and provincial judges.

Recommendation 2: Consider renewing the mandate of the Centre of Excellence for Matrimonial Real Property in recognition of its central role in informing all stakeholders (i.e., Chief and Council, Band staff, and community members) of the Act.

4.3 Lessons Learned

The following section contains a list of lessons learned from the Centre of Excellence for Matrimonial Real Property and communities that have succeeded or attempted to enact a community-specific matrimonial real property law.

4.3.1 Best Practices in Law-Making

Finding: The Centre of Excellence's guide for law-making is a resource that can be applied to future community law-making initiatives unrelated to matrimonial real property rights.

In March 2017, the Centre of Excellence for Matrimonial Real Property produced a report³¹ compiling a list of best practices among the communities that had implemented a community-specific matrimonial real property law. The best practices encourage communities to:

- Form a committee consisting of a variety of representatives to discuss the principles of the law;
- Hire a lawyer to draft the law who understands legal frameworks within First Nation matrimonial real property laws, and who can participate in committee meetings from start to finish;
- Make use of the resources offered by the Centre of Excellence, including the law template;
- Encourage Chief and Council to consider the law a priority;
- Plan for a year-long process;
- Be prepared to discuss controversial issues, such as child welfare, defining common law relationships, and requiring the use of provincial court systems; and
- Discuss the provisional federal rules from the start and consider what does and does not fit, which could potentially avoid the expense of drafting an entire law.

Additionally, community key informants identified that a best practice is to name a coordinator to lead the process. Gathering community representatives together for regular committee meetings can be difficult, with competing priorities and full schedules. A lead coordinator can help to arrange meetings as well as facilitate the organization of the overall process.

Community key informants confirm that applying these best practices helps to simplify, organize, and budget for the law-making process.

In Nova Scotia, five communities joined together in 2014 under the Confederacy of Mainland Mi'kmaq Tribal Council to draft community-specific laws. The committee shared the services of one lawyer who was able to capture Mi'kmaq values as well as individual community preferences. In this example, five communities were able to share many of the costs associated with drafting a law, as well as encourage a sense of partnership and support during the process. Of the five communities, four were successful in passing the ratification vote.

4.3.2 The Cost of Law-Making

Community and INAC key informants indicated that one of the most common reasons communities have not implemented a community-specific matrimonial real property law is because of the high cost and capacity requirements needed to commit to the process. The Centre of Excellence for Matrimonial Real Property estimates that the cost of creating a community-specific law is \$60,000.³² However, case study key informants suggested that it could cost as much as double this amount, depending on how much attention band staff can contribute and more expensive techniques such as e-voting.

³¹ Catherine Fagan. "First Nations Law-Making and Implementation Experience when enacting Matrimonial Real Property Laws under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*." Arbutus Law Group LLP. 8 March, 2017.

³² The Centre of Excellence for Matrimonial Real Property. "Special Pilot Project – Support to First Nation's Law Making Pursuant to *Family Homes on Reserves and Matrimonial Interests or Rights Act*." 12 May 2016. Page 2.

INAC does not presently offer financial support to communities to pursue the law-making process. For the fiscal year 2016-2017, the Centre of Excellence for Matrimonial Real Property hosted a pilot project to offer funding to First Nations based on the submission of proposals. Funding of up to \$25,000 is available for each of the most expensive elements of the law-making process, including hiring a legal advisor for the consultation and drafting component, holding a ratification vote, and communicating the details of the new law (if successful) to First Nations members.

With the introduction of this support, many First Nations have expressed interest in enacting their own laws, and of these, 14 communities (as of June 2017) have already completed the drafting phase. Among the four case studies where communities have developed their own law,³³ three indicated they had received funding from the First Nations Market Housing Fund.³⁴ This suggests that finding an external source of funding to support the development of a community's law is a large factor in the uptake of the first part of the Act.

4.3.3 Passing the Voting Threshold

Finding: The current voting threshold for passing a community-specific matrimonial real property law has been described by some communities as a barrier to successfully passing the vote.

In order for the community matrimonial real property law to be listed on the INAC website as having been enacted pursuant to the Act, it has to pass the voting threshold. According to the Act, at least 25 percent of the First Nation's eligible voters, whether they live on or off reserve, must participate in the vote. Of the 25 percent who participate, the majority (50 percent plus one) must vote in favour of passing the community law.

Requiring a minimum amount of voter representation is not uncommon in Canada; according to a study on voter thresholds, the 25 percent threshold exists to protect against a small number of people misrepresenting the whole.³⁵

Community key informants, particularly those who are from a community with a high population of members living off reserve, questioned the need for a 25 percent threshold of voter representation. They elaborated that if, for example, a community has 100 members and 24 people participate in the vote, unanimously casting ballots in favour of passing the community law, it is still not considered as being enacted in pursuant to the Act since 25 percent of eligible members did not participate. One key informant, who has advocated for the Act to Quebec First Nations, inferred that one of the main reasons Quebec communities have yet to enact a community-specific law is because they are convinced the 25 percent threshold is impossible to reach.

³³ See table 6, section 2.2.1.

³⁴ The First Nations Market Housing Fund is an organization dedicated to providing individuals on reserve with access to credit for housing that is comparable to off-reserve options. The Fund also maintains a capacity development program that communities can access for housing-related activities such as the development of a matrimonial real property law.

³⁵ Straté Juste Consulting. "Understanding Voter Thresholds for First Nations: Review of the Theoretical and Comparative Contexts, Phase II". Strategic Research Directorate, INAC. February, 2016.

In order to raise interest among members, some communities focused their efforts on engaging younger voters, who may otherwise feel that a law on matrimonial real property does not apply to them. Key informants from these communities recommended advertising the vote as an opportunity for youth to participate in self-governance. Furthermore, they advocated the benefits of hosting information sessions catered to specific demographics. In those sessions, participants could hear more on the community-specific matrimonial real property law and how it may affect them and people in similar situations, rather than holding an information session where a young voter's questions may differ greatly from the concerns of an elder.

Community key informants indicated that a successful way of advertising the day of the vote and the importance of a community-specific matrimonial real property law is through social media. Not only did this method help to reach younger voters, but it was also a helpful tool to send frequent reminders, updates, and requests for volunteers on the day of the vote.

Some larger communities with more resources pursued e-voting as an option to engage members who live off reserve. Key informants indicated that e-voting and advanced e-voting were also convenient for engaging members on-reserve who may find it difficult to travel to the voting site. In one example, band office staff went door-to-door with an iPad to gather more participation. However, key informants note that this is an expensive option and may not be possible for communities on a tighter budget.

In order to encourage more community members to participate in the matrimonial real property vote to reach the 25 percent participation threshold, band staff often combined the day of the vote with another community gathering. This increased the possibility that members who live off-reserve would be in town and able to participate. Some communities offered free meals or door prizes for those who voted, while others volunteered to drive members to the voting site.

However successful a community was in encouraging members to participate, all communities interviewed highlighted the great amount of work involved to communicate the importance of a community-specific law and the need for voters. One community has failed to pass the voter threshold twice due to the majority of their membership (over 75 percent) living off-reserve. Bad weather on the day of the first vote as well as misinformation being spread among members about the purpose of the community-specific law also contributed to low voter participation. When asked if the community will attempt to pass their law a third time, key informants indicated a present reluctance due to the high cost.

Recommendation 3: Consider reviewing voter requirements of the Act, including voting thresholds and alignment to First Nation ratification processes, as well as costs associated with the voting process.

5. Police Enforcement Supports

5.1 Royal Canadian Mounted Police

The RCMP Regular Members are responsible for law enforcement on reserves in all provinces except Ontario and Quebec, with the exception of communities that have their own police forces.

Two parts of the Act have key provisions for law enforcement: Emergency Protection Orders and Exclusive Occupation Orders. Officers are to “assist the applicant in acquiring an Emergency Protection Order where available (i.e., the province or territory has designated a judge to hear applications); Serve and enforce all Emergency Protection Orders to protect the vulnerable people and to assist them to properly apply for an Emergency Protection Order (with regard to reserve land and family homes located on-reserve land); serve and enforce Exclusive Occupation Orders; and/or, investigate any violations.”³⁶

5.1.1 RCMP Training

Finding: The RCMP fulfilled its commitment to develop and deliver training to increase its Members’ awareness of matrimonial real property law and social issues on-reserve, and RCMP data indicates that a number of Regular Members have accessed the online training.

INAC, Public Safety, and the RCMP agreed that due to the diverse geographic locations of Regular Members and the content to be delivered, online learning is the most effective means of delivering Matrimonial Real Property training for the RCMP.³⁷ As a result, an online matrimonial real property guide was developed and the course training standards were approved by the RCMP’s Learning and Development Unit. The guide was then made available on the internal training website, Agora, to all RCMP Regular Members starting in June 2014.

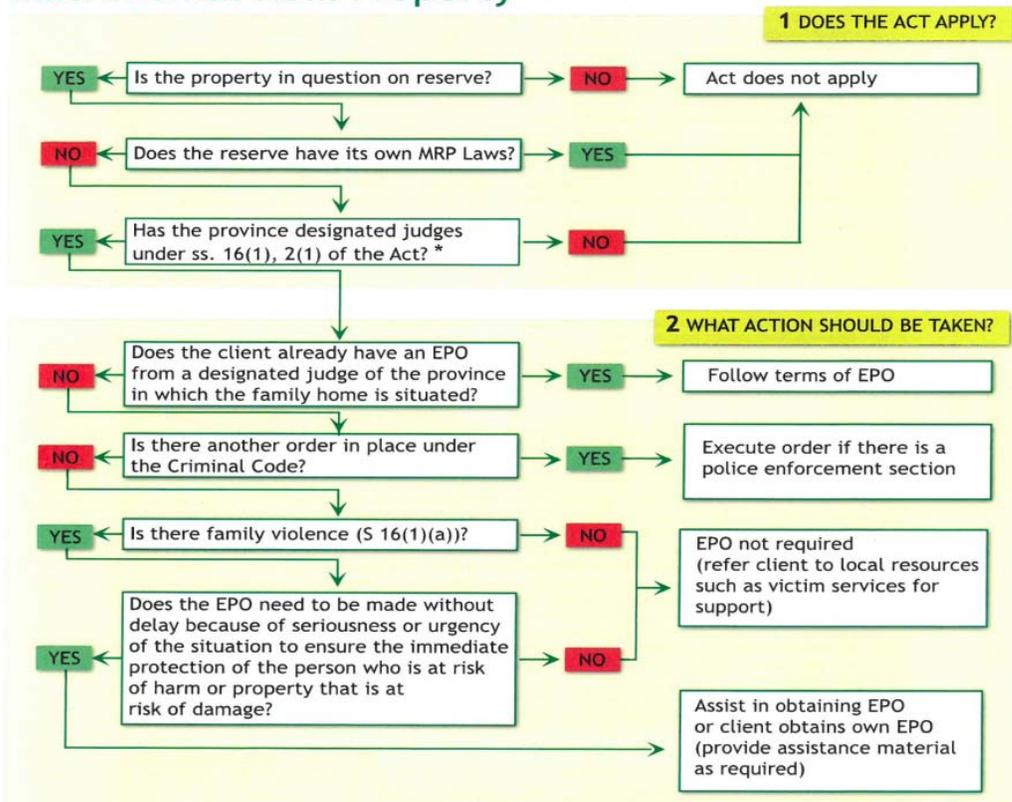
The guide provides Members with links to relevant sections of the legislation and is intended to be a job aid that allows Members to recognize the situations in which to serve and enforce matrimonial real property orders, as well as an understanding of their duties and responsibilities under the Act, including operational policies and procedures. Image 1 is an excerpt from the online RCMP resource guide that illustrates when the Act is to be applied and what actions should be taken.

³⁶ Royal Canadian Mounted Police. (2014) *Service to Aboriginal Communities*. Presentation. Slide 8.

³⁷ Royal Canadian Mounted Police. (2014) *Service to Aboriginal Communities*. Presentation. Slide 8.

Image 1: RCMP Guide to Facilitate Decision Making³⁸

Matrimonial Real Property



EPO = Emergency Protection Order

A review of data indicated that from June 2014 to September 2016, the matrimonial real property resource guide was downloaded by 281 Regular Members. The majority (77 percent) of downloads came from “K” Division in Alberta, “F” Division in Saskatchewan, “E” Division in British Columbia, and National Division in Ottawa. Although evaluators attempted to assess the extent to which Members were satisfied with the matrimonial real property resource guide, none of the individuals that downloaded the guide completed the optional online satisfaction survey.

³⁸ Some provinces have not yet designated judges or advised they will not designate judges to hear applications for Emergency Protection Orders under *the Family Homes on Reserves and Matrimonial Interests or Rights Act*. With respect to an Emergency Protection Order issues under provincial or territorial law only, there is some constitutional doubt about provincial emergency protection enforcement touching on reserve lands/structures or occupancy rights. Policy by the federal government is under development in this area. In the interim, given the risk and immediacy of a domestic violence situation, in which a provincial Superior or other court has issued an order for police action and enforcement, the RCMP member will need to exercise his or her discretion to assess the situation and decide what action they deem necessary to be taken to protect the persons/property and preserve the peace.

In addition to providing the resource guide to its own Regular Members, the RCMP made it available, free of charge, to other police service providers throughout Canada through the Canada Police Knowledge Network. A summary report on course enrollment and outcomes from the Network indicated that as of September 2016, 129 non-RCMP police officers had completed the course, and 236 were enrolled.³⁹

The RCMP also engaged in additional awareness raising initiatives, such as presentations on the new matrimonial real property laws with various key partners. This included a two day workshop with RCMP Divisions, the First Nations Chiefs of Police Association, and the Ontario Provincial Police.

The RCMP committed to internally reallocating \$2.7 million of existing operating funds, over five years, to cover operating expenditures for the training. From 2013-2014 to 2015-2016, the RCMP spent \$245,400 representing nine percent of the estimated total dedicated to the initiative. Delivering the training online presented efficiencies for the RCMP.

5.2 Public Safety

Public Safety administers the First Nations Policing Program, which is a contribution program that provides financial contributions in support of professional, dedicated, and responsive policing services to Indigenous communities. The Program is delivered through tripartite policing agreements between the federal government, provinces and territories, and Indigenous communities. Financial contributions are shared by the federal government (52 percent of eligible costs), and the provinces and territories (48 percent of eligible costs). Public Safety was responsible for entering into contribution agreements to fund a recipient⁴⁰ to develop training for police officers working for police services funded by the First Nations Policing Program in First Nations communities.

5.2.1 Public Safety Funded Training

Finding: Public Safety experienced delays launching the funded training program due to challenges in finding a qualified recipient to develop the training. As such, it is too early in the process to assess the impacts of the training component funded by Public Safety.

Development of training was initially planned for fiscal years 2013-2014 and 2014-2015. The training was then to be launched following its development at the end of 2014-2015. Interviewees indicated that development of the training was delayed because of an unsuccessful 2014-2015 call for proposals to find a qualified recipient to begin its development. As a result, program funding for the first fiscal year of implementation (approximately \$287,500) lapsed.

³⁹ Summary Report – Course Enrollment and Outcomes by Organization. Retrieved from RCMP Learning and Development Data Extract in 2016.

⁴⁰ Recipient refers to the qualified program developer with whom Public Safety has entered into a contribution agreement for the design of training supports.

Subsequently, in 2015-2016, Public Safety signed an agreement with the First Nations Chiefs of Police Association to develop the training. In November 2016, the training was finalized and followed by a pilot phase, which launched in January 2017, and was completed by mid-March 2017. The training was officially launched at the First Nations Chiefs of Police Association Annual Conference on April 27, 2017. It is provided in both official languages and hosted on the Canada Police Knowledge Network.

Public Safety's responsibilities concerning enforcement supports for the Act include:

- 100 percent of First Nations Policing Program self-administered police services would be informed that training materials are available; and
- 100 percent of First Nations Policing Program self-administered police services find the training material to be helpful.

The training includes a mandatory satisfaction survey. Initial feedback from participants as of June 2017 suggests they are satisfied with the design of the training, the learning outcomes included, and the cultural sensitivity of the content. Some improvements were suggested by survey respondents, such as clarification of training instructions, incorporation of more example scenarios, and more photos reflecting First Nations diversity. At least one participant suggested having an in-class version of the course to fully explore how unique community settings may affect the enforcement of the Act's Emergency Protection and Exclusive Occupation Order components.

The agreement between Public Safety and the First Nations Chiefs of Police Association includes a commitment to strive for the successful completion of training by 100 percent of Self-Administered police service officers within the terms of the agreement (i.e., before March 31st, 2018).⁴¹

The April 2017 training launch represents progress towards achieving expected results. However, it is still too early to assess whether the Public Safety training program has contributed to an "increased awareness of an understanding of the application of matrimonial real property law on-reserve."⁴²

5.3 Relevance and Continued Need

Finding: There is agreement among evaluation participants that there is an ongoing need to train and build awareness of the Act among enforcement officers in First Nations communities.

INAC, Public Safety, the RCMP, and consulted communities agree that there is an ongoing need for training and awareness of the Act for enforcement officers in First Nations communities.

⁴¹ Bilateral Contribution Agreement Between the Minister of Public Safety and Emergency Preparedness (Canada) And the First Nations Chiefs of Police Association. Annex A "Project Description." September 2015. p. 15

⁴² Performance Measurement Strategy for the Implementation and Enforcement Supports for *the Family Homes on Reserves and Matrimonial Interests or Rights Act*. See Annex A.

Community representatives, INAC staff, and third-party representatives emphasized that it is important for police to be informed of their duties under the Act in case they respond to a situation in which the Act applies. Training can help ensure that an officer is able to inform community members of their rights under the Act. Community key informants added that victims will look to police during a crisis situation as supports in navigating their rights under the Act and protections against violence.

It was the perception of INAC case study interviewees that training police officers on reserves is necessary in order to ensure that Emergency Protection Orders and Exclusive Occupation Orders can be enforced. A police officer responding to a situation on-reserve can rely on these Orders, however if such an order is not in place, a police officer can rely on an undertaking to protect victims of family violence. Under the *Criminal Code*, Section 499, an undertaking will release a person from custody if they agree to certain conditions, including, “to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, or from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking”.⁴³

The Act’s Orders, however, are not the same as an undertaking. While an undertaking (such as a restraining order) may prevent a person from returning to the home and from communicating with the victim, an Exclusive Occupation Order does not prohibit communication between the two parties away from the family residence. Exclusive Occupation and Emergency Protection Orders are key elements of the Act, which allow victims to stay in the family home for a period of time specified by the court, whether or not the house is in their name or if they are the holder of the Certificate of Possession⁴⁴ Applications for Exclusive Occupation Orders can be heard by any judge, unlike Emergency Protection Orders, which require the approval of a provincially designated judge.

RCMP interviewees indicated that Members are able to protect a person and their home regardless of whether or not the Act is in place. Had an officer not accessed the specific matrimonial real property resource guide, the RCMP determined that there was no risk to community safety. In the potential absence of matrimonial real property awareness training or in the absence of a community member possessing a matrimonial real property-related court order, the RCMP has and will continue to rely on existing procedures when a respondent calls for service.

RCMP Members continue to be trained in response procedures, as well as in the legal and cultural reality of communities and, therefore, the need for specific matrimonial real property training was determined to be an additional tool in support of officers who serve and enforce matrimonial real property-related orders on reserves.

⁴³ *Criminal Code* R.S.C. 1985 c. C-46. “Release from custody by officer in charge where arrest made with warrant.” 18 June 2017. <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-131.html#docCont>

⁴⁴ An early concern during the drafting of the Act was that residents who are not members of the First Nation may gain ownership of the family home on First Nation land. The Act therefore specifies that an Exclusive Occupation Order is “subject to any condition and for the period that the court specifies” (*Family Homes on Reserves and Matrimonial Interests or Rights Act, Section 20.1*).

Public Safety interviewees felt that a lack of training among officers under the First Nations Policing Program could result in a limited awareness of the relevant issues and how to deal with them if and when they arise. As a result, in the contribution agreement with Public Safety, the First Nations Chiefs of Police Association committed to strive for 100 percent participation and completion, as explained in section 5.2.1.

Recommendation 4: Continue to assess the uptake of training offered by Public Safety and the RCMP in order to monitor and report on the number of officers on reserves who are aware of the Act.

6. Legal Enforcement Supports

The performance measurement strategy for the implementation and enforcement supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act* includes the immediate outcome that “key officials are aware of and understand matrimonial real property law and social issues on-reserve.” The evaluation has identified three barriers in the legal system to achieving the immediate outcome and ensuring enforcement of the Act:

- A lack of awareness among court staff and judges;
- A lack of designated judges to enforce Emergency Protection Orders in most provinces; and
- Difficulty for community members to find and afford adequate legal support.

As is discussed below, key informants, case study interviewees, and document review indicate that these barriers mean community members cannot access their rights under the Act in the courts. This significantly reduces the impact of the legislation and its accompanying awareness and enforcement supports.

6.1 Judicial Awareness

Finding: Key informants indicated that there is a general lack of awareness of the *Family Homes on Reserves and Matrimonial Interests or Right Act* in the judicial system, including among court staff, judges, and lawyers. This presents an added challenge to enforcement of the Act.

The design and delivery of the implementation and enforcement supports for the Act involves the participation of all four parties: INAC and the Centre of Excellence for Matrimonial Real Property inform community administration and band members of the Act and its implications, the Centre of Excellence supports communities in implementing their own laws, and the RCMP and Public Safety train RCMP Regular Members and other police officers in the implications and enforcement requirements of the Act. However, in order for rules governing the breakdown of a marriage to be enforced, they must also be applied in the Canadian judicial system.

As such, program efforts were also directed to inform judges of the coming into force of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. A contribution agreement was developed by an independent legal organization to educate the judiciary on the Act and the social context surrounding matrimonial real property rights and issues on reserves.

In November 2014, the National Judicial Institute released information on the Act in its newsletter and sent a copy to 659 judges across Canada.⁴⁵ As of April 1, 2015, 180 individual judges had visited the Aboriginal Law Resource Page on the National Judicial Institute's website since its creation in May 2014.⁴⁶ INAC and the Department of Justice created a comprehensive overview of the legislation, as well as a presentation and a section of the Aboriginal Law Bench Book to address the Act. As a result, the National Judicial Institute decided to draft a detailed guide of the legislation to provide judges with the information and tools needed to understand the application of the Act.

INAC and the Department of Justice's efforts to educate the judiciary were also expanded to include private practitioners through presentations to Canadian Bar Association members. Their efforts also included work with Provincial Law Societies with the objective of producing material and/or courses on the Act to provide to their members. The Centre of Excellence for Matrimonial Real Property recognized the importance of an informed legal community for the proper enforcement of the Act, and took advantage of opportunities to give presentations to provincial Bar associations and law societies.

Despite these efforts, key informants and case study interviewees expressed concerns that much of the legal community is not informed about the Act. Judges, lawyers, and other legal experts have a professional responsibility to inform themselves of the Act, particularly if their work involves family law matters and property on-reserve territory. Department of Justice key informants speculated that lawyers and legal experts are more likely to research the Act if their clientele includes residents of a reserve. Information for document review⁴⁷ indicates that provincial Superior Courts with significant reserve populations offer presentations on the Act and the National Judicial Institute has included speakers on the subject during their conferences. However, the number of judges in attendance at each presentation is not known.

While there is no quantitative evidence to demonstrate a lack of awareness, there is no reason to assume court staff are aware of the Act. While key informants indicate that some law schools are attempting to raise awareness of the Act through additional courses, it remains a specialized topic. INAC key informants have signaled that this has real implications for community members who may not be aware of the rights concerning matrimonial real property and protections against family violence that exist and are available to them under the Act.

As of June 2017, INAC key informants identified two specific cases regarding matrimonial real property that have come before the courts and which have dealt substantively with provisions of the Act. The first of these cases, as referenced in Section 1.4.2, invoked the federal provisional rules. While the judge presiding over the case made use of the Act, key informants were divided on whether or not the ruling took into account the community's home ownership customs and interests in the house.⁴⁸ The second of these cases involved a community-specific law, and despite clear

⁴⁵ National Judicial Institute. "Project on Matrimonial Real Property on Reserves: Annual Report for April 1, 2014 – March 31, 2015". 15 April, 2015.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ There were two specific issues with the ruling: first, that the house under dispute in this case was determined to be the family home despite the fact that one partner had moved out in 2012, two years prior to the coming-into-force of the Act. Second, the judge did not give consideration to community-specific approaches to housing. Despite the fact that the band owned the house and the member in question was in a rent-to-own program, the judge determined the

jurisdiction of the community's law in the case under dispute, the judge avoided adjudicating on the division of the value of the house, arguing instead that this decision rested with the community. Interviewees from the community's Governance Committee expressed frustration that the judge would not rule using their law despite the fact that it is designed to be upheld in a court. Both of these instances corroborate key informants' concerns that the legal community is not sufficiently aware of the Act to enforce it. Key informants indicated that as more cases arise in the courts there will be more case law for judges and lawyers to draw from.

6.2 Designation of Judges

Finding: Most provinces have not designated judges to apply Section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. This is a barrier to the enforcement of the Emergency Protection Order component of the Act.

Section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* gives individuals the option to apply for an Emergency Protection Order if they have experienced family violence or are at serious risk of injury or damage to property. This Order is immediate in nature and can allow the victim to stay in the family home, even if the Certificate of Possession is not in their name. The designated judge has the power to issue a 90 day order, with an option of extension, to bar a partner from the home, from approaching the spouse or common-law partner, or "any other provision that the designated judge considers necessary for the immediate protection of the person who is at risk of harm or property that is at risk of damage."⁴⁹ Where necessary, peace officers are authorized to ensure the Order is enforced.

This section of the Act requires provinces to designate judges to hear emergency cases to ensure that immediate protection from family violence can take place. To date, only three provinces have designated such judges, namely New Brunswick, Nova Scotia, and Prince Edward Island. For the remainder of the country, individuals living on-reserve are unable to access their right to an Emergency Protection Order under Section 16 of the Act, representing an unequal application of federal law across all provinces. While appointing provincial judges to hear Emergency Protection Orders allows for the harmonization of the regime with the provincial system, it remains that the absence of an appointed judge leaves a resident on-reserve without access to the Emergency Protection Order component of the Act.

The ability of RCMP Regular Members and Public Safety's officers under the First Nations Policing Program to apply what they have learned from the training guide is partially dependent on whether community members have a designated judge to secure Emergency Protection Orders. As of June 2017, neither police force has been called to enforce an Order.

member to have what was in effect a mortgage from the band and decided the value of the house could be reasonably split between the two partners.

⁴⁹ *Family Homes on Reserves and Matrimonial Interests or Rights Act*, Section 16 (5) (f).

There is no clear rationale for why provinces have not designated judges to rule on Section 16 of the Act. Interviews with INAC program staff indicated that, for provinces such as Alberta, Saskatchewan, and Newfoundland, provincial authorities simply have not taken this step and that for the governments of Ontario and British Columbia, the likely view is that because their provincial legislation does not distinguish between on- and off-reserve matrimonial real property, couples are protected under provincial law and have no need for the Emergency Protection Order component of the Act. In Quebec, as discussed in Section 3.4, the issue is more deeply rooted in a dispute over the pre-eminence of the Quebec Civil Code versus federal legislation. INAC staff, the Centre of Excellence for Matrimonial Real Property, and Quebec case study and key informant interviewees all confirm these issues are more pronounced in Quebec.

As such, provinces without designated judges present serious barriers to the enforcement of some of the provisions in the Act designed to enhance community safety. In many cases, there are also barriers to obtaining Exclusive Occupation Orders given the lack of awareness amongst court staff.

As key informants and research by the Conference Board of Canada have indicated, the federal provisional rules under the Act are meant to give community members rights and protection from family violence through access to Emergency Protection and Exclusive Occupation Orders.⁵⁰ Moreover, as discussed above, INAC and the Centre of Excellence for Matrimonial Real Property have provided information to community members about these options.

Recommendation 5: Consider adding the Department of Justice as a formal partner to the Matrimonial Real Property Advisory Committee and Implementation Support Team to foster awareness of roles and responsibilities as they relate to the Act and the administration of justice.

6.3 Access to Justice

Finding: The high costs and limited availability of legal experts familiar with the *Family Homes on Reserves and Matrimonial Interests or Rights Act* present a challenge for individuals who wish to pursue legal remedies under the Act.

Beyond the readiness of the courts to apply the Act, there is an additional question of whether community members have affordable access to lawyers, legal aid, and nearby court houses. Key informants and document review indicate that in many cases this is a challenge. As several key informants and case study interviewees noted, legal fees are often unaffordable for community members with low incomes. This can be compounded in remote areas, where the Conference Board of Canada estimates it takes an average of almost an hour and a half and over \$650 in travel costs to reach a court house.⁵¹

⁵⁰ Conference Board of Canada, *Assessment of Select Non-Legislative Policy Issues Associated with the Family Homes on Reserves and Matrimonial Interests or Rights Act*, 2006. Page 26.

⁵¹ Conference Board of Canada, pg. 30.

Moreover, if a community member decides to pursue legal action with respect to the Act, finding legal experts can be a difficult process regardless of the cost. Key informants indicated that legal experts who are familiar with the Act are relatively uncommon and on average reside close to larger city centres. The Centre of Excellence for Matrimonial Real Property commonly receives calls from lawyers asking how the Act should be interpreted, despite the fact that the Centre of Excellence for Matrimonial Real Property is not meant to be a legal advisory body. As key informants suggested, finding a lawyer informed on the Act is a challenge given that there are few economic incentives for lawyers to practice in this area. Simply put, there are often limited assets to divide between community members in the breakdown of a marriage and therefore little financial incentive for lawyers to take cases. Finding a culturally relevant, informed, and inexpensive source of legal aid close to an individual's home community presents a challenge likely to limit uptake of the Act.

In summary, community members face barriers to enforcement in the courts due to limited availability of legal supports, a lack of awareness among court staff and judges, and a lack of designated judges for hearing Emergency Protection Orders. As such the program's immediate outcome that "key officials are aware of and understand matrimonial real property law and social issues on-reserve" has not yet been achieved.

7. Conclusions and Recommendations

7.1 Conclusions

Findings from the evaluation indicate that there is a continued need to support the implementation and enforcement of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. INAC and the Centre of Excellence's outreach to community members has improved awareness of the Act since its implementation, however, further work is needed to ensure that all members are aware of their rights. The Centre of Excellence's toolkit and their workshops have assisted 11 communities with the successful implementation of a community-specific law, and provide lessons learned for future community law-making initiatives. However, the evaluation found that even with full awareness of the Act, many communities do not have the capacity to develop a community-specific law, or find it difficult to pass the voting threshold. These factors contribute to the majority of First Nations, which remain under the provisional federal rules. For these communities, many have researched alternative dispute resolution mechanisms in order to keep marital disputes, for privacy reasons, within the community. Further implementation efforts have been complicated by the frequent updates to matrimonial real property forms as well as the Act's definition of common-law couples misaligning with provincial definitions.

The evaluation also found that the RCMP and Public Safety have successfully launched their training components; however delays in the launch of Public Safety's training mean it is too early to properly assess the training's impacts. The RCMP, Public Safety, and INAC agree that ongoing training and awareness of the Act is necessary.

Finally, the evaluation found that members of the judicial system are still relatively unaware of the Act. The majority of provinces have not designated a judge to hear Emergency Protection Orders, which creates a barrier to enforcing this component of the Act. From the perspective of community members, accessing legal services is also a challenge given that few are aware of the Act and there is a high cost to access services for those in remote communities.

7.2 Recommendations

There is a need to continue the implementation and enforcement supports for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, with a focus towards the following:

1. Work with the Centre of Excellence for Matrimonial Real Property to explore methods of integrating Alternative Dispute Resolution mechanisms into First Nations community practices, particularly for those communities without provincially designated judges.
2. Consider renewing the mandate of the Centre of Excellence for Matrimonial Real Property in recognition of its central role in informing all stakeholders (i.e., Chief and Council, Band staff, and community members) of the Act.
3. Consider reviewing voter requirements of the Act including voting thresholds and alignment to First Nation ratification processes, as well as costs associated with the voting process.

4. Continue to assess the uptake of training offered by Public Safety and the RCMP in order to monitor and report on the number of officers on reserves who are aware of the Act.
5. Consider adding the Department of Justice as a formal partner to the Matrimonial Real Property Advisory Committee and Implementation Support Team to foster awareness of roles and responsibilities as they relate to the Act and the administration of justice.

Annex A – Program Objectives and Expected Outcomes

The logic model for the *Family Homes on Reserves and Matrimonial Interests or Rights Act* identifies three activity streams:

#1. Establishment and Operation of the Centre of Excellence for Matrimonial Real Property

- Created within the National Aboriginal Land Managers Association, an existing national Aboriginal organization, the Centre of Excellence for Matrimonial Real Property supports First Nations in the development of their own on-reserve matrimonial real property laws and in the application of the Act.

#2. Public Education and Awareness Campaign

- A public education and awareness campaign on the new Act was directed to stakeholders such as First Nation communities and individuals living on reserves so that they can better understand the rights and the protections available to them. This took place from 2013 to 2015.

These activities are expected to result in the following **immediate outcome**:

- First Nation communities and individuals are aware of their rights concerning law-making and protections under the Act

#3. Training and education to key officials (front-line police officers and legal experts)

- Police officers on reserves were trained to properly enforce the legislation and educational materials and programs were made available to legal experts to promote informed analysis and decision under the legislation.

This activity is expected to result in the following **immediate outcome**:

- Key officials are aware of and understand matrimonial real property law and social issues on reserves.

In addition to these outcomes, program staff are engaged in other work necessary to properly implement the Act. This includes providing input for policy development such as changes in land management and estates, managing funding agreements with the Centre of Excellence for Matrimonial Real Property and other stakeholders, working with the provinces and territories on their respective responsibilities for the Act and maintaining INAC's Matrimonial Real Property website. Staff in the regions are similarly engaged in ensuring land management and estates practices are consistent with the Act.

1.1.2 Sub-Program Result:

- Governance institutions, organizations and key officials have the capacity to support First Nations in making informed decision making on matrimonial real property on-reserve issues

Annex B – Evaluation Issues and Questions

Relevance

1. Is there a continued need for INAC, Public Safety Canada, and the RCMP to provide awareness raising, training, and capacity building activities to support the implementation and enforcement of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*?
 - a) What are the risks to communities of not continuing to provide awareness raising, training, and capacity building activities beyond fiscal year 2017-2018?
 - b) What are the risks to on-reserve communities if some deficiencies are found in general awareness of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*?
2. Do the awareness raising, training, and capacity building activities to support the implementation of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* align with the roles, responsibilities, priorities, and strategic outcomes of:
 - a) The Government of Canada
 - b) INAC
 - c) Public Safety Canada
 - d) RCMP
 - e) First Nations on-reserve communities

Performance

3. To what extent have awareness raising, training, and capacity building activities to support the implementation of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* met their intended outcomes as outlined in the 2014 Performance Measurement Strategy?
 - a) Immediate Outcome 1: First Nation communities and individuals are aware of their rights concerning law-making and protections under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
 - b) Immediate Outcome 2: Key officials are aware of and understand matrimonial real property law and social issues on-reserve
 - c) Intermediate Outcome: Governance institutions, organizations, and key officials have the capacity to support First Nations in making informed decision-making on matrimonial real property on-reserve issues
 - d) Ultimate Outcome: Transparent and accountable First Nation governments and institutions
4. Have there been any factors (external or internal) that have impacted on the achievement of expected outcomes (positively or negatively)?
5. To what extent have awareness raising, training, and capacity building activities to support the implementation of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* been conducted in an efficient and economical manner?
6. To what extent have the provinces/territories, through the administration of the courts, supported the implementation of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*?
 - a) Have personnel who routinely assist individuals to access the courts been provided with information on *Family Homes on Reserves and Matrimonial Interests or Rights Act*

- (i.e., courthouse staff, provincial legal aid bodies, courthouse duty counsel, and First Nations court workers)?
- b) Have Court Rules of Procedure been amended to accommodate *Family Homes on Reserves and Matrimonial Interests or Rights Act*?
 - c) Have court forms been amended to accommodate applications pursuant to *Family Homes on Reserves and Matrimonial Interests or Rights Act*?
7. What are the costs to on-reserve communities associated with developing and implementing their own community-specific matrimonial real property laws?
 8. What challenges have occurred and were there any lessons learned or best practices that could inform future legislative implementation initiatives and future support to Indigenous communities for code and policy development?

Annex C – Evaluation Issues and Related Report Sections

Evaluation Question	Evaluation Finding
<p>Question 1: Is there a continued need for INAC, Public Safety Canada, and the RCMP to provide awareness raising, training, and capacity building activities to support the implementation and enforcement of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>?</p> <p>Question 1 (a) What are the risks to communities of not continuing to provide awareness raising, training, and capacity building activities beyond fiscal year 2017-2018?</p>	<p>3.1: There has been some success in informing First Nations communities of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. However, challenges with awareness-raising and training remain.</p>
	<p>5.2.1 Public Safety experienced delays launching the funded training program due to challenges in finding a qualified recipient to develop the training. As such, it is too early in the process to assess the impacts of the training component funded by Public Safety.</p>
	<p>5.3. There is agreement among evaluation participants that there is an ongoing need to train and build awareness of the Act among enforcement officers in First Nations communities.</p>
<p>Question 1 (b) What are the risks to on-reserve communities if some deficiencies are found in general awareness of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>?</p>	<p>3.4 The Act's definition concerning common-law couples has created a general unease among First Nations members who were accustomed to provincial definitions of common-law relationships.</p>
	<p>6.2 Most provinces have not designated judges to apply section 16 of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. This is a barrier to the enforcement of the Emergency Protection Order component of the Act.</p>
<p>Question 2: Do the awareness raising, training, and capacity building activities to support the implementation of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> align with the roles, responsibilities, priorities, and strategic outcomes of:</p> <p>a) The Government of Canada</p> <p>b) INAC</p> <p>c) Public Safety Canada</p> <p>d) RCMP</p> <p>e) First Nations on-reserve communities</p>	<p>4.2.2 The Centre of Excellence is seen to be effective and efficient at providing outreach in the form of workshops. However, the Centre's ability to reach more communities is limited by capacity levels and the program's upcoming sunset date.</p>
	<p>5.1.1 The RCMP fulfilled its commitment to develop and deliver training to increase its Members' awareness of matrimonial real property law and social issues on-reserve, and RCMP data indicates that a number of Regular Members have accessed the online training.</p>
	<p>5.2.1 Public Safety experienced delays launching the funded training program due to challenges in finding a qualified recipient to develop the training. As such, it is too early in the process to assess the impacts of the training component funded by Public Safety.</p>

<p>Question 3: To what extent have awareness raising, training, and capacity building activities to support the implementation of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> met their intended outcomes as outlined in the 2014 Performance Measurement Strategy?</p> <p>Question 3 (a): Immediate Outcome 1: First Nation communities and individuals are aware of their rights concerning law-making and protections under the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i></p>	<p>3.1 There has been some success in informing First Nations communities of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. However, challenges with awareness-raising and training remain.</p>
<p>Question 3 (b): Immediate Outcome 2: Key officials are aware of and understand matrimonial real property law and social issues on-reserve</p>	<p>5.1.1 The RCMP fulfilled its commitment to develop and deliver training to increase its Members' awareness of matrimonial real property law and social issues on-reserve, and RCMP data indicates that a number of Regular Members have accessed the online training.</p> <p>5.2.1 Public Safety experienced delays launching the funded training program due to challenges in finding a qualified recipient to develop the training. As such, it is too early in the process to assess the impacts of the training component funded by Public Safety.</p> <p>5.3 There is agreement among evaluation participants that there is an ongoing need to train and build awareness of the Act among enforcement officers in First Nations communities.</p> <p>6.1 Key informants indicated that there is a general lack of awareness of the <i>Family Homes on Reserves and Matrimonial Interests or Right Act</i> in the judicial system, including among court staff, judges, and lawyers. This presents an added challenge to enforcement of the Act.</p>
<p>Question 3 (c): Intermediate Outcome: Governance institutions, organizations, and key officials have the capacity to support First Nations in making informed decision-making on matrimonial real property on-reserve issues</p>	<p>4.3.2 Many communities have not enacted a community-specific law because of the high cost and the commitment it demands from band administration staff.</p> <p>6.2 Most provinces have not designated judges to apply Section 16 of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. This is a barrier to the enforcement of the Emergency Protection Order component of the Act.</p>
<p>Question 3 (d): Ultimate Outcome: Transparent and accountable First Nation governments and institutions</p>	<p>3.5 Frequent updates to land registration forms related to matrimonial real property have created confusion and challenges for on-reserve land transactions.</p> <p>4.3.1 The Centre of Excellence's guide for law-making is a resource that can be applied to future community law-making initiatives unrelated to matrimonial real property rights.</p>
<p>Question 4: Have there been any factors (external or internal) that have impacted on the achievement of expected outcomes (positively or negatively)?</p>	<p>3.2 While the majority of communities are under the provisional federal rules, this is generally by default. There are several factors that inhibit a community from proceeding with the development of a community-specific law, including competing priorities and unique land administration practices.</p>

	<p>3.4 The Act's definition concerning common-law couples has created a general unease among First Nations members who were accustomed to provincial definitions of common-law relationships.</p>
	<p>3.5 Frequent updates to land registration forms related to matrimonial real property have created confusion and challenges for on-reserve land transactions.</p>
	<p>5.1.1 The RCMP fulfilled its commitment to develop and deliver training to increase its Members' awareness of matrimonial real property law and social issues on-reserve, and RCMP data indicates that a number of Regular Members have accessed the online training.</p>
	<p>6.2 Most provinces have not designated judges to apply Section 16 of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. This is a barrier to the enforcement of the Emergency Protection Order component of the Act.</p>
	<p>6.3 The high costs and limited availability of legal experts familiar with the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> present a challenge for individuals who wish to pursue legal remedies under the Act.</p>
<p>Question 5: To what extent have awareness raising, training, and capacity building activities to support the implementation of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> been conducted in an efficient and economical manner?</p>	<p>4.2.1 Users view the Centre of Excellence for Matrimonial Real Property's toolkit on how to create a law as a highly effective resource in support of the creation of a community-specific law.</p>
	<p>4.2.2 The Centre of Excellence is seen to be effective and efficient at providing outreach in the form of workshops. However, the Centre's ability to reach more communities is limited by capacity levels and the program's upcoming sunset date.</p>
	<p>5.2.1 Public Safety experienced delays launching the funded training program due to challenges in finding a qualified recipient to develop the training. As such, it is too early in the process to assess the impacts of the training component funded by Public Safety.</p>
<p>Question 6: To what extent have the provinces/territories, through the administration of the courts, supported the implementation of the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>?</p>	<p>6.1 Key informants indicated that there is a general lack of awareness of the <i>Family Homes on Reserves and Matrimonial Interests or Right Act</i> in the judicial system, including among court staff, judges, and lawyers. This presents an added challenge to enforcement of the Act.</p>
<p>Question 6 (a): Have personnel who routinely assist individuals to access the courts been provided with information on <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> (i.e., courthouse staff, provincial legal aid bodies, courthouse duty counsel, and First Nations court workers)?</p>	<p>6.1 Key informants indicated that there is a general lack of awareness of the <i>Family Homes on Reserves and Matrimonial Interests or Right Act</i> in the judicial system, including among court staff, judges, and lawyers. This presents an added challenge to enforcement of the Act.</p>
<p>Question 6 (b): Have Court Rules of Procedure been amended to accommodate <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>?</p>	<p>4.3.2 Many communities have not enacted a community-specific law because of the high cost and the commitment it demands from band administration staff.</p>

<p>Question 7: What are the costs to on-reserve communities associated with developing and implementing their own community-specific matrimonial real property laws?</p>	<p>3.3 Before appealing to the provincial court system, there is a preference to resolve disputes related to the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> either internally or through Alternative Dispute Resolution.</p>
<p>Question 8: What challenges have occurred and were there any lessons learned or best practices that could inform future legislative implementation initiatives and future support to Indigenous communities for code and policy development?</p>	<p>4.3.1 The Centre of Excellence's guide for law-making is a resource that can be applied to future community law-making initiatives unrelated to matrimonial real property rights.</p>
	<p>4.3.3 The current voting threshold for passing a community-specific matrimonial real property law has been described by some communities as a barrier to successfully passing the vote.</p>
	<p>4.1 The Act includes protection of the rights of men and women on reserves in the case of matrimonial real property interests. Community law-making has, however, allowed First Nations communities that have enacted their own laws to extend protection to include the rights of children in the community.</p>
<p>Question 9: To what extent does the program design reflect the needs of stakeholders, in particular women?</p>	<p>4.1 The Act includes protection of the rights of men and women on reserves in the case of matrimonial real property interests. Community law-making has, however, allowed First Nations communities that have enacted their own laws to extend protection to include the rights of children in the community.</p>

Annex D – Logic Model for the Implementation and Enforcement Supports for the Family Homes on Reserves and Matrimonial Interests or Rights Act

Note: Activities Stream #3 are activities shared by Indigenous and Northern Affairs Canada, the Royal Canadian Mounted Police and Public Safety and Emergency Preparedness Canada.

