



Matrimonial Real Property (MRP) Toolkit



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Aboriginal Affairs and
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Chapter 1 - MRP Toolkit

Matrimonial Real Property

A Welcome to the Users of this Toolkit



This toolkit on Matrimonial Real Property (MRP) was produced by the National Aboriginal Lands Managers Association (NALMA) and The Centre of Excellence for Matrimonial Real Property (COEMRP), for you, thanks to funding provided by Aboriginal Affairs and Northern Development Canada (AANDC) now known as Indigenous Affairs and Northern Development Canada (INAC). It was designed to be user-friendly. We hope you find the material easy to access, useful, and presented in an engaging fashion.

NALMA invites your suggestions for any improvements, corrections, and clarifications of the material presented herein. We hope you find this toolkit helpful and we wish you every success in your initiatives.

National Aboriginal Lands Managers Association
1024 Mississauga Street
Lake Ontario K0L 1R0
Tel: 1-705-657-7660

The Centre of Excellence for Matrimonial Real Property

Hosted by the National Aboriginal Land Managers Association, The Centre of Excellence for Matrimonial Real Property (COEMRP) is an arm's length First Nation organization that assists First Nation communities in developing their own matrimonial real property laws and provides research on alternative dispute resolution mechanisms.

The Centre focuses on disseminating knowledge to First Nation individuals, communities and organizations to assist them in understanding and implementing the *Act*. The Centre provides a wide range of informational documents and aids such as this Toolkit, as well as specific guidance and coaching through visits or conference calls.

The Centre does not provide legal advice or opinions.

Centre of Excellence for Matrimonial Real Property

1024 Mississauga Street
 Curve Lake ON K0L 1R0
 Phone (705) 657-9992
 Toll Free (855) 657-9992
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We invite you to visit the Centre's website at:

www.coemrp.ca



MRP Toolkit: A Practical Resource for First Nations

Why was this Toolkit developed?

On June 19, 2013, Bill S-2, the *Family Homes on Reserves and Matrimonial Interests or Right Act*, (the *Act*) received Royal Assent. The first part of the *Act* went into force December 16, 2013.

The remainder of the *Act*'s provisions came into effect a year later, December 16, 2014.

As announced on June 2013, the *Act* protects rights connected to family homes on reserves, including matrimonial interests or rights. These protections apply to individuals living on reserve during a relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner.

Effective Dec 16, 2014, judges are able to issue orders for exclusive occupation as well as orders for the division of value of matrimonial real property. Special designated judges may issue Emergency Protection Orders that can remove violent partners from the family home. Not all provinces have designated judges so it is important to determine if Emergency Protection Orders are available in your province.

The *Act* also allows courts to apply First Nations' own matrimonial real property laws that respect their culture and traditions once those laws are enacted.

To assist First Nation communities to understand this *Act*, and/or pass their own MRP law, a Centre of Excellence for Matrimonial Real Property (COEMRP) was put in place, hosted by the National Aboriginal Land Managers Association (NALMA).

This toolkit has been developed by NALMA/COEMRP as a practical aid for all First Nations' use.

What is this Toolkit?

It is an integrated set of printed materials, worksheets, flowcharts, checklists, and training modules designed for use by First Nations and their professional associates.

When should it be used?

2014 served as the transition period provided under the *Act*. However, many First Nations had not yet passed their own MRP law by December 16, 2014, in which case, the full force of the *Act* came into effect (with some exceptions).

The toolkit is expected to be useful for many years to come as all First Nations review their own MRP situations.

Who should use this Toolkit?

The toolkit has been written in a style so as to be helpful to both laypersons and those schooled in the law.

Given the significance of the subject, Chief and Council, band staff, and members should familiarize themselves with the toolkit.

A copy of the toolkit should be readily available at the band office.

Where can you get this Toolkit?

Copies of this Toolkit may be obtained from COEMRP. Call 1-705-657-9992.

Any suggestions for the improvement of this toolkit are most welcome and should be directed to COEMRP at 1-705-657-9992 or by email at info@coemrp.ca.

You are also invited to visit the INAC website for valuable information, at:

www.aandc-aadnc.gc.ca

What's included in this Toolkit?

Chapter 2 – A brief explanation on the need for an *MRP Act*

Chapter 3 – Summary of the *Act*, A Visual Guide

Chapters 4 to 6 – First Nations MRP Law-Making, MRP Law Ratification, Provisional Federal Rules

Chapter 7 to 9 – Family Law Basics, Administrative Considerations, Alternative Dispute Resolution

Chapter 10 – Some sample scenarios

Chapter 11 – Additional Resources

Practical Aids

In addition to the manual, the toolkit package provides a checklist, an MRP Journal, an official copy of the *Act*, a plain language version of the Act and model laws to assist First Nations with the development of their own community specific MRP Law.

Training Options

While this toolkit was designed for use by those First Nations' technicians charged with the responsibility of developing and/or administrating MRP law, NALMA also offers training and assistance through COEMRP. Specialized training can be arranged for groups or for individual First Nations.

This MRP Toolkit is the third in a series of such products produced by NALMA.

The first, the Additions To Reserves Toolkit, was printed in 2010. The ATR Toolkit has been very well received and many people have also attended the various NALMA ATR Training Courses held across the country.

The second toolkit, on DESIGNATIONS, was produced in 2013.

For further information on these and other NALMA products and services please call: 1-705-657-7660, or toll-Free 1-877-234-9813.

Best Practice: Use the Journal...

Included with this toolkit, you will find an aid called the MRP Journal. It has been provided so that you have a handy place to keep notes regarding the progress of your initiative. The journal includes the steps that are outlined in the Toolkit and which are documented in this manual. Keeping your notes and action reminders in one place may help you make better progress, and will be most useful if there is any staff turnover.

Toolkit Assumptions

First and foremost, this toolkit was produced to serve the needs of the First Nations. While it deals with legal matters and legislation, it is not assumed here that you are a lawyer or someone with extensive experience in legal matters.

Perhaps you have been tasked with informing your community on the potential impact of the *Act*. Or perhaps you are a member or the Council or an elder expected to advise your community.

You may be feeling rather anxious about these new responsibilities and somewhat perplexed about the legislation. That is perfectly understandable. Many experienced staff members on other reserves share many of your concerns!

In assembling this toolkit, many people experienced in MRP matters were consulted. This toolkit tries to present a

number of common principles and best practices.

NOTE:

This toolkit is intended to provide information relating to general practices only and should not form the basis for legal advice of any kind.

Ensure that your band lawyer is an integral part of your team.

It is critical that community leaders have a solid understanding of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* and the process of adopting their own MRP law if they so choose. The Chief and Council must provide leadership to the community in this important area.

Some Handy Acronyms

Anyone involved in the MRP process will certainly become exposed to the inevitable collection of “secret codes” or acronyms used. Here are a few to get you started! There is a longer list provided at the end of this document, following chapter 11.

BCR - Band Council Resolution

C&C - Chief and Council

COEMRP – Centre of Excellence for Matrimonial Real Property

DOJ - Department Of Justice

EPO – Emergency Protection Order

FAQ – Frequently Asked Questions

FN - First Nation

FNCR – First Nation Council Resolution

INAC – Indigenous and Northern Affairs Canada

MRP – Matrimonial Real Property

NALMA - National Aboriginal Lands Managers Association

PFR – Provisional Federal Rules

Note on Terminology

For purposes of simplicity, in this manual, where it refers to “spouse”, it normally includes “common-law partner” as well.

Hypothetical Situation #1

Life can certainly get complicated at times. Family breakdowns. Death. Domestic violence. When these things happen, emotions run high, lives are affected, and all communities need sensible ways to deal with such situations.

Here is an example of the sort of situation that occurs.

The Problem

A non-member father living on a reserve for 15 years is dealing with the death of his member wife and caring for their young children. In his time of grief, he is also looking for a new place to live because he has been told by the First Nation that he cannot stay in the family home since his late wife held the right of possession of the home.

Although he has care of the children who are members and have always lived on the reserve, this father is worried that he may have no choice but to leave the family home and probably live off the reserve.

Clearly, this is a stressful situation for both the family and friends and relatives in the community.

The Solution

For a First Nation where no MRP law has been enacted, all the provisions of the *Act* came into effect December 16, 2014; the father has a minimum of 180 days to stay in the home while he searches for a new home and develops a plan. He is also able to apply for exclusive occupation of the family home for a fixed period, which would allow him time to keep his children in their school and maintain a close connection to their community.



Chapter 2 – Need for *MRP Act*

A Note on the *Indian Act* and the Role of INAC

As specified in the *Indian Act*, a reserve is a “tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band”. The *Indian Act* gives the Minister of Indigenous and Northern Affairs Canada (INAC) the right to “determine whether any purpose for which lands in a reserve are used is for the use and benefit of the band”.

While the underlying title to these lands rests with the Crown, individual band members may gain possession and use of a portion of land

defined by the band Council and may be given a certificate of possession or certificate of occupation by the Minister. Transfers of possession can be to the band or to another member of the band only, again with permission from the Minister.

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* aims to ensure that families living on First Nations reserves have access to similar matrimonial rights as those living off reserves.



Indigenous and Northern Affairs Canada

www.aandc-aadnc.gc.ca

Historical Context

In collaboration with First Nation groups and communities, Indigenous Affairs and Northern Development Canada developed legislation to address a long-standing and unacceptable legislative gap regarding matrimonial real property on reserves.

Consultations took place, starting in 2006, prior to introducing this legislation. This process consisted of four phases: planning, national consultations, consensus building, and engagement on a draft legislative

proposal. Over \$8 million of funding was provided to hear from a number of national organizations and allow them to carry out their roles in this process.

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* received Royal Assent on June 19th 2013. The first part of the *Act* related to First Nation law-making, came into effect December 16, 2013. The remaining provisions of the *Act* came into force on December 16, 2014.

Before the Introduction of the *Act*

Each province and territory have established laws and courts to deal with family matters such as:

- The right to occupy the family home during a conjugal relationship.
- The right of a survivor to occupy the family home.
- The granting of Emergency Protection Orders.
- Exclusive occupation orders for the family home in the case of relationship breakdown.
- The formula for division of matrimonial property on relationship breakdown.
- The formula for division of property for survivors.



First Nation members living off reserve, on property that is not part of a reserve are governed by these laws and can seek the protection and rights that these laws provide.

Provincial or territorial family laws related to matrimonial personal property, such as money in bank accounts and cars, apply on reserves. However, in 1986 the Supreme Court of Canada ruled that courts cannot apply provincial or territorial family laws on reserves governed by the *Indian Act* if doing so would alter individual interests in matrimonial real property on reserves. These rulings (*Paul v Paul* and *Derrickson v Derrickson*) identified a legislative gap, which meant that on-reserve residents would continue to lack basic rights and protections in relation to matrimonial real property since the *Indian Act* was silent on the issue.

So prior to this *Act* coming into full force, courts could not make orders at all about the possession of a family home if it was located on a reserve, since this is governed exclusively by the *Indian Act* reserve lands provisions.

The term “matrimonial real property” refers to the house or land that a couple lives on or benefits from while they are married or in a common-law relationship. Provincial and

territorial laws on matrimonial property do not apply to reserve land.

As a result, many of the legal protections relating to matrimonial interests or rights that are applicable off reserves were not available to individuals on reserves prior to the coming into force of the *Act*.

This “legislative gap” left some families and communities in a difficult, and often unfair situation. If a couple did not agree on how to deal with their matrimonial real property, there was no law they could use to help them resolve this dispute. This lack of legal clarity and protection also meant that some spouses who were experiencing violence, or who became widowed, could lose their homes on the reserve. Family members who had to move away from the reserve often lost the support and help of their families, friends, and community. They also lost their access to many benefits and programs that were only available to people living on reserve. This was clearly an unacceptable situation.

With the *Family Homes on Reserves and Matrimonial Interest or Rights Act* now in force (in full as of Dec 16, 2014) many of the legal protections relating to matrimonial real property applicable off reserves are now available to individuals on reserves.

This *Act* ensures that individuals living on reserve have similar protections and rights as other Canadians. The Provisional Federal Rules are based on common elements of various provincial and territorial matrimonial real property

regimes. However, not all of these elements are appropriate for application on reserve, due to the inalienability of reserve lands and the uniquely collective nature of land and housing on reserves.

Scenario #2

An elderly woman, recently widowed, is being evicted from her home, after living in the community almost her entire life. She lived in the home on the reserve with her husband and they were foster parents to a number of children in their community. Her daughter believes that her mother should be able to stay in the family home, at least until she can figure out where to go, without fear of being forced to leave her home.



With the full provisions of the *Act* now in force, the provisional federal rules would allow the mother the right to remain in the family home for a minimum of 180 days. She could also apply to the courts for an Exclusive Occupation Order to remain in the family home for a further period of time. If, however, the First Nation has enacted its own MRP law, the matter would be decided in accordance with the provisions contained in the First Nation Law.

To assist First Nations communities, a Centre of Excellence for Matrimonial Real Property has been put in place. Hosted by the National Aboriginal Land Managers Association (NALMA), this resource centre assists First Nations with the understanding and application of the new federal *Act* and helps First Nations to continue their long-standing tradition of caring for families and each other.

It is the choice of each First Nation whether or not to develop and enact its own laws to address matrimonial real property interests or

rights on their reserve lands. Until a First Nation community develops and enacts its own matrimonial real property law under the *Act* the Provisional Federal Rules apply.

(Chapters 4 and 5 of the toolkit address the First Nation MRP law-making and ratification process.)

Under the *Act*, First Nation communities may establish laws that are specific to their culture and traditions. A First Nation law would have to be approved by a community ratification process to ensure that their law is in accordance with the community's interests. A community MRP law is not reviewed nor approved by the Minister of Aboriginal Affairs. Traditional practices and values vary among First Nations. For this reason, the Provisional Federal Rules in the legislation provide for First Nations to make representation to the court on the legal, cultural and social context that relate to any applications before the courts. This does not apply in the case of emergency protection and confidentiality orders.

As a First Nation develops its own laws, the rights of individuals on reserves are protected, as they are off reserve, by the *Canadian Charter of Rights and Freedoms* (Charter) and the *Canadian Human Rights Act*, to the extent that complaints fall within their scope. Both the *Charter* and the *Canadian Human Rights Act*, where applicable, will apply to First Nations laws. This approach makes First Nations governments accountable to First Nation members and will respect First Nations' ability to make laws to suit their community needs.

First Nations family laws have been recognized for some time under the *First Nations Land Management Act*, a federal law enacted in 1999 that provides signatory First Nations with legislative authority to address on-reserve matrimonial property issues or rights. *The First Nations Land Management Act*, as well as the implementation of legislation for individual self-government agreements that deal with land management, enable First Nations to address the legislative gap respecting on-reserve matrimonial real property. This underlines the importance of the *Act* in providing a mechanism for other First Nations to develop their own laws in this area and have them applied by the courts.

Neither the Minister nor the Department have power regarding the content of community MRP law. The development and enactment of First Nation laws are between community members and their First Nation government.

The *Act* will not erode the First Nation community's land base or cause them to lose control of reserve lands. The Provisional Federal Rules do not allow for non-Indians or non-members to acquire permanent interests in reserve lands.

A Balancing Act

Any MRP law, to be acceptable and successful, has to:

- **Provide basic protections for individual residents on reserves during and after the ending of a conjugal relationship, and;**
- **Balance individual rights with the collective rights of First Nation communities regarding their reserve lands.**

Why do we refer to “Provisional Federal Rules”?

The term “provisional” is used to indicate that the rules in effect under the *Act* are only in effect until such time as a First Nation adopts its own MRP law. If a First Nation does not adopt its own law, the “provisional rules” last indefinitely.

Provincial Courts and the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

Sections 7 to 11 of the *Act* provide a mechanism for First Nations to enact their own laws with regard to on-reserve matrimonial real property. This means First Nation communities can enact and apply their own matrimonial real property laws, that respect their culture and traditions.

Enforcement of Court Orders

The *Act* provides that a First Nation Council, on application by a non-member spouse or common-law partner, enforce a court order made under the *Act*. If the Council does not enforce the order within a reasonable period of time, a Court may require payment of the specified amount into the court directly.

The Government of Canada will continue to promote the *Act* by disseminating relevant communications products, ensuring police officers working on reserves are trained to enforce the law, and distributing education materials for legal experts and court judges to promote informed decisions under the legislation.

Other Notes

The *Act* is not retroactive. The legislation cannot affect situations in which the relationship breakdown or death occurred before the *Act* came into force.

Although non-Aboriginal individuals may be able to occupy an on-reserve home for a temporary period of time (which may extend to years) they will never gain permanent possession of that home. As a result of the *Indian Act*, land cannot be transferred to non-members and this does not change as a result of this legislation. The overall land-holding regime of the *Indian Act* regarding restrictions on transfers and the entitlement to hold land still apply.

Scenario #3

A woman lived in a common-law relationship in her First Nation community for 18 years and is now separating. She contributed to building the family home and made payments on the housing loan, but her name is not on the Certificate of Possession. Upon separation she was asked to leave the home she helped build for 18 years.

Under the provisional federal rules, she could be entitled to half of the value of the interest in the family home.

To Whom Does this *Act* Apply or Not Apply?

The *Act* will apply to married couples and common-law partners living on reserve, where at least one of them is a First Nation member or an Indian.

Effective December 16, 2014, the Provisional Federal Rules automatically apply to all First Nations with reserve land, with the following exceptions:

- First Nations that have enacted matrimonial real property laws under this *Act*;
- First Nations with a self-government agreement unless they have reserve land and opt into the Provisional Federal Rules;
- First Nations with land codes in place under the *First Nations Land Management Act (FNLMA)*;
- First Nations without land codes in place that are on the schedule to the *First Nations Land Management Act* will be exempted for a period of three years from the date of Royal Assent.

NOTE

FNLMA bands must enact their MRP law within one year of developing their land code.

Once First Nations enact their own MRP law under the *Act*, the Provisional Federal Rules will **no** longer apply to their community.

Benefits of an MRP Law

While the the task of developing an MRP law specific to an individual First Nation requires a considerable effort both in time and resources, there are many benefits that will accrue to the First Nation:

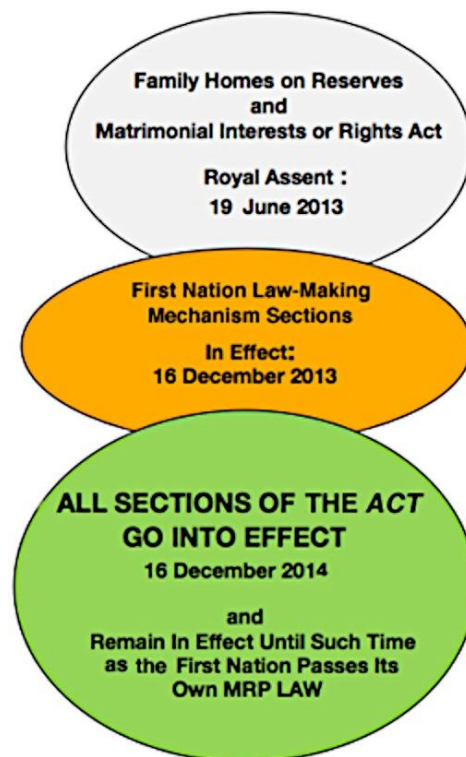
- Allows First Nations to exercise jurisdiction over land and family law matters;
- Protects/ensures the interests of children as a priority;
- Aids in resolving property disputes through community-based solutions (e.g., as a result of marital breakdown);
- Promotes fairness, rights and remedies, without discrimination on the basis of sex;
- Preserves and protects the well-being of all parties involved and helps to prevent further conflict from arising;
- Protects the human rights of members while balancing individual and collective rights;
- Complements the First Nation traditional laws, customs, practices, and policies;
- Complements dispute resolution mechanisms to assist couples in resolving disputes relating to family law matters;
- Clarifies the mechanism for the disposition of matrimonial real property on reserves following a marital breakdown;
- Addresses the safety of First Nation members and residents in situations of family violence.



Chapter 3 - A Visual Guide

Family Homes on Reserves and Matrimonial Interests or Rights Act

THE MRP LEGISLATIVE TIMETABLE



Note to Reader

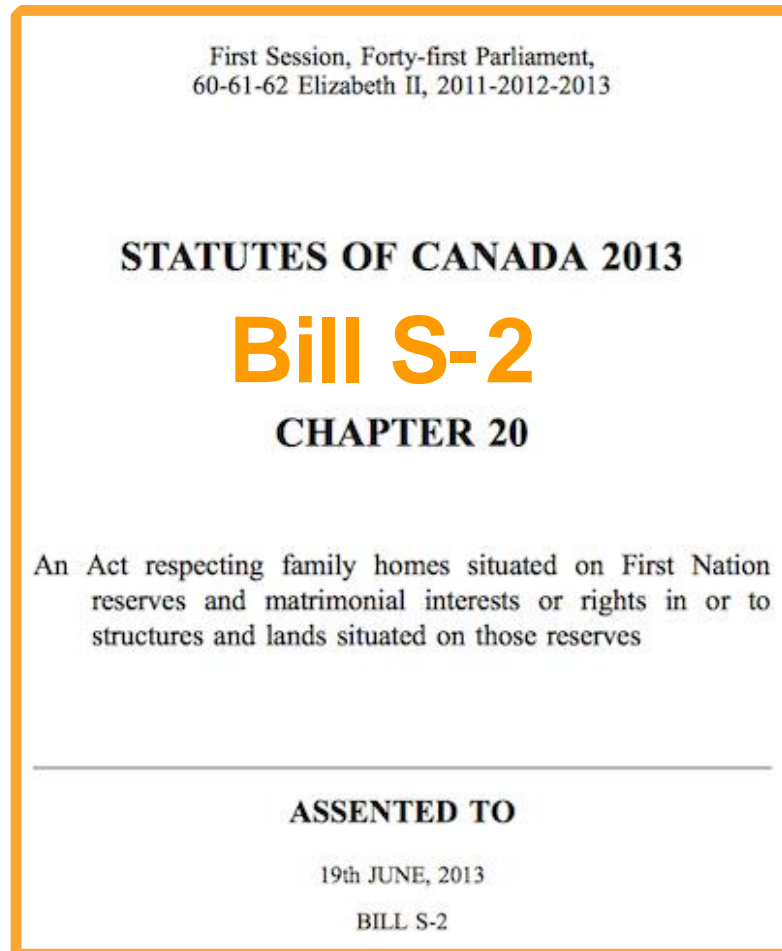
In the chapter pages that follow, we provide you with a visual guide to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. It is provided as a means to give an overview of the *Act* in a fairly expedient manner.

Of course, it is not a substitute for a careful reading of the *Act* itself (which is provided in an appendix of this toolkit).

Necessarily, certain details have been omitted or condensed in this overview. More important detailed information will be provided in subsequent chapters of the toolkit.

Family Homes on Reserves and Matrimonial Interests or Rights Act

MRP - A VISUAL GUIDE



In collaboration with First Nations, communities and groups, Aboriginal Affairs and Northern Development Canada (AANDC), now known as Indigenous and Northern Affairs Canada (INAC) developed legislation to address a long-standing and unacceptable legislative gap regarding matrimonial real property on reserves.

The first part of the Act, the First Nation law-making mechanism, came into force by Order in Council on December 16, 2013.

This visual guide is provided strictly for information, not legal, purposes. Refer to the Act itself in all legal matters.

Family Homes on Reserves and Matrimonial Interests or Rights Act: **A Visual Guide**



Statutes Of Canada 2013

Chapter 20

Assented To 19 June 2013

Bill S-2

MAIN PURPOSE (Sections 1-6 of the Act)

Provides spouses or common-law partners with rights and remedies during a conjugal relationship when that **relationship breaks down** or on the **death** of a spouse or common-law partner in respect of:

- 1) the use, occupation and possession of **family homes on reserves**, and,
- 2) the **division of the value** of any interests that they hold in structures and lands on those reserves.

FN Law-Making Mechanism

ENACTMENT OF FIRST NATIONS MRP LAW (Sections 7 to 11 of the Act)

Under sections 7-11 of the *Act*, First Nation communities may choose to enact their own matrimonial real property law. The law must include procedures for amending and repealing them. To enact this law:

- 1) The FN must submit the proposed law to the FN members for their approval.
- 2) Proper notice for a meeting to vote on the proposed law must be given.
- 3) At least 25 % of the eligible voters must participate in the vote.
- 4) The law is approved if a majority of those voting approved the law (majority).

The second part of the *Act* (Sections 12-52, 54 and 55) came into force Dec 16, 2014

These sections provide Provisional Federal Rules to fill the legislative gap in the absence of a FN's own laws or until such time as the FN passes its own law.

The *Act* addresses 2 major issues

**OCCUPATION OF
FAMILY HOME**

**DIVISION OF
VALUE**

*Family Homes on Reserves and Matrimonial Interests or Rights Act. **A Visual Guide***

Family Home



OCCUPATION – Section 13-15 of the Act

During Conjugal Relationship

Each spouse or common-law partner may occupy the family home during the conjugal relationship, [whether or not that person is a First Nation member or an Indian](#).

After Death

A survivor who does NOT hold an interest or right in the family home may occupy that home for 180 days.

Consent

One party [cannot dispose of or encumber](#) the family home without the free and informed consent in writing of the other party.

If a spouse does sell or encumber the property against the will of, or without knowledge of the other spouse, the court can set aside (nullify) the transaction and impose conditions and damages.

However, the disposition or encumbrance cannot be set aside if the other contracting party acquired it for value and acted in good faith.

A court may authorize a spouse to dispose of a party's interest in the family home without the other spouse's consent if the court is satisfied that the other spouse cannot be found, is not capable of consenting, or is unreasonably withholding consent.

BUT WHEN THE RELATIONSHIP BREAKS DOWN...??

Family Homes on Reserves and Matrimonial Interests or Rights Act: A Visual Guide

Emergency Protection Order

Sections 16 to 19 of the Act specify the rules and regulations regarding Emergency Protection Orders (EPO) issued to reduce the risk of family violence and/or property damage.

A designated judge of the province in which the family home is situated may make an Emergency Protection Order (EPO) for a period of up to 90 days that contains conditions **if the judge is satisfied that family violence or damage to the property is a real possibility.**

In making such an order the judge should consider:

- history and nature of family violence,
- the risk of immediate danger,
- the best interests of any children involved,
- the interests of any elderly or disabled persons who habitually reside in the family home,
- the rights of others who may have an interest in the home,
- the period of residence on the reserve,
- the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse.



Content of Order

- 1) A provision granting the applicant **EXCLUSIVE** occupation of the family home and reasonable access to that home.
- 2) A provision requiring the applicant's spouse and other specified occupants to vacate the family home immediately or within a specified time and prohibiting them from re-entering.
- 3) Instructions to a Peace Officer to remove a person and keep the person away from the family home.
- 4) Any other provision that the judge deems necessary for the immediate protection of a family at risk.

NOTE: Not all provinces have designated judges. As a result, Emergency Protection Orders under Section 16 are not available in all provinces. It is critical that you determine whether or not Emergency Protection Orders are available in **your** province

Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Emergency Protection Order Follow-on Matters

Section 17 of the Act deals with what happens after an EPO is issued.

The designated judge must forward a copy of the order and all supporting materials to the provincial court.

The court must review the order within **three working days**.

The court, on reviewing the order, must confirm the order if satisfied that there was sufficient evidence to make the order and give notice to the parties of any subsequent procedures.

If the court is not satisfied with the order, a re-hearing of the matter will be undertaken and notice given. On a rehearing, the court may confirm, vary or revoke the order.



Section 18 of the Act deals with an application to vary or revoke an order.

Any person specified in the order may apply to the provincial court to have the order varied or revoked

- 1) **within 21 days** or within any further time the court allows, or
- 2) at any time if there has been a material change in circumstances.

The court may confirm, vary or revoke the order and may extend the period of 90 days.

The court must consider the supporting materials, any evidence presented, including evidence on the collective interests of the First Nations' members, on whose reserve the home is situated.

Section 19 of the Act deals with issues of confidentiality.

The court will weigh the balance between making the information public and the need to protect affected parties, especially children.

Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Exclusive Occupation Order

Section 20 of the Act

A court may grant an applicant exclusive occupation of the family home and reasonable access to that home, subject to any conditions imposed by the court and for the period that the court specifies.

In making such an order, the court must consider:

- the best interests of any children involved,
- the terms of any agreement between the spouses,
- the collective interests of the First Nation,
- the financial situation and/or medical issues of the spouses,
- any existing orders made on the matter,
- history of any family violence or psychological abuse,
- interests of any elderly or disabled occupants,
- any exceptional circumstances.



Content of Order

The Order may contain provisions:

- for a spouse or partner to vacate the family home immediately or within a specified period of time and prohibiting them from re-entering the home,
- for preserving the condition of the home,
- for making payments to the other spouse toward the cost of other accommodation,
- for payment of all or part of the repair and maintenance of the home.

Application may be made to the court to have the order revoked or varied if there have been material changes in circumstances.
In that case, notice to the other party must be given.

Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Exclusive Occupation Order after Death

Section 21 of the Act

On application by a survivor, a court may order that the survivor be granted exclusive occupation of the family home along with reasonable access.

In making such an order, the court must consider:

- the best interests of any children involved,
- the terms of the will,
- the terms of any agreement between the spouses,
- the collective interests of the First Nation,
- the medical condition of the survivor,
- the period which the survivor has habitually lived on the reserve,
- the significant value of the home,
- the interests of any other person who holds rights in the home,
- any exceptional circumstances.

The order may contain certain provisions:

- **for preserving the condition of the home,**
- **to have someone vacate the home and not re-enter it,**
- **to have a peace officer deliver notice to certain persons.**
- **to have the executor of the will or the administrator of the estate pay for repairs and maintenance.**

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Other Occupation Provisions

Section 22 to 27 - Other Provisions Related to Occupation

Section 22 - A designated judge may find that family violence has occurred whether or not there are charges or convictions.

Section 23 - An order does NOT change who holds an interest or right in the family home or prevent an executor from transferring such an interest.

Sections 24 -26 - Provides extra details, such as enjoyment of use and fines.

Section - 27 - Specifies that, in the case of a first offence, a fine not to exceed \$2,000 and/or imprisonment for a term not exceeding three months may be levied. In the case of subsequent offence, the limits may be raised to \$5,000 and one year.



Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Division of Value Matrimonial Interests or Rights

Section 28 of the Act

When a conjugal relationship breaks down each spouse or common-law partner is entitled to an amount equal to one half of the value of the **family home**.

Section 28 outlines the details of how value of **other reserve-based structures and lands** in which a spouse may have an interest or right is to be determined and takes into consideration the appreciation in value that may have occurred during the time of the conjugal relationship, and the differences in payments that each spouse made to maintaining and/or improving the properties.

Determination of value is based on the amount that a buyer would reasonably be expected to pay for comparable interests and the amount of any debts or liabilities assumed. On agreement by the spouses, value may be determined on any other basis. An detailed example is provided in Chapter 10 – Example Situations.

The court may make changes:

A court may, by order, vary the amount if it is considered unconscionable (grossly unfair), given:

- 1) the needs of caring for children
- 2) the debts or liabilities of each spouse
- 3) a significant change in value of the interests
- 4) other pertinent factors

Application may be made to the court to have the order revoked or varied if there have been material changes in circumstances.

In that case, notice to the other party must be given.

Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Division of Value Other Provisions

Sections 30 to 33 - Other Provisions Related to Division of Value

Section 30 of the Act

On application by one of the spouses, made within three years after cohabitation ended, the court may determine the amount payable by one spouse to the other, and set the conditions for how the amount is to be settled. In certain circumstances, the three-year period may be extended.

Section 31 of the Act

On application by a spouse **who is a First Nation member**, the court may order that the interest or right to the family home and/or any structure or land specified in Section 28, be transferred to the applicant if the court is satisfied that:

- a) the spouses agree in writing, consent was informed, and agreement is not unconscionable,
- b) the applicant had previously held the interest before cessation of cohabitation,
- c) the transfer is appropriate in the circumstances because the spouses hold interest in more than one such land interest.

Section 32 of the Act

The court may make orders as it considers necessary to protect value of property.

Section 33 of the Act

The court may make orders to enforce the terms of the agreement, including payments.



Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Division of Value

Death of Spouse or Common-Law Partner

Section 34 of the Act

On the death of a spouse, the survivor is entitled to one half the value of the interest that was held by the deceased in the family home.

If the survivor is a First Nation member then he or she is also entitled to:

- 1) an amount equal to one-half of the value of interests in other structures and lands on the reserve held by the deceased spouse,
- 2) and the greater of: either one-half the appreciation in value that occurred during the conjugal relationship, or, the difference between the payments the survivor made towards improvements, and debts/liabilities.

Section 34(3) spells out the similar survivor rights for **non-members**, however only using the value of the structures on the land, not the value of the land itself.



Section 35 of the Act

A court may, by order, vary the amount owed to the survivor if it is considered unconscionable (grossly unfair)

- 1) given the needs of caring for children,
- 2) if the spouses had previously resolved the consequences of the breakdown by agreement or judicial decision.

Section 36 of the Act

On application by the survivor made within ten months after death of the spouse, a court may, by order, determine any matter in respect of the **survivor's entitlement**, including:

- 1) the amount payable to the survivor,
- 2) the method of payment (lump sum, installments),
- 3) if the survivor is a First Nation member, the transfer of any interests or rights in any structure or land situated on the reserve,
- 4) extension of the ten-month period due to special circumstances,
- 5) permitting the executor of a will to vary the terms under the will to allow for the amounts due to be paid to the survivor,
- 6) ensuring that proper notice is given.

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Distribution of Estate

Section 38 of the Act

The executor of a will or the administrator of an estate must NOT proceed with the distribution of an estate until one of the following occurs:

- 1) the survivor consents in writing to the proposed distribution,
- 2) the period of 10 months or any extended period granted has expired.

Reasonable advances to survivors or other dependents may be made for their support. If there are two survivors - a common-law partner, and a spouse with whom the deceased was no longer cohabiting - the estate must pay the common-law survivor before paying the survivor who was the spouse.



Section 39 of the Act

A court may make any order that it considers necessary to restrain the improvident depletion of the interest or right in the family home.

Section 40 of the Act

If an executor and a survivor enter into a written agreement that sets out the amount and terms of payment that is not unconscionable, the court may make orders to enforce that agreement.

Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Notice to Council and Views of Council

Section 41 of the Act

An applicant for an order under this *Act*, except for sections 16 and 19 (Emergency Protection) must, without delay, send a copy of the application to the Council of any First Nation on whose reserve the structures and lands in question are situated.

On the Council's request, the court must allow the Council to make representations with respect to the cultural, social and legal context that pertains to the application and present its views as to whether or not the order should be made.

Section 42 of the Act

Once the court makes an order under the *Act*, the person in whose favour the order is made must send a copy of the order to the Council.



Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

Jurisdiction of Courts

Sections 43-46 of the Act

These sections define which court has jurisdiction in various situations, such as divorce or breakdown of the relationship.

Generally, if no divorce proceeding is pending, the court that has jurisdiction to hear and determine an application by a spouse or common-law partner is **the court in the province in which the structures and lands in question are situated.**

These sections outline several exceptions and various rights of appeal.



Rules of Practice and Procedure

Sections 47 of the Act

“Competent authority,” in respect of a court in a province, is a court established under the laws of a province or an appellate court in a province, and means the body, person or group of persons ordinarily competent under the laws of that province to make rules regulating the practice and procedure in that court. Such an authority may make rules regulating the practice and procedure of its proceedings, the conduct and disposition of any proceedings under this *Act*, regulate the sittings of the court, fix and award costs, prescribe and regulate the duties of officers of the court, and any matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this *Act*.



Family Homes on Reserves and Matrimonial Interests or Rights Act. A Visual Guide

OTHER PROVISIONS

Sections 48 of the Act

A court may determine whether a spouse, a common-law partner, a survivor or the estate of a deceased spouse or partner holds an interest or right in or to a structure or land situated on a reserve.

Sections 49 of the Act

In the case where death occurs before an application is disposed of, the application may be continued by or against the executor of the will or administrator of the estate of the spouse who dies.

Sections 50 of the Act

When a court makes an order under this *Act*, except under Section 19 (confidentiality), the applicant must, without delay, send a copy of the order to the Minister, or to the Council of the First Nation if the order is in respect of any structure or land situated on the following reserves:

- a reserve of a First Nation that is subject to a land code as defined under the *First Nations Land Management Act*;
- a reserve of a First Nation that is on the list referred to in subsection 12(5);
- The Kanesatake Mohawk interim land base.

Sections 51 to 53 of the Act

Deal with the provincial laws of evidence, the enforcement of orders, and payments into courts. The Governor in Council may make regulations that it considers necessary for carrying out the purposes and provisions of this *Act*.

Sections 54 to 56 of the Act - Transitional Provisions

The period **December 16, 2013 to December 16, 2014** is considered a transitional period and these sections provide details regarding any proceedings that may be under way through this period.



Chapter 4 - MRP Law-Making

for First Nations

Law-Making Mechanism Now in Force

The first part of the *Act* – the First Nation law-making mechanism – came into force December 16, 2013. Under sections 7-11 of the *Act*, First Nation communities can choose to enact their own matrimonial real property law and take into account their own communities' traditions and customs.

The Provisional Federal Rules of the *Act*, which came into effect Dec 16, 2014, govern First Nations who have chosen not to enact their own MRP law. These rules apply (with some exceptions) until the First Nation passes its own MRP law.

Important To Note

The 12-month transition period was added to the *Act* to provide time for First Nations to enact their own MRP law before the Provisional Federal Rules took effect. However, First Nations were NOT limited to the 12-month transition period and may enact their community-specific laws at any time.

As soon as a First Nation enacts its matrimonial real property law, the Provisional Federal Rules in the *Act* NO LONGER apply to that community.

In the pages that follow, a suggested law-making approach is provided with a step-by-step guide. The full MRP Law-Making Process chart is included on the next page. In each section, a specific illustrated view is taken from the main chart.

The COEMRP provides expertise and support, such as best practices and templates, to assist First Nations in developing their own laws.

The COEMRP will NOT provide legal advice. First Nations should engage their own lawyers in such law-making matters.

Principles

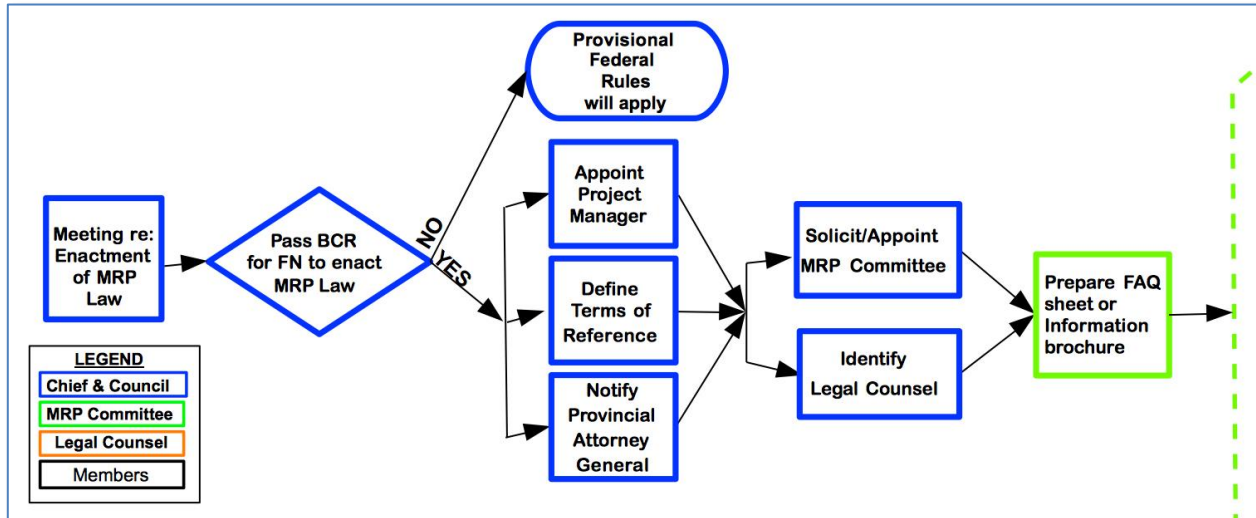
A First Nation has the right to establish and maintain its own processes to resolve matrimonial real property disputes. The purpose of any MRP law is to promote the best interests, protection, and well-being of all members and residents of the First Nation, regarding the use, division and distribution of matrimonial real property.

Since the law affects all reserve families and their matrimonial homes, it is of the utmost importance that the members be fully informed of the provisions of the new law being proposed so that they make an informed vote.

Some examples of governing principles that need to be taken into account when developing such a law may include:

- 1) That individuals are not the permanent owners of reserve lands but that the lands are held in trust for future generations and the collective.
- 2) That there are inherent responsibilities in relation to the lands and all living creatures on it.
- 3) When spouses separate or divorce, taking care of the best interests and welfare of children is most important.
- 4) Children of spouses who are ending their relationship should have the right to reside in the matrimonial home until the children reach the age of majority, or until other suitable arrangements have been made in the best interests of the children.
- 5) Spouses can make agreements to deal with their real property when they separate or divorce. Spouses have the right to determine their affairs by agreement, with the support of their families if necessary, as long as the agreement respects the laws of the First Nation.
- 6) Alternative dispute resolution processes shall be used as much as possible in cases where an agreement between the spouses cannot be reached. Whenever possible, disputes between spouses should be resolved amicably through mediation.
- 7) Spouses will have access to a court of Competent Jurisdiction to resolve their property rights, entitlements and obligations upon the breakdown of their marriage or common-law relationship, subject to the First Nation laws where their property rights include an interest in First Nation land.
- 8) Chief and Council may enforce any agreement reached between the spouses, or the decision of a court or a dispute resolution committee.

Decision to Draft MRP Law



If the Chief and Council of the First Nation decide to go ahead and draft their own MRP law to replace the Provisional Federal Rules, we suggest the process as described in the pages that follow in this chapter and in the next chapter on Ratification. It is not required that this model be used, but it is based on “tried-and-true” processes that have succeeded in other areas of First Nations undertakings.

Initiating BCR

A major commitment is required both in terms of time and finances to complete a project such as drafting a comprehensive law, in this case dealing with matrimonial real property on reserve. Therefore a BCR should be passed to formally begin the task.

The C&C should appoint a Project Manager, someone ideally with land management and matrimonial law knowledge, and who also is a good leader with a history of getting the job done. The C&C should also select representatives for an MRP Committee. Clear Terms of Reference must be defined for those drafting the MRP law, and for those on the MRP Committee.

It should be noted that the First Nation will have to cover the costs of developing their own MRP law and of conducting the ratification vote. However, in fiscal year 2016-2017, INAC provided funding for these costs through a MRP Special Pilot Project. For more information on funding availability, contact COEMRP.

Suggestion

It might be helpful to talk to the First Nations Market Housing Fund about the possibility of financial assistance with the costs associated with this project.

Their website is: www.flmpn.ca

Notification to Provincial Attorney General

Once the Chief and Council have made the decision to go ahead and develop an MRP law for their own First Nation, the C&C must send a notification to the Attorney General of any province in which the reserve is situated. Thus if the First Nation has reserves in more than one province, the notification must be sent to each applicable Attorney General. This advance notification will provide a “heads-up” to the courts for future reference where a judgement has to be rendered on First Nations matrimonial real property.

MRP Committee

Community input is essential in this endeavour because the end result will be a law that the community must abide by. The C&C should seek representation from the membership through the MRP Committee. Based on the Terms of Reference, applications for a position on the committee can be sought from the membership. Representation across the board might include members from various backgrounds, such as members of Council, elders, married members, members who have children, youth, possibly a non-member living on reserve, department heads from Social Services, from Lands, from Housing, from Policing.

The members of this Committee should have a strong interest in the development of this new law and should be prepared to attend all meetings.

Legal Counsel

Drafting of a law that is comprehensive, acceptable and fair, and mindful of the First Nation principles, is a complex task that requires specialized skills. The Committee should select legal counsel to work on this task. The ideal lawyer will have experience in First Nations affairs generally and family law in particular, and **ideally with experience in drafting laws**, as this is a specialized field. The Committee will be working closely with this lawyer over the months ahead.

Each First Nation undertaking to pass its own community-specific MRP law will be expected to engage their own lawyer, at their own expense, to draft the law that they will put to their community for a vote.

Legal Counsel needs to work closely with the MRP Committee, the Chief and Council, staff, community support organizations, elders and leaders to ensure the draft legislation truly meets the needs of the community and its residents.

Preliminary Information for Membership

The first task of the Committee will be to prepare information for the general membership; it must include some background information on the law, the current practices of the FN where it must deal with MRP, the Provisional Federal Rules defined by the *Act*, the importance and need for having a well-defined law, the basic principles on which the FN should base this law. With this information, the membership will be prepared to provide informed ideas on the principles that must be entrenched in the new MRP law.

Best Practice – Band Member Website

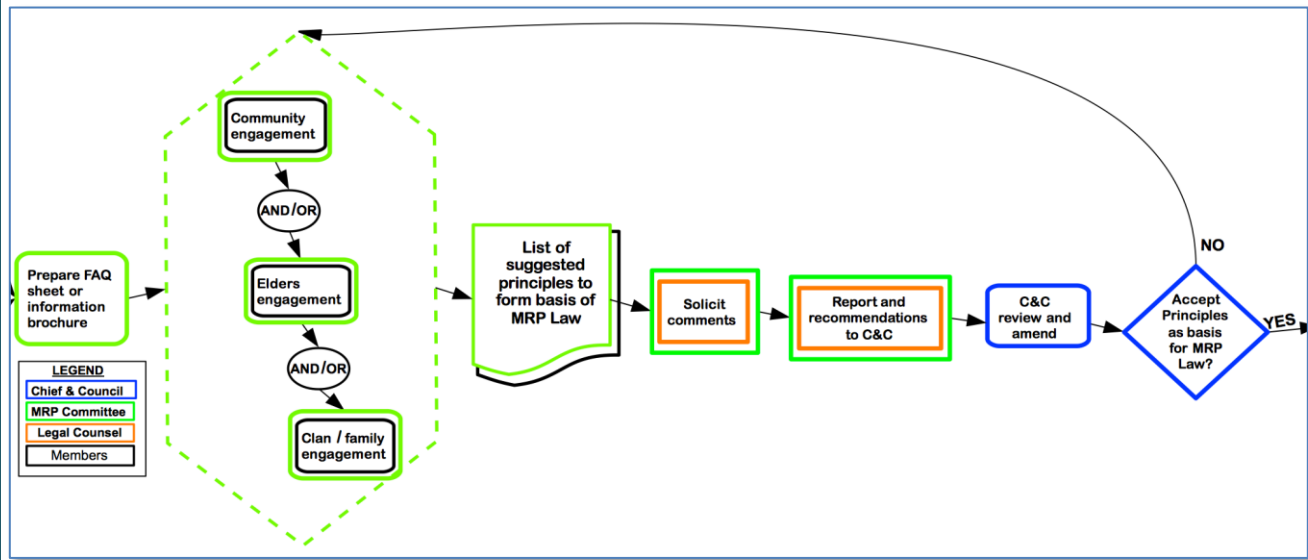
Set up a special website or a specific page in an existing website for this endeavour. In this latter case, provide ample information directing viewers to the correct page. Provide ongoing information to the members to keep them informed and to encourage them to participate in any information meetings.

Refresh the page frequently and post dates, time and place for information meetings scheduled.

Some Things to Think About...

Have the principles on which law will be based been drafted?
Have you developed a Terms of Reference for your lawyer?
Have you selected a lawyer with relevant experience?
Have you developed a Terms of Reference for the Committee?
Have you advertised for MRP Committee positions?
Have you notified the Provincial Attorney General that you will be drafting your own MRP law?
Have you planned ahead for a community meeting?
Have you thought of the questions that may be raised and prepared responses?
What steps will you take to notify members of the Community Meeting?

Engagement Process



Who Should Be Involved?

To gain support from the members of the First Nation, they must be part of the process and be involved from the beginning. Engaging the members in a variety of ways will not only encourage their support and acceptance, but may well be a source of solid suggestions.

The issue of on-reserve matrimonial real property interests or rights has often been cited as being a First Nation women's issue, given that woman head up over 70 per cent of the over 29,000 lone-parent families on reserves. Because women are more likely to be caregivers of dependent children and/or adults, men may be less likely to retain occupation of the family home on breakdown of a conjugal relationship.

However, there are implications for men, women, children and families, as the previous legislative gap in protections on reserves can affect all residents.

Therefore, all members of the FN, whether or not they are a resident on the reserve of the First Nation, should have the opportunity to provide their thoughts and ideas, and to be well informed of the drafting of the MRP law, from early discussions to final review of the proposed law.

Engaging the Membership

Engaging the members directly fosters a strong sense of ownership. If the members provide input, and they see that input reflected in the drafting of the law, they are more apt to encourage other members to take an active interest and to participate in the voting.

There are three good ways to engage the membership, at various levels. Before any of these meetings, prepare your ideas, and just as importantly, anticipate the objections and questions. Prepare in advance a reasonable response to foreseeable objections, and answers and explanations for any anticipated questions. If you cannot answer an unanticipated query, make note of it, and follow-up as soon as you can.

Certainly one important aspect is to meet with the elders who have a life's worth of knowledge and experience, and who have the respect of the community. Meeting with the elders at the outset to elicit their input is critical. Record their ideas, suggestions, and objections; they may shed light on historical approaches of the community in dealing with matrimonial issues.

Another valuable method to provide information and to gain support is through small meetings with individual clans or families. This approach, while time-consuming, often yields very good results. In the more relaxed surroundings, folks may feel more comfortable asking questions and providing their views. Again be prepared with answers for anticipated questions and objections.

The third approach, which should be used even if the first two are used, is the community meeting. The advantage of this type of meeting is that everyone hears about ideas and suggestions they might otherwise not hear about, and importantly, it provides transparency to the undertaking. No one feels left out and all will have an opportunity to voice their views.

While one of the goals of this meeting is to inform the membership, another equally important goal is to compile views and suggestions. With that second goal in mind, plan to have a recording secretary who will make note of ALL suggestions, views, and objections. This list will be reviewed and used to ensure that the most sensible and comprehensive MRP law is drafted.

The List of Principles

In the days that follow the Community Meeting, the MRP Committee will compile the list of principles including the basic ones put forward by the Committee as well as any further principles suggested by the engagement process just completed. The Committee will then post this list on their website and at appropriate locations where the membership can look it over, noting that any member who missed the Community meeting or anyone else with further suggestions can mail or email them in to the Committee.

The Committee will then prepare a report with recommendations for the Chief and Council. Note that the Committee, at its discretion and on the advice of legal counsel, may remove items deemed to be litigious or that might leave the First Nation open to litigation.

The Chief and Council will then review, and amend if necessary, the list of principles. If the C&C are not satisfied with the list and anticipate that any law drafted on the basis on the List of Principles will not be ratified when the members vote, the C&C may send the it back for further community input, either through individual discussions or through another Community Meeting.

Once satisfied with the List of Principles, the C&C will direct legal counsel to begin drafting the MRP law.

The section on the next page provides some useful suggestions for planning and running a Community Meeting.

Community Meeting

Who should attend the meeting?

Certainly the whole MRP Committee must attend all community meetings. As well, the Chief and Council must be there to show that they support this initiative and to underline its importance. The Membership Clerk should also be in attendance; this is a perfect opportunity to collect and update off-reserve member information. If necessary, an interpreter should be present to properly inform the electors where there may be language issues.

When to schedule the meeting?

- Avoid days or evenings when other activities will compete with your meeting, such as planned school activities, community events.
- Choose days when members tend to come to the community, such as treaty days.
- Try NOT to have the meeting in the six months preceding an election, in order to avoid campaigning.

Helpful hints to maximize participation:

- Advance promotion of these meetings in the form of notices, advertisements in local papers, and telephone calling.
- Have drivers available for elderly members or those who may not be able to get there easily.
- Encourage staff and C&C to talk to their friends and neighbours in advance of the meetings
- Set up a webcast of the meeting to reach those who cannot attend.

Running a successful meeting

The FN Project Manager often chairs the meeting and is the main presenter. Needless to say, the better prepared you are to host these meetings, the more successful they will be.

Best Practice:

The meeting Chairperson is key to its success. If it is anticipated that attendance will be high, that there will be many questions or controversy, it may a good idea to select an experienced person to chair the meeting, a person who can keep the agenda on track.

A proper presentation should be prepared, with a few key slides. There should be extra copies of the FAQ Sheet or Information Package previously provided. Communicating the fundamentals of the principles that will form the basis of the new MRP law and creating enthusiasm about it will go a long way to securing the support you need.

Informed leaders should be prepared to address concerns and questions. Provide a summary page for members to take home and review at their leisure. The Chief and Council should be present to show their support and to answer questions. The lawyer whom the MRP Committee has selected to draft the new law should attend the community meeting to help present the ideas and to answer any questions.

Meeting Specifics

- Plan on a 2-hour meeting maximum.
- Begin the meeting with an elder prayer.
- Have an agenda and stick to it as much as possible; **do not let other issues not related to the MRP Law-Making to distract from the discussions.** Inevitably some will come up, however they should not be addressed now, rather refer the inquirer to a relevant contact who can answer the question at a later time.
- Plan time for an open Q&A session at the end. The Chairperson will direct the questions to the appropriate person to answer.
- A podium at the front with members facing you can appear confrontational. If the group is not too large, set up the meeting in a “sharing circle” format, or the tables in a “U” shape.
- If controversy is expected, use a “talking stick or stone” to make sure only one person has the floor at any time.
- Take comprehensive minute/notes.

Scheduling Community Meetings:

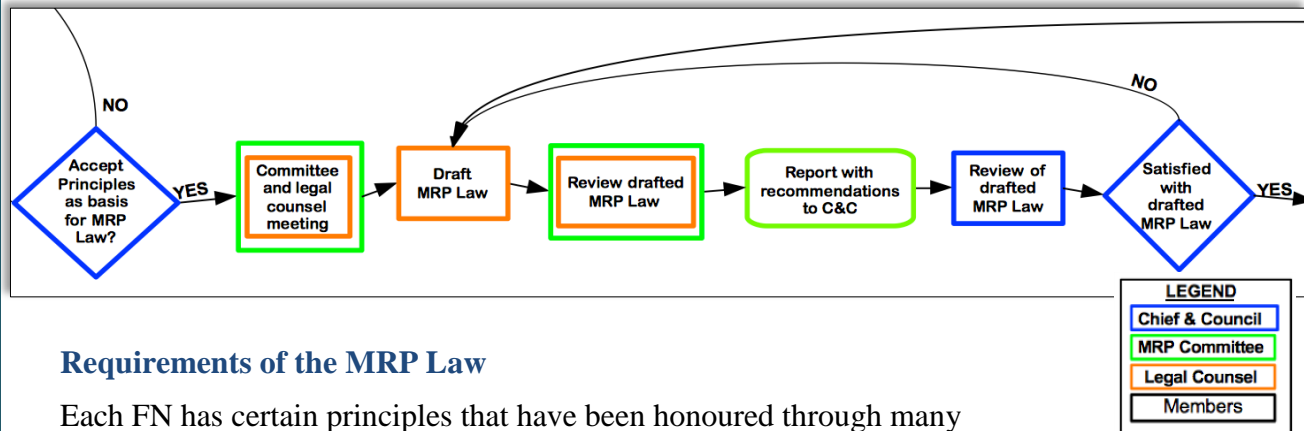
Over the course of developing the draft MRP law, it will be necessary to hold several meetings:

- to gain additional information and to provide updates on an ongoing basis;
- where the FN members are dispersed in a way that makes it practical to hold several meetings to ensure that all members have an opportunity to be briefed on the drafting of the MRP law;
- where significant issues or concerns were raised or become apparent at the first meeting.

Some Things to Think About...

Does the date of the meeting conflict with any other activities involving the electors?
Have you scheduled legal counsel to attend the meeting?
Have you made arrangements to assist members needing help in attending the meeting?
What process have you established for off-reserve members to ensure that they are well informed?
Have you set an agenda for the meeting and arranged for the appropriate speakers?
Have you thought of the questions that may be raised and prepared responses?
Have you addressed the concerns of those who may be opposed to the proposed law?
What steps will you take to notify members of the Community Meeting?
Will you provide any incentives to encourage attendance at the meeting?
Have minutes of the meeting been taken?

Drafting the Law



Requirements of the MRP Law

Each FN has certain principles that have been honoured through many generations. With this fact in mind, a detailed effort must be made to ensure that the List of Principles gathered will meet the needs of the MRP law to be drafted. Any MRP law must achieve the following goals:

- Strike a balance between individual and collective rights.
- Respect the inalienability of reserve lands.
- Take into account the best interests of children.
- Protect people from family violence and abuse.
- Result in greater certainty for spouses and common-law partners on reserves concerning the family home and other matrimonial rights or interests.
- Be enforceable.

First Meeting of Committee and Lawyer

This first meeting is a two-way information session. Matrimonial Real Property laws may vary from one community to another, however there are basic areas that it should cover. The lawyer will explain the general scope of the MRP law and what it can and cannot cover.

On the other hand, the First Nation Committee, with input from the membership, has prepared a list of goals and principles that frame the basic values of the First Nation community, as well as what it hopes and expects from the law. In addition the Committee will inform the lawyer about the specifics of the laws that currently govern real property possession in the community. Combining these two aspects, goals and current situation, the Committee must provide some guidance to the lawyer to ensure that the drafted law meets the needs and requirements of the community.

If the First Nation has a sample MRP law, or is aware of such laws in other communities that might serve the needs of its community, it should share this information with the lawyer.

A handy resource is the First Nations Matrimonial Property Handbook published by the Assembly of First Nations; it includes a sample law. The web address is:

<http://www.afn.ca/index.php/en/policy-areas/matrimonial-real-property>

The enactment of laws within a community requires a well-defined process. At this meeting, the Committee and the lawyer will review the process to ensure that they both understand the process and are amenable to it.

The Draft Law

Using the List of Principles, the legal counsel must now set about the task of preparing the first draft of a comprehensive MRP law that suits this particular First Nation. It should address all the facets that deal with matrimonial real property on reserve lands including situations that involve:

- Effects of death of a spouse for either a surviving FN member or non-member.
- Effects of separation where one or both spouses are FN members.
- Emergency protections orders requested by either spouse, whether an FN member or not.
- An exclusive occupation order.

Important Note

All legislation in Canada, whether federal, provincial or local, and whether statute, regulation or by-law, must conform to the Canadian Charter of Rights and Freedoms (the Charter). The Charter limits the authority of all legislatures, including First Nation Councils. Respect for principles outlined in the Charter becomes particularly important if a law is challenged in court. A law that does not conform to these rules may be vulnerable to such a challenge and may be struck down. It is therefore important for First Nations to ask about these principles when drafting an MRP law, and it is something that a legal advisor will be aware of.

Principles of Legislative Drafting

What is Legislative Drafting?

The writing of documents for a legislative body to enact as law.

Criteria for Good Legislative Drafting

- The law must properly address the real problem or issue. This means the drafter must truly understand what the purpose of the law is and what problem or issue is to be solved (the "policy") and must actually do his or her best to implement it with legislative words.
- The law must be capable of being easily understood by the intended reader. This means the drafter must use language understood by the reader and expressed in a simple and clear way.

The Legislative Drafting Process

- Preparing an outline
- Writing and organizing the provisions properly
- Getting information from the "policy person" on issues as they arise
- Sending successive drafts to the policy person for comments.

Final Review:

- Review the final draft carefully and critically.
- Get others to read it and comment.
- Check whether you used each defined term consistently.
- Double check all cross-references.

Organizing the Law

Normal outline for a complete law:

- Title: Short and Descriptive
- Definitions
- Main Provisions
- Administrative / Procedural Provisions
- Sanctions
- Transitional
- Coming into force date

Basic Principles:

- "Respect your First Nation and your Members". Be careful and thorough.
- Be Accurate: the provision should be written to achieve its purpose exactly.
- Be Clear: the provision should be easy to understand.
- Be Precise: The provisions should not be ambiguous, vague or easily misunderstood.
- Be Concise: Use short, direct and simple sentences. Subject - verb - object. Leave out unnecessary words.

Review and Further Draft Versions of the Law

The drafted law will then be reviewed by the MRP Committee with the lawyer who must ensure that the contents of the drafted law are understood. Consistency is important and a critical review is essential. The Committee members may request clarifications or changes.

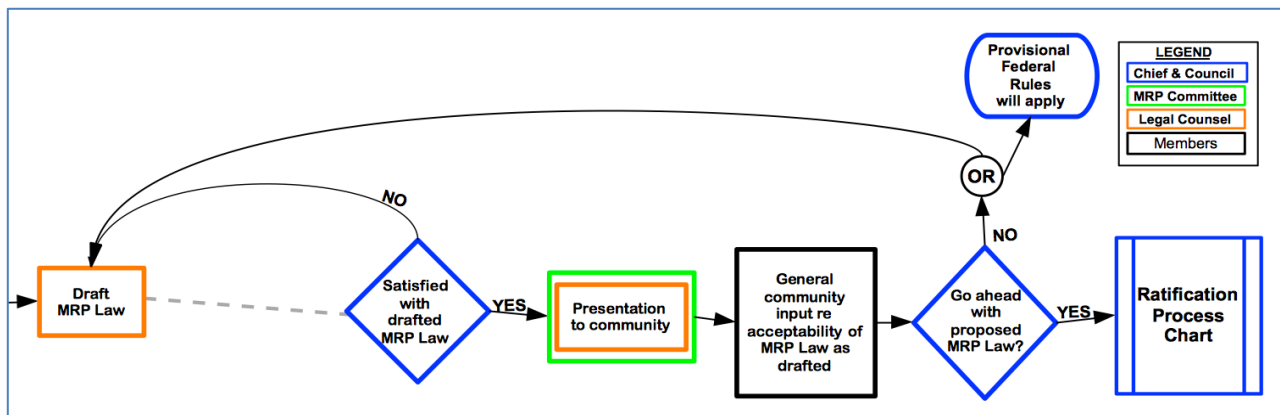
The lawyer will then prepare an updated version of the draft to satisfy the concerns of the Committee and to implement changes agreed upon. The review drafting cycle may be repeated again until everyone is satisfied that the drafted law does indeed meet the FN needs.

Once the draft is finalized to the satisfaction of legal counsel and the MRP Committee, they will prepare a report with recommendations for the Chief and Council.

Some Things to Think About...

Is your lawyer familiar with your FN set of values and principles?
Is the lawyer clear on your Terms of Reference?
Do you have an agenda for the meetings with your lawyer?
Have minutes of the meeting been taken?

Chief and Council Review of the Draft



The C&C now have the opportunity to review the drafted law. They may make suggestions or request changes. The draft then is sent back to legal counsel for updating or clarification. This process repeats until C&C are satisfied that the drafted MRP law meets the needs of their FN community and respects the principles that were earlier agreed upon.

Upon agreement by the Chief and Council that the proposed MRP law meets their requirements, then it is approved by the C&C, and is presented to the FN community at large, through email, website publication, or posted in public locations on reserve. The

members will have a last chance to make their views known.

At this point the C&C must make a call as to whether or not the proposed MRP law is acceptable, and if so, the process moves to the Ratification Process, which is described in the next chapter.

If there is strong objection to the proposed MRP law as drafted, the C&C have the option of sending it back to the draft stage with recommendations, or deciding to not have their own MRP law but rather continue to make use of the Provisional Federal Rules as described in the *Family Homes on Reserves and Matrimonial Interests or Right Act*.

Some Things to Think About...

Have you provided the C&C with an advance copy of the draft MRP law?

Have you scheduled a meeting for this review?

Will your lawyer be available to offer explanations?

Have minutes of the meeting been taken?

Scenario #5

After five years of marriage, a couple began experiencing problems and has decided to separate. Both of them want to stay in the family home they built together in the community. The wife feels she is more entitled to remain in the home as she has lived in the community all her life while the husband only returned to the community when they married.

Two years into their marriage, the husband's grandmother and his niece, whom the grandmother was raising in the community, came to live with the couple as the grandmother was finding it difficult to manage on her own. The husband is the primary caregiver, as the wife's job involves frequent travel.

Should the couple not be able to resolve the issue on their own, the Provisional Federal Rules in the legislation allows each of them to apply for exclusive occupation of the family home. When deciding on the order, the judge will consider, among other factors, the period of time each individual has lived on the reserve, the best interest of any child, and the interests of any elderly person who habitually resides in the family home.

Chapter 5 – Ratify MRP Law

Ratification Metrics

If a First Nation intends to enact its own matrimonial real property law under section 7 of the *Act*, **the Council of the First Nation must submit the proposed MRP law to its members for their approval.**

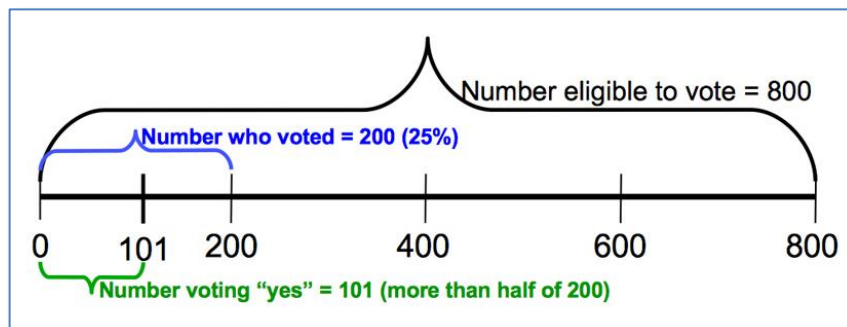
In response to First Nations organizations' and stakeholders' concerns, the ratification threshold for the adoption of a First Nation MRP law was lowered to a majority approval of those voting, and set participation in the vote to at least 25 per cent of the eligible voters. This requires that at least 25 percent of the eligible voters participate in the vote and a majority of those voting must vote in favour. There is a positive impact for this lower voting threshold in that more First Nations will be able to ratify their community-specific laws. However, a First Nation may, by resolution, raise the participation threshold to a higher percentage than the minimum of 25%.

Every person who is 18 years of age or over and a member of the First Nation, whether or not they are a resident on a reserve of the First Nation, will be eligible to vote in the **community approval process.**

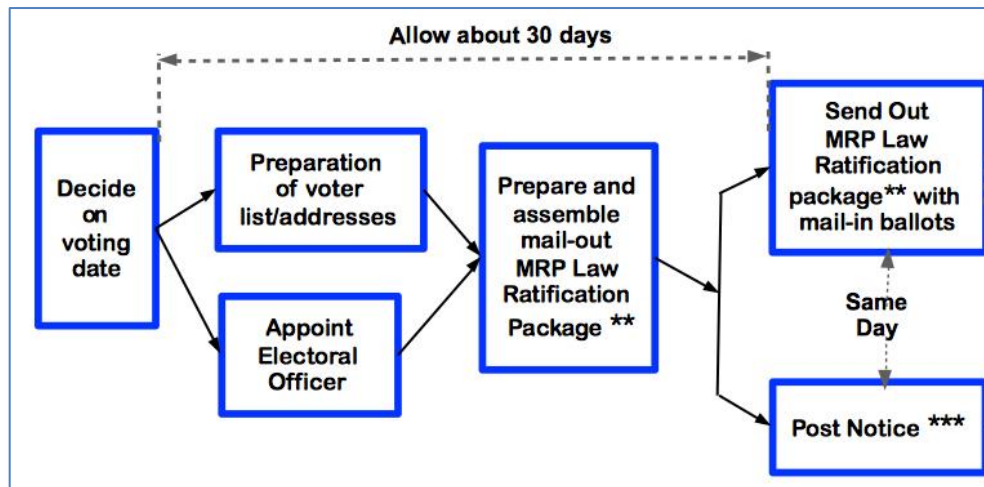
Note:

FNLMA bands follow the ratification process as described in their land code.

A **majority** occurs when no matter how many electors are eligible to vote, a majority of those who actually cast a ballot have voted in favour of the proposal. For example looking at the graphic below, assume that there are 800 electors, some of which live off reserve. Only 200 of the 800 cast a vote, thus the 25% threshold is met. Of the 200 voting, at least 101 vote in favour of the question resulting in a majority. The vote for the acceptance of the proposed MRP law passes!



Ratification Vote Preparation



Although regulations for the ratification vote are not specifically laid out in the legislation, we are suggesting here a Best Practice method of carrying out this ratification vote. However, many First Nations may have their own process for this task, including administrative tasks such as voter lists, documents to prepare, and meetings to organize.

There are many time-consuming tasks to complete before the voting date; the Chief and Council, in selecting this date, should allow ten to twelve weeks of time at a minimum.

The second important task at this point is to select an Electoral Officer (EO). Because the running of a vote or ratification is a complex process, they should appoint an EO who has experience and references.

The first duty of the EO is to appoint a Deputy Electoral Officer (DEO) (at least one and possibly more depending on the size of the reserve). The other responsibilities of the EO include the following:

- Preparing the Voter Lists.
- Assembling the Ratification package.
- Posting the Notice of Ratification.
- Mailing out of the Ratification package.
- Attending Information Meeting(s).
- Arranging the poll logistics.
- Managing the running of the polling stations.
- Counting and certifying the ballots.
- Reporting results after the vote.
- Posting the voting results for membership viewing.

Voters List Completed

Work on the preparation of the Voter List should get under way as soon as the First Nation decides that it will introduce its own MRP law.

To ensure that all eligible voters are on the list, it is important to start with an up-to-date membership list.

Note that: Section 10 Bands have control of their own membership list; and from this membership list, the voters list is derived. Since Section 11 Bands' membership lists are maintained by INAC, those bands will have to request the latest version of the list from INAC.

The Master Voters List should include the following information for all eligible voters 18

years or older, whether or not they live on reserve:

- 1) Registration number,
- 2) Date of birth,
- 3) Band Member first and last name,
- 4) Address (P.O. Box is acceptable).

Other information that is useful on the day of voting includes whether or not the member is an on- or off-reserve member, and whether or not a Ratification package was mailed to that member with the date, the expected ballot type (e.g., mail-in or in person voting), and a column for notes.

Some First Nations require that Voter Lists be certified by the Chief, or a Councillor, or an appointee of the C&C. If it is not a requirement, it is a best practice.

Best Practice – Band Member Website

- Refresh the website page to solicit updated mailing information.
- Include a highlighted block requesting updated addresses.
- Provide an email address to which the information can be sent.
- Keep announcements about information meetings current.
- Post specific information for voting: the date, time, and location.

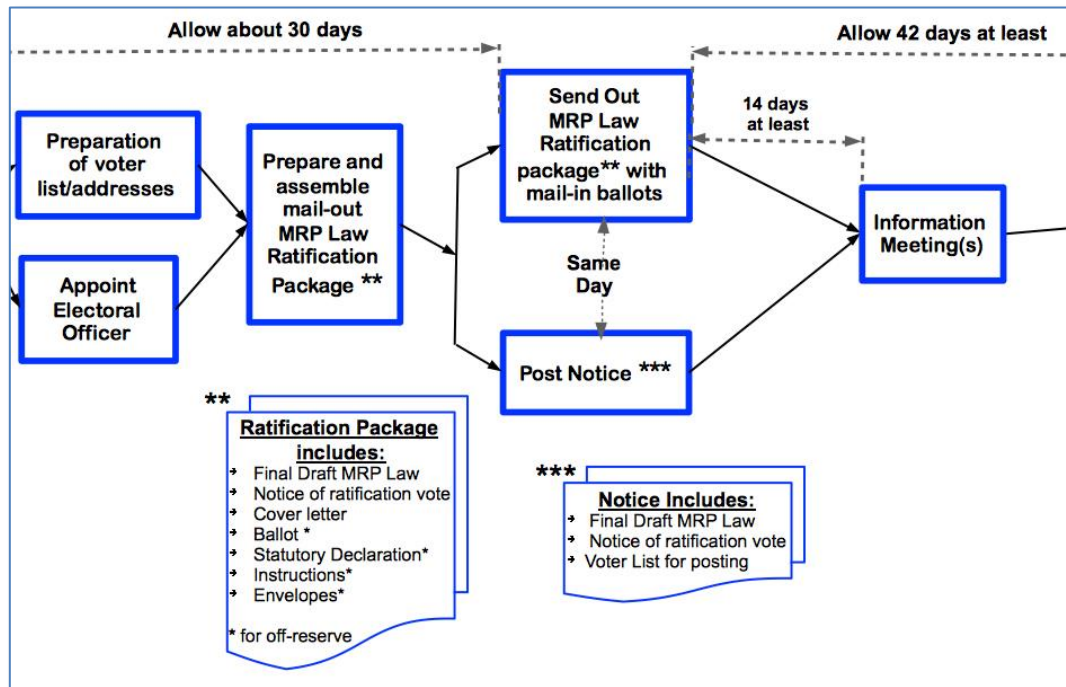
Some Things to Think About...

Have you determined how many electors there are, both off and on reserve?

Have you discussed the MRP project with the Membership Clerk?

Have you an up-to-date address for all members?

Informing Members



The Council, before proceeding to obtain community approval, will have to take reasonable measures in accordance with the First Nation’s practices to locate voters and inform them of their right to vote, the means of exercising that right, and the content of the proposed laws. The EO, on the direction of the Council must publish a notice of the date, time, place, and counting of the vote.

The Chief and Council have an obligation to ensure that the voters have the opportunity to be fully informed about the content of the MRP law before the ratification vote is held.

Best Practice – Advance Notice

Prior to mailing out the package, it is a good idea for the MRP Committee to send an executive summary explaining the need and importance of having an MRP law in place to all voting members (both on-reserve and off-reserve members.)

Experience has shown that if the members are advised that a package will be sent shortly, the Band Member is more apt to read the document.

An information package should be prepared and mailed out to all members to ensure that they have all the information required to make an informed decision. In the one-page cover letter, usually signed by the Chief, it would be a good idea to include a notice as to when and where the voting results will be either available or posted.

The list of documents is listed on the next page, noting who is responsible for each one. The timing for the mail-out should be at least six weeks before the Vote Date to allow time for the package to arrive, for the member to review it, and for the mail-in ballot to be sent back.

Package Documents	Responsibility
Final draft of proposed MRP Law	Legal Counsel
Notice of Ratification Vote	EO
Cover letter – one page	C&C
Voting instructions	EO
Official Ballot (for off-reserve members)	EO
Statutory Declaration (for off-reserve members)	EO
Ballot envelope (for off-reserve members)	EO
Return mail-in envelope (for off-reserve members) (pre-addressed, post paid)	EO

Off-reserve members receive the full information package including the mail-in ballot. The on-reserve members receive the information package with NO mail-in ballot; however they can request a ballot if they expect to be absent on voting day.

From the compiled Voters List, a subset list containing only the names of eligible voters

should be prepared for posting. This Posted Voters List should be posted in a location where members can check it out to ensure that their name is on it, such as the Band Office. As well, the final draft of the proposed MRP Law and the Notice of Ratification Vote should be posted.

Some Things to Think About...

Have you identified who will write the required documents?
Have you identified another person to edit it?
Have you solicited input from the C & C?
Have you reviewed and completed all the required components of the mail-out?
<ul style="list-style-type: none"> •The final draft of the proposed MRP law • Executive Summary on importance of MRP law or cover letter from C&C
Has the MRP Document been finalized and reviewed?
Have you posted the Voters list, the draft MRP law, and the Notice of Vote?

A sample Declaration of Elector’s Vote, such as the one shown on the next page, must be included in the package for off-reserve members, or it can be printed on the back of the ballot envelope.

Ratification Information Meeting

Prior to voting day, First Nations should host a public information meeting to explain the purpose and features of their proposed MRP law to their community members. Although several meetings may have been held during the drafting of the laws, this Ratification Information Meeting can serve to inform on the following:

- the principles on which the MRP law is based,
- the proposed MRP law,
- the importance and need for such a law,
- aspects information on the voting process, such as eligibility, required threshold, date, time and location.



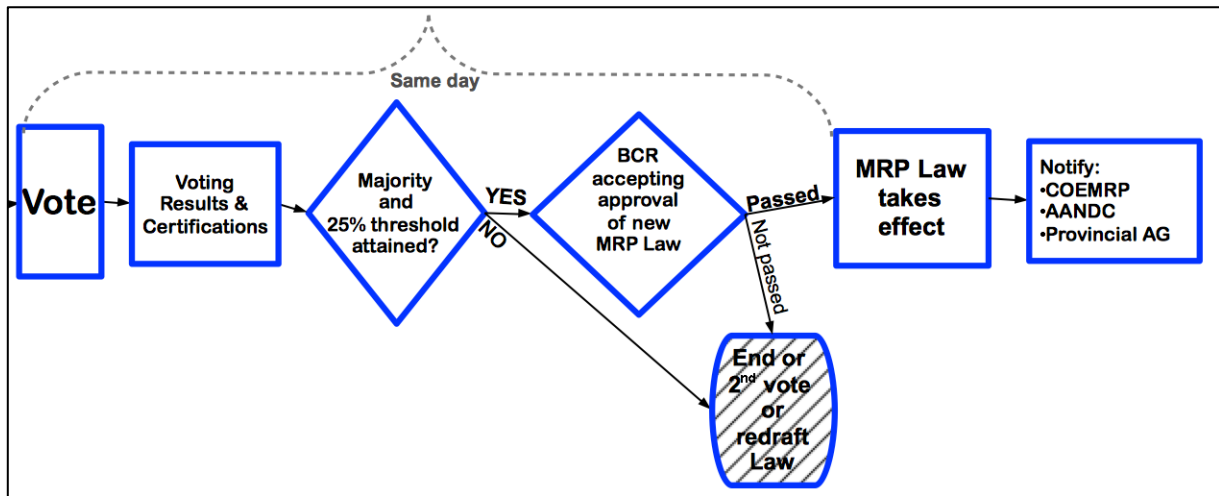
The planning, management and running of this meeting is similar to that described in the Engagement Process, section on Community Meeting, in Chapter 4. Again it must be emphasized that **all** MRP Committee members, the Chief and **all** Councillors, the legal counsel, and the Electoral Officer **must** attend this meeting.

Planning for more than one meeting is always a good idea. It will provide a better opportunity for everyone to attend, as well as an opportunity for those who want to follow up or who require more information, to gain that knowledge

Some Things to Think About...

Does the date of the meeting conflict with any other activities involving the electors?
Have you identified or anticipated issues or objections from community members?
Have you confirmed legal counsel attendance at the meeting?
Have you made arrangements to assist any electors who may need help in attending the meeting?
Will you be holding another meeting off the reserve?
Have you set an agenda for the meeting and arranged for the appropriate speakers?
Have you thought of the questions that may be raised and prepared responses?
Have you an idea of who may be opposed to the proposed MRP law and addressed their concerns?
What steps will you take to notify electors of the Information Meeting?
Will you provide any incentives to encourage attendance at the meeting?
Have minutes of the meeting been taken?

Process - Vote



At last, it is the day for the Vote! Time should be allowed for all the off-reserve members to have received their information package and voting materials, and time for their votes to be mailed out and received at the FN reserve.

A vote must be held by secret ballot. Failure to follow proper procedures could result in a contested and failed vote.

Best Practice

A good rule of thumb is a **six-week elapse** between mailing out the package and the voting day.

The First Nation staff must be ready to provide logistical support to the Electoral Officer and ensure that the polling stations have everything they need in the way of tables, chairs, supplies, etc. The FN is responsible for booking all rooms necessary well in advance to accommodate the polling stations both on the reserve and off the reserve. Since the polling station would normally open at 9 a.m., it would be advisable to prepare the room the preceding day. Everything such as tables, chairs, polling booth, pencils, pens, etc., should be in place.

The only items NOT set up at this time are the ballots, the ballot boxes, and the voters lists.

After months of hard work gathering input from the members and then drafting the proposed MRP Law, and holding the Information Meetings, the voting day arrives. The location(s) of the poll(s) will have been noted on the Information Document. Usually the on-reserve station is in the Band Office building or the Community Centre.

Review these requirements with the Electoral Officer well in advance of the voting day. In preparation for the voting day, you may want to plan for security staff in attendance at the polls.

Before voting gets under way, the EO must confirm that the ballot boxes are in good condition and are empty, and must complete an Examination of Ballot Box form in the presence of a witness, e.g., a member of the First Nation, **but not the DEO**. The boxes are then locked for the duration of the voting. In addition, the EO must ensure that each polling station is properly manned and supervised, and additionally may have to swear in an Interpreter, using the Oath of Interpreter form.

Normal voting hours are recommended as 9:00 a.m., to 8:00 p.m., to ensure that all members have an opportunity to vote.



Membership Clerk

The Membership Clerk must be present to confirm the eligibility of any person wanting to vote but who is not on the voters list. The FN member in question must sign the declaration form “Eligibility to Vote” provided by the EO and then the Membership Clerk must sign the form.

While it is important to have as many of the eligible members cast a ballot as possible, no incentives may be offered, as this would be seen as “buying the vote.” On the other hand, offering assistance, such as transportation to the poll, is acceptable and even encouraged.

The MRP Committee should keep a running count of the number of voters, and if only a small number have voted, then it would be advisable to encourage as many members who have not yet voted to get out and vote. Voter apathy is common in many elections and referendums. Obtaining a majority from a large number of voters will help to ensure community support.

The only way to ensure this outcome is with a strong campaign and communications efforts to inform and educate your electorate about the importance of each individual vote,

whether for or against. If a member is against the proposal, the best way to indicate that is by actually voting NO. No-shows in this case indicate lack of interest rather than opposition and may not affect the outcome if the 25% threshold is met.

During the polling hours, each polling station should receive a visit now and then by as many of the Chief and Councillors, elders, and leaders as possible. While they cannot try to encourage voting in any particular way, their presence should signify their support. As well, they should be prepared to be pro-active by going out and encouraging members to vote. Drivers should be available to transport the elderly, the handicapped, or those members who may have difficulty getting to the polling station.

NOTE:

Voting is by SECRET ballot. Neither the EO nor the DEOs should look at your vote. The only exception is if due to disability (e.g., blindness) the voter cannot mark the ballot; in such situations, the EO will mark the ballot for the member. The ballot should be initialled by the EO on the outside (reverse) side.

NOTE:

The EO should arrange for a Commissioner of Oaths to sign the necessary forms.

Some Things to Think About...

Is the vote date at least 6 weeks after the mail-out and the posting on Notice?
Are the polling stations in well-known places, and easy to access?
Are members of the project team available to assist the Electoral Officer on voting day, especially during voting hours of 9:00 a.m. to 8:00 p.m.?
Is the Membership Clerk present to verify voter eligibility?
Have the ballot boxes been examined, the form completed and witnessed?
Will members of the C&C be showing their support on that critical day?
Have you volunteers available to assist elders and handicapped voters?

Sample document provided on the following page.

(MONTH DAY), 20(YEAR) RATIFICATION

**(BAND NAME) FIRST NATION
(RESERVE NAME) INDIAN RESERVE NO. (RESERVE #)**

MRP LAW RATIFICATION VOTE

EXAMINATION OF BALLOT BOX

I, the undersigned, state that immediately before the opening of the poll, I opened the ballot box used for a ratification vote by the _____ First Nation on the _____ day of _____, 20__.

I found the ballot box empty and called the persons who were present to witness that it was empty. I then locked and properly sealed the box and placed it in view for the reception of ballots.

Dated at _____ this _____ day
of _____, 20__.

Signed in the presence of:

Name of Electoral Officer

C&C Responsibilities - Voting Certifications

Once the polls close at 8 p.m., preferably that same evening or first thing the next day, as soon as is practicable, the votes must be counted. All ballots including the mail-in ballots must be counted and tallies recorded by the Electoral Officer. Spoiled ballots are counted to determine the number of electors who actually voted. A spoiled ballot must not be counted as either a vote in favour of, or against a proposal. The decision to reject a ballot or to consider it a spoiled ballot rests with the EO solely.

Under sections 7-11 of the *Act*, a majority voting in favour of the proposal will be deemed to constitute consent by a majority of the electors of the First Nation as long as at least 25% of eligible voters voted.

Once the counting of ballots is completed, several forms must be signed.

Documents to be signed:

- At the end of the voting: a Polling Statement (one for each polling station) should be signed by the Chief or a Councillor, and the Electoral Officer.
- After the counting of all ballots: the “Statement As To Voting Results” should be signed by the Chief or a Councillor, and the Electoral Officer.

Best Practice

Once the voting is completed, and if the 25% voting threshold was met, and a majority has been achieved, it is a best practice for the Chief and Council to pass a Band Council Resolution accepting the results of the majority achieved, and so inform the First Nation members.

Notifications to Governments

As soon as there has been a successful ratification of the proposed MRP Law, the First Nation Council must make several notifications in writing, along with a copy of the newly ratified MRP Law, and the BCR if one was passed. These notifications must be sent to:

- the Minister of INAC,
- the COEMRP, and
- the Attorney General of any province(s) in which a reserve of that First Nation is situated.

Best Practice

Bring a copy of the new MRP Law to the local Court and to the INAC Regional Office so that there is no “waiting time” for it to come down through their system.

Make the voting results available for members on your website, bulletin boards, and/or newsletters, and any location mentioned in your cover letter in the Ratification package.

Sample documents are provided on the following pages.

SAMPLE POLLING STATEMENT

POLL LOCATION: _____

POLL NO.: _____

WE, the undersigned, state that in the ratification vote held by the (Band Name) for the MRP Law on (Reserve Name) Indian Reserve No. (Reserve #) held on the (Day, e.g. 3rd, 7th) day of (Month), 20(Year):

_____ votes were given in favour of ratifying the proposed MRP law;

_____ votes were given against ratifying the proposed MRP law; and

_____ ballots were rejected.

Dated at _____ this (Day, e.g. 3rd, 7th) day of (Month), 20(Year).

Name of Electoral Officer

Signature

Name of Chief or Councillor of the First Nation

Signature

SAMPLE

STATEMENT AS TO VOTING RESULTS

WE, the undersigned, state that the following are the results of the ratification vote held by the (Band name) for the acceptance of the proposed MRP Law on (Reserve name) Indian Reserve No. (Reserve #) held on the (DAY, e.g., 3rd) day of (MONTH) 20(YEAR):

- a) _____ electors were entitled to vote;
- b) _____ electors voted;
- c) _____% of eligible members voted;
- d) The _____% threshold _____met.
was / was not
- e) _____ electors voted in favour of ratifying the proposed MRP Law;
- f) _____ electors voted against ratifying the proposed MRP Law; and
- g) _____ ballots were rejected.
- h) A majority _____ achieved.
was / was not

Dated at _____ this (DAY) day of (MONTH) OF 20(YEAR).

Name of Electoral or Deputy Electoral Officer Signature

Name of Chief or Councillor of the First Nation Signature

SAMPLE WORDING
BAND COUNCIL RESOLUTION
Re: (Name of Law)

Whereas the (First Nation) desires to provide a law appropriate to our culture and traditions respecting the use, enjoyment, and occupation of family homes on its reserve lands, and the division of real property rights or interests held by spouses or common-law partners on reserve lands; and

Whereas the (First Nation) desires to enact a Matrimonial Real Property Law under Section 7 of the *Family Homes on Reserves and Matrimonial Rights Act*; and

Whereas the (Name) Law was submitted to the (First Nation) members for their approval in accordance with Section 8 of the *Family Homes on Reserves and Matrimonial Rights Act*; and

Whereas a ratification vote was held on (date), and

Whereas (number of voters) cast ballots representing (percent) of eligible voters, and

Whereas (number) voted in favour represent (percent) of the ballots cast,

Therefore be it resolved that the (First Nation) (Name of law) Law has been approved and comes into force on (date).

Dated at _____ this (DAY) day of (MONTH) OF 20(YEAR).

 Name of Chief of First Nation

 Name of Councillor of the First Nation Signature

 Name of Councillor of the First Nation Signature

 Name of Councillor of the First Nation Signature

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 Name of Councillor of the First Nation Signature

Chapter 6 - Provisional Federal Rules

As of December 16, 2014, the Provisional Federal Rules (PFR) defined in the *Act* came into force to fill the legislative gap for those First Nations that have not yet developed their own matrimonial real property law.

The Provisional Federal Rules may be accessed by those who need them, in circumstances that require the protection offered by the court system, but this does not mean that individuals must access the court system in order to resolve matrimonial real property issues. Many individuals may be able to come to agreement on division of property or temporary exclusive occupation of the family home through mediation, alternative dispute resolution or existing traditional systems for resolution. However, as a result of the *Act*, seeking resolution through the court system is an option.

Generally speaking, the protections and rights provided in the Provisional Federal Rules are accessible through the provincial and territorial superior courts that normally deal with family law matters.

The intent of the *Act* is to provide a degree of legal certainty that makes it easier for couples to come to an agreement so they do not have to go to court. However, if on-reserve individuals feel they need to access

the courts, they have to do so in the same way as those living off reserve.

The *Act* does not incorporate provincial and territorial laws relating to matrimonial real property on reserves. The *Act* only provides that either the Provisional Federal Rules or First Nations laws will apply on reserves. First Nations are not required to develop their own MRP law. They may decide that the *Act* meets their needs.

Where a community's collective interests in lands are engaged, the First Nation may make representations to the courts about the cultural, social and legal context relevant to the proceedings.

In the following pages, we will address several important aspects covered in the Provisional Federal Rules.



Equal Right to Occupancy of the Family Home

Each spouse or common-law partner may occupy the family home during the conjugal relationship, whether or not that person is a First Nation member or an Indian (Section 13 of the *Act*). A First Nation may want to consider the questions listed below when deciding to implement their own law or to use the Provisional Federal Rules.

Questions to consider...

What are the implications for a community's Residency By-law?
--

How does this affect a community's Housing Policy or Rental Housing Policy?
--

Do these policies and laws need to be adjusted in light of the Provisional Federal Rules?
--

Spousal Consent

There is a requirement of spousal consent for the sale or the disposal of the family home in the Provisional Federal Rules. This requirement provides spouses or common-law partners with protection that the family home cannot be sold, or otherwise disposed of, or encumbered during the marriage or common-law relationship without the free and informed **written** consent of the spouse or common-law partner, **whether or not that spouse or common-law partner is a First Nation member or an Indian.**

Questions to consider...

Is there a role for the First Nation administration to ensure compliance?
--

If so, how might this occur?

Emergency Protection Order

An Emergency Protection Order (EPO) allows a designated judge to order that a spouse or common-law partner be excluded from the family home on an urgent basis (in situations of family violence). An Emergency Protection Order can increase the protection available to families on reserve by making it possible to remove the abuser from the home for up to 90 days.



An EPO can be used to do the following:

- 1) Keep abusers away from a home, workplace, school or other premises where family members might be present.
- 2) Prohibit abusers from making contact or communicating with other family members.
- 3) Grant exclusive rights to occupy the home to certain family members for a specified period.
- 4) Direct the police to remove abusers from their home and supervise the removal of personal belongings.
- 5) Direct police to seize and store weapons.
- 6) Specify any other provision for the immediate protection of family members.
- 7) If the police are investigating a domestic disturbance, the investigating officer can assist a victim to obtain an EPO, even in the middle of the night.
- 8) In some circumstances, an application may be made by phone to a designated judge.
- 9) The police officer gives evidence (hearsay) and the order is granted immediately and faxed to police officer.
- 10) Can be used to remove an offender from the home, and prevent their return.
- 11) EPOs may also include the removal of any other person who is deemed to pose a danger to a family member.

What Constitutes Family Violence?

Family violence can sometimes be difficult to recognize, especially when being victimized by it. Family violence can be any of the following:

- Injury to a family member or damage to property, either of which is intended to intimidate or harm a family member
- Any act or threat that causes a family member to be afraid for their safety or their property and which is intended to intimidate or harm a family member
- Forced confinement
- Sexual abuse
- Stalking

When it comes to emergency protection orders, the intent of the Emergency Protection Order Regulations of the *Act* is to include options to make access to justice more accessible given the rural nature of many communities. It is intended that the application can be made to the judge in person or by telecommunications systems, which includes telephone, email, or fax. The application may be made by the applicant, or by someone acting on the applicant's behalf.

Should a spouse or common-law partner not be able to apply for an emergency protection order in person, a peace officer or other person may apply on behalf of that spouse or partner to ensure the immediate protection of the person or property at risk of harm. In situations where the applicant spouse or partner has not provided consent to apply for an emergency protection order, the designated judge may grant leave in accordance with the regulations to the *Act* for an application to be made on behalf of that spouse or partner.

Important to note that...

...during the time period of an Emergency Protection Order, the spouse or common-law partner will be able to apply for exclusive occupation of the family home.

On the other hand, any person named in the order may apply to the provincial court to have the order varied or revoked

- **within 21 days** or within any further time the court allows, or
- at any time if there has been a material change in circumstances.

The court will then confirm, vary or revoke the order as it is; or, the court may extend the 90-day period of the EPO.

In making its decision, the court must consider the supporting materials, any evidence presented, including evidence on the collective interests of the First Nations' members, on whose reserve the home is situated.

NOTE: Not all provinces have designated judges. As a result, Emergency Protection Orders under Section 16 are not available in all provinces. It is critical that you determine whether or not Emergency Protection Orders are available in your province

Questions to consider...

Does a First Nation have a family violence worker, a drug and alcohol counselor, or a child welfare worker who may be able to assist the family?

Should the First Nation community think about creating a family violence prevention program?

Exclusive Occupation

An Exclusive Occupation Order allows a court to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners. The duration of the order could range from a set number of days to a longer period, such as until dependent children reach the age of majority.

The exclusive occupation could result from the death, divorce, or separation of one of the spouses, and it can be issued to a First Nation member or non-member.

There are various matters that the Court takes into account in considering when deciding whether or not to give a spouse exclusive occupancy. The considerations may include the following:

- 1) Can a party be adequately housed elsewhere?
- 2) Are funds available from either party's resources to provide that housing?
- 3) For which partner is it less convenient to live away from the matrimonial home?
- 4) What are the interests of any children of the parties and what would be in their best interest?
- 5) What are the relevant proprietary rights of the spouses?
- 6) Whether the conduct of a party may justify the other party in asking for sole occupancy.
- 7) Is a party engaging in any improper behavior, such as intimidation or manipulation to prevent a spouse from pursuing his or her rights, should they continue to reside in the one home?
- 8) The possible injustice of forcing a party to establish for her/himself another home, or, otherwise accept inferior accommodation, without just cause.
- 9) Actual and/or threatened violence, physical or mental harm, intimidation, or harassment.
- 10) The interest of any other person holding an interest.

Questions to consider...

What happens if the house is sold?
What if the property is owned by someone else? (E.g., a custom allotment)
What if there is a mortgage or Ministerial Guarantee?
How does this regulation affect a community's residency law?
Is this consistent with a community's rental housing policy?
What happens when the deceased has willed the property to someone else?
Does the community have a plan to adjust existing policies for overall consistency?

Division of Assets

The Provisional Federal Rules provide that each spouse or common-law partner whether a member of a First Nation or not, and whether a status Indian or not, is entitled to half of the value of the interests in or rights to the family home (structure) and other matrimonial interests or rights on reserve which were acquired during the relationship. It ensures that the proven value of a couple's matrimonial interests or rights in, or to, the family home (structure) and other structures and lands on the reserve are shared equally on the breakdown of a relationship. The value is based on what a buyer would reasonably be expected to pay a seller for comparable interests or rights. Note though that a non-member does NOT benefit from the value of the land on reserve.



The PFRs provide for an Order for the transfer of matrimonial real property between member spouses or common-law partners. Thus it allows a court to order the transfer, in some circumstances of the matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.

Questions to consider...

How do you determine the value?

If the house is the main asset, how do you come up with the money to compensate the other spouse?

If a transfer of interests is to take place, how is the transfer completed?

Custom Allotments

The Provisional Federal Rules in the *Act* do not apply to the value of the lands that have been allotted according to custom, as these allotments are not recognized as legal holdings by the federal government. However, they will apply to structures on custom allotments that are recognized by First Nations or by the courts.

Leasehold Interests

The protections provided by the Provisional Federal Rules in the *Act* apply to family homes and other matrimonial interests or rights that are leased. If a spouse or common-law partner is granted exclusive occupation of the home, that individual will be bound by the lease and required, for example, to pay the rent.

Estates

The Provisional Federal Rules in the *Act* provide that:

- A surviving spouse or common-law partner who does not hold an interest or right in or to the family home will have an automatic right to occupy the family home for a minimum of 180 days after the death of their spouse or common-law partner.
- The survivor will be entitled to apply for exclusive occupation of the matrimonial home for longer than the 180-day period. Various considerations will be taken into account by the court to determine whether to grant exclusive occupation and the period of such occupation.
- The surviving spouse or common-law partner will be able to make application to receive half the value of the deceased spouse's or common-law partner's interest or right in the family home and of other matrimonial interests or rights. If the court determines that the surviving spouse is entitled to an amount in respect of that interest or right, the surviving spouse or common-law partner will not be able to benefit from the deceased's will or from the provisions of the *Indian Act* in respect of the same interest or right. In other words, the surviving spouse or common-law partner will have to choose between receiving an amount under this *Act* or an amount or right under the will or the *Indian Act*. Administrators and executors of estates will have access to information regarding the options for survivors that may affect the estate administration.

Questions to consider...

Will the First Nation need to make amendments to its Housing Policy?
How will this impact a community Residency By-law?
A First Nation may need to educate its members on the implications of this clause, especially where the survivor is not a First Nation member.
What happens if the home has a mortgage attached to it?
What happens if the home is on leased lands?
Should First Nations educate their members on the importance of domestic contracts?
Should First Nations encourage their members to execute domestic contracts?

Chapter 7 - Family Law Basics

In this chapter, we briefly examine the family law as it existed before the *Act*; then once a First Nation has passed its own MRP law; and after the new *Act* is in full force as of December 16, 2014.

This section is provided to give the reader a general understanding of the principles of Family Law as practised widely across Canada. It is general in nature and should not be relied upon for legal advice. Each person involved in the breakdown of a marriage or common-law relationship should seek their own independent legal advice.



A Few Definitions

- “*Family home*” means 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.
- “*Spouse*” includes either of two persons who have entered in good faith into a marriage that is voidable or void.
- “*Common-law partner*” means a person who is cohabiting with another individual in a conjugal relationship, having so cohabited for a period of at least one year (except in the province of Quebec where common-law relationships are not treated as a marriage).
- “*Conjugal relationship*” refers to the nature of the relationship between the members of a couple. The two people have “joined together” with the intent of forming a life together.

Note on Terminology

For purposes of simplicity, in this manual, where it refers to “spouse”, it normally includes “common-law partner” as well.

Separation

When people get married, the law treats the marriage as an equal economic partnership. If the marriage ends, the value of the property acquired while married and the increase in the value of property brought into the marriage will be divided in half.

In a very real sense, marriage and common-law relationships are legal economic unions. Everyone should understand and accept this principle BEFORE entering into such unions.

What does separation mean?

Very simply, separation means that one person has left the relationship or marriage with the intention of ending the relationship. It does not mean that someone has physically left the house or living accommodations; only that they are no longer living as a couple, socializing together, or having sexual relations.

Both people do not have to agree to the separation. If one leaves the relationship with the intention of ending the relationship, the couple is separated, whether the other person wants to be separated or not.

Is it necessary to get a “legal separation”?

As soon as you are no longer “living together”, you are separated. The law does not require you to have an agreement or a court order to be legally separated. Eventually it will be necessary to properly work out family law matters such as child custody and access to children, child and spousal support, division of property and rights to pensions.

If you were legally married and want to end all rights and obligations as a married person, you will have to apply to the court for a divorce to do this.



Separation Agreements

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the *Act*) recognizes the ability of a judge to consider “the terms of any agreement between the spouse or common-law partners” when making orders under the Provisional Federal Rules. The agreements mentioned in the

Act are also known as domestic contracts.

What is a “domestic contract”?

A domestic contract is an agreement reached between two individuals living in a family relationship, which outlines their rights and responsibilities. These agreements are legally binding.

Types of domestic contracts:

- Marriage contracts
- Cohabitation agreements
- Separation agreements



What is a “marriage contract?”

A marriage contract is an agreement that a couple may enter into before their marriage or during their marriage while living together. In the contract, they define their rights and responsibilities during marriage, and upon death, divorce or separation.

A marriage contract cannot say anything about custody, access or child support. These issues can only be decided after you separate.

What is a “cohabitation agreement”?

A cohabitation agreement is a contract that outlines each person’s rights and obligations during the period of cohabitation or upon death or separation. This type of agreement is appropriate for couples who are living together but who are not married to one another (i.e. common-law or “shacked up”).

A cohabitation agreement can say:

- How you want to organize some things in your relationship (for example, you can agree that you keep your finances separate).
- What you will do if your relationship ends (for example, how to divide property and how much support one of you will pay to the other).

A cohabitation agreement cannot say anything about custody and access for your children. Custody, access and child support can only be decided after you and your partner separate.

If you and your partner get married after you have been living together, your cohabitation agreement becomes your marriage contract.

What is a “separation agreement”?

A separation agreement is another kind of domestic agreement. It is a contract which allows you and your spouse (or common-law partner) to set out your rights and obligations at the time of your separation. You may enter into a separation agreement if you and your spouse (or common-law partner) were living together but have separated and are now living apart. A couple can prepare a separation agreement when they are still living together but have agreed to live separate.



A separation agreement can talk about custody and access for children, financial support, and how property will be divided.

What are the advantages of having a “domestic contract”?

Some of the advantages of having a domestic contract include:

- Couples can agree in advance about how to settle their family law matters. This is quicker and less stressful because they don't have to apply to a court to decide these important matters for them.
- A couple can control what is in the agreement.
- They often help families avoid conflicts about spousal and child support, custody to and access of their children as well as division of pensions and property.
- They allow spouses to divide marital property in a manner other than the one indicated in the applicable provincial family property law (generally an equal share of marital property). For example, a marriage contract could replace the rules about property division in the *Act*.
- The couple may be more likely to follow the agreement because they chose what to put into it.

What is required for a domestic contract to be valid?

In order to be valid, a domestic contract must be in writing and must be signed by you and your partner. The agreement must also be witnessed.

To change anything in the contract, or end the contract, you must follow the same rules: it must be in writing and both of you must sign in front of a witness.

How do we prepare a domestic contract? Do we need a lawyer?

If you and your partner wish to enter into a domestic contract, you can start by sitting down together and coming to an agreement about the various family matters you want to address. Some couples may need help to negotiate their contract. You may wish to use the services of a mediator to resolve any differences.

When you reach an understanding, one of you should take it a lawyer who can draft the contract. The other person should take the draft contract to his/her lawyer for review. It is important that you each seek separate legal advice to ensure that you understand what your rights and responsibilities will be under the agreement. Sometimes it is best to have lawyers negotiate.

The agreement may be written up as a consent order which a judge would sign. However, a judge may ignore any provision in the contract if one of the parties did not receive independent legal advice and he/she challenges a provision.

Custody and Access to Children

Although a separation is a breakdown of the relationship between two spouses, it does not end their relationship with their children. Parents' responsibilities to their children continue. In any court matter dealing



with children, the court tries to protect the children. In law, the “best interests of the child” and the rights of the children always come first!

Custody means having the care and control of a child. When a couple separates, the parents need to decide on arrangements for the care of the children. The parent who does not have custody of a child normally has the right of reasonable access to the child. If the parents cannot agree on these arrangements, either of them can apply to the court for an order setting out custody and/or access.

Support

Child Support

Both parents have an obligation to support their children financially, generally in accordance with each parent’s income. When parents separate, the parent with custody usually receives child support payments from the other parent. There are Federal Child Support Guidelines available, which have tables for each province and territory. If the parents cannot agree on the payments, the court will decide. Child support usually continues as long as the child is a dependent. It can extend beyond the age of majority (19) if the court decides the child needs extended educational or vocational support.

Spousal Support

Spousal support is money that is paid by one spouse to the other spouse after the relationship has ended. It is often called alimony or maintenance. Such support is not automatic. If you are trying to get such support, a judge will take a number of factors into consideration including: length of the relationship, age of both parties, education and income of both parties, net worth and financial consequences of separation. A judge can decide if such support is for a definite or indefinite period of time.

As an example, under the *Family Services Act*, if you have been living in a common-law relationship for three years, or for one year and you had a child together, you may be entitled to support as a dependent. The court may make determinations about how support payments are to be made and take measures to enforce such payments.



Division of Property and Debts

When married spouses separate or divorce, each spouse is entitled to an equal share of the marital property, and each spouse is responsible for an equal share of the marital debts, except in certain special circumstances.

Debts can include financial obligations that were incurred by either spouse during the marriage, including debts like mortgages, car loans, credit card bills, and lines of credit.



You can divide your marital property after separation. If you cannot agree, you can apply to the court for a division of the property.

Unlike a married couple, if you are leaving a common-law relationship, in some jurisdictions you do NOT have an automatic right to a share of the property. Generally, any property that you brought into the common-law relationship, or that you bought during the relationship, is your own. If you separate, the person who paid for the item or whose name is on the deed may be the only one entitled to it. Generally, common-law couples are not responsible for the debts of their partner unless they have co-signed them or there is a contract agreeing for a portion of the debt incurred when both parties benefitted from the debt.

Pensions

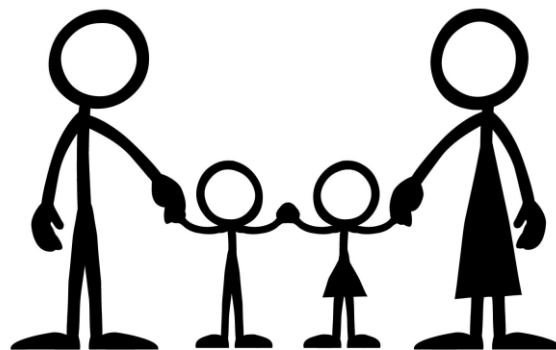
If a couple has been living together, married or common-law, for 12 consecutive months, and a relationship ends, either party may apply for a division of unadjusted pensionable earnings under the Canada Pension Plan. Some provincial pension plans may also be split.

A division of pension credits may mean more money to a spouse when they retire or if they become disabled. It could mean benefits for one's children if a spouse dies or becomes disabled.

Quebec Family Law

In Quebec, the Civil Code establishes a family property regime that is markedly different from the other provinces. In Quebec, marriage and civil union are legally recognized, while common law relationships (*de facto* relationships) are **not** legally recognized.

The chart on the following page provides a comparison between the rights and protections available to *de facto* couples and married spouses in Quebec.



Couples living on reserve during separation

Common Law/*De facto* relationships

Division of real property under the federal law

No family patrimony exists. The division of assets (other than matrimonial real property) will be based on right of ownership.

Child custody and support payments for children are established functions of the Civil Code of Quebec.

Married Spouses

Division of real property under the federal law

Division of the family patrimony, with the exception of real property, falls under the rules of the Civil Code of Quebec, (including furniture, RRSPs, pension plans, motor vehicles, etc.)

Child custody and support payments for children are established functions of the Civil Code of Quebec.

Possibility of obtaining spousal support (The *Divorce Act* under federal jurisdiction)

Note: This document is a succinct representation of the application of provincial law and the *Family Homes on Reserves and Matrimonial Interests or Rights Act* according to the married status of spouses. In the case of civil unions, the same rules of separation apply, with some variation.

Chapter 8 – Administrative Considerations

Collective Interest

Equality rights are guaranteed under sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*, and existing collective Aboriginal rights are recognized under section 35 of the *Constitution Act, 1982*, and referred to in section 25 of the *Charter*. The *Family Homes on Reserve and Matrimonial Interests or Rights Act* is intended to balance individual rights, specifically the need for spouses and common-law partners on reserves to have access to matrimonial real property protections and rights, and the collective interest of First Nations in their reserve lands.

Traditional practices and values vary among First Nations. For this reason, the Provisional Federal Rules in the *Act* provide for First Nation councils to be notified of court proceedings brought forward under the *Act* with the exception of emergency protection or confidentiality orders. First Nation councils will be able to make representations to the courts about the collective interests of the First Nation members in their reserve lands, in cultural, social and legal context relevant to the application.

Best Practice

While the *Act* now fills an historical legislative gap on dealing with Matrimonial Real Property, it would be a good practice to minimize the need to invoke the MRP law by developing pre-emptive programs that educate the members about wills, domestic agreements, rights of members and non-members on reserve with respect to real property.

Law Enforcement

As part of the implementation plan for the new legislation, mechanism for the training and education of key officials have been put in place, including:

- Police officer on reserves who will be trained to properly enforce the legislation.
- Provincial superior court judges and judicial professionals who will be provided with educational material to promote informed judgements under the *Act*.

Responsibility for enforcing orders made under the Provisional Federal Rules will vary depending on the circumstances. Pursuant to section 89 of the *Indian Act*, orders in favour of a non-Indian cannot be executed against

property of an Indian situated on reserve. A court order for compensation between spouses or common-law partners who are Indians, whether a member of that First Nation or not, can be enforced as any other order.

On application from a non-member or non-Indian spouse or common-law partner, the Provisional Federal Rules provide that a First Nation Council may, on behalf of the applicant, enforce a court order against a member for compensation made under the *Act*. If the Council does not enforce the order within a reasonable period of time, a court will be able to vary the order to require the member spouse or common-law partner to pay the specified amount into the court directly.

Chief and Council Responsibilities

With the introduction of the *Act*, followed either by the First Nation's own MRP law, or the use of the Provisional Federal Rules by the First Nation, members may seek assistance in resolving matrimonial real property issues. They will do this by making application to invoke the tenets of the law. The applicant must send a copy of the application (except in the case of an Emergency Protection Order) to the Council of the First Nation on whose reserve the structures and lands in question are situated.

If the issue ultimately goes to court, the Chief and Council will be required to make a decision about their representation in the court proceedings. While representation is not required, there should be a policy defined to determine which type of case will require representation and which will not, keeping in mind all aspects: cultural, social and legal. These guidelines should address the following items:

- Who responds to the court?
- Under what circumstances will the First Nation want representation at the court proceedings?
- Who determines whether the First Nation wants representation at the court proceedings?
- How is fairness maintained?
- What constitutes "conflict of interest"?
- How is transparency vs. privacy maintained?

As well, the Chief and Council of the First Nation should ensure that a set of administrative guidelines and procedures for handling such applications have been developed, and that the staff has been trained to handle them with discretion.

File Management vs. Privacy

Members who submit these applications are generally seeking redress or solutions. Often the situation is fraught with anxiety and speedy resolution may be necessary. Members will look forward to a timely handling of the file; as well they will expect their privacy to be respected.

With the Provisional Federal Rules now in effect, processes and guidelines should be defined to address the handling of such applications received concerning matrimonial real property on reserve.

The following items should be considered to be included in those guidelines:

- What happens when an application is received?
- Who receives the application?
- Is there a “point person” who always interacts with the applicant?
- Who at the Band Office will then be responsible for the applications?
- Who interacts with the applicant?
- Who drafts a response?
- Where is it stored, so that privacy is protected?
- Who will have access to the applications?
- Who is informed of the application?

Chapter 9 - Dispute Resolution

Dispute Resolution Processes

For most First Nations, family law and matrimonial property issues are typically resolved through traditional dispute resolution processes involving family members, elders, or dispute resolution committee members.

Whenever possible, resolving separation issues through traditional means is greatly encouraged. “Going to court” should be considered as a measure to be used when all else fails.



Family Meeting

Consistent with the legal traditions, customs and practices of most First Nations, one option is to convene a meeting of family members to assist them in concluding a separation agreement. Family Meeting means a meeting convened with family members of the spouses chosen by each spouse who will assist in determining the issues related to the separation, including any interest in First Nation land. If the meetings are successful, a separation agreement is made in writing, signed by the parties and witnessed. The provisions in the separation agreement with respect to an interest in First Nation land, including an interest that is the matrimonial home, would need to be provided to the Council, or its designate, to ensure the agreement is implemented pursuant to the laws and policies of the First Nation.

Mediation

If the couple is unable to conclude a separation agreement with the assistance of family members, the couple can usually elect to seek the assistance of a mediator; in some jurisdictions, mediation is required. “Mediator” means a qualified mediator listed with the Council or designates.

Usually, either spouse may commence mediation with respect to his or her rights and interests in First Nation land, by providing notice in the designated form to Council and to the other spouse. The spouses then select a mediator jointly from a list provided by Council and schedule the mediation proceedings.

As soon as possible after a mediator has been appointed, the mediator meets with the spouses to explain the mediation process and provides an initial assessment of the parties' suitability for mediation. This will include a recommendation that the spouses obtain independent legal advice. Spouses have a duty to attend the meetings with the mediator.

A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* provides for the enactment of First Nation laws to govern on-reserve matrimonial real property. The legislation also recognizes agreements between spouses and common-law partners reached through Dispute Resolution. The Centre of Excellence for Matrimonial Real Property developed a Dispute Resolution Toolkit to provide information about dispute resolution options and provides examples of existing dispute resolution processes currently being used in First Nations across Canada. Please contact us if you require a copy. It can also be found in our "Resources" tab at www.coemrp.ca

Scenario #4

A mother and her children are homeless in the city after living for 15 years in their First Nation community. Before leaving for the city they had endured ongoing abuse by the father and husband. They are now living in a shelter miles away from their friends, family and support system, leaving behind a comfortable home, prosperous business, clothing and toys.

Without access to applications for emergency protection orders this woman was not able to protect herself or her children while remaining in the community.

With the Provisional Federal Rules now in force, she could make application for temporary exclusive occupation, to stay in the home, while she determines the next steps without having to uproot her children.

While this woman has access to the court to assist her, a First Nation may wish to consider developing its own Dispute Resolution process to assist families to resolve these matters as an alternative to the complex and often costly court process. Providing, of course, that the woman and her children can participate safely in this alternative process.

DISPUTE RESOLUTION COMMITTEE



The couple may elect to seek the assistance of a First Nation Dispute Resolution Committee, if one exists, to assist them in concluding a separation agreement. In some cases, a Tribal Council may provide alternative dispute resolution services to its member nations.

The typical Committee consists of six members who are well versed in the customs, traditions and practices of the First Nation; who understand real property rights on the reserve; and who are experienced in family law and dispute resolution.

Unless otherwise agreed, each spouse may be responsible for an equal share of the costs of the Committee.

A committee member will declare a conflict of interest and not participate in a proceeding where he or she is an immediate family member of a spouse seeking to address their interest in First Nations land issues by the Committee.

During the proceedings, the committee will hear from both spouses and may hear from those who are affected by the breakdown of the marriage. This may include children of the spouses or other family members.

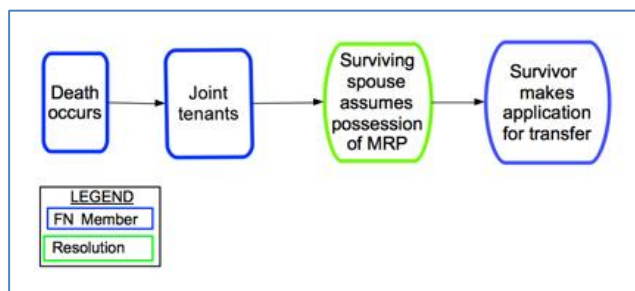
Chapter 10 – Sample Situations

In this chapter, we will present some examples of situations where the Provisional Federal Rules would apply. If a First Nation implements its own Matrimonial Real Property Law, the application of that law would follow a logical path as well, possibly a path quite similar to the examples provided below.

While there are too many possibilities to cover, this selection of examples should serve to exemplify the logical path to take, and point out the different paths to the end result depending on which factors apply. Keep in mind that these are examples only, and that in real-life situations there may be other factors to take into account.

Situation 1 – Joint Tenant FN Member Survivorship

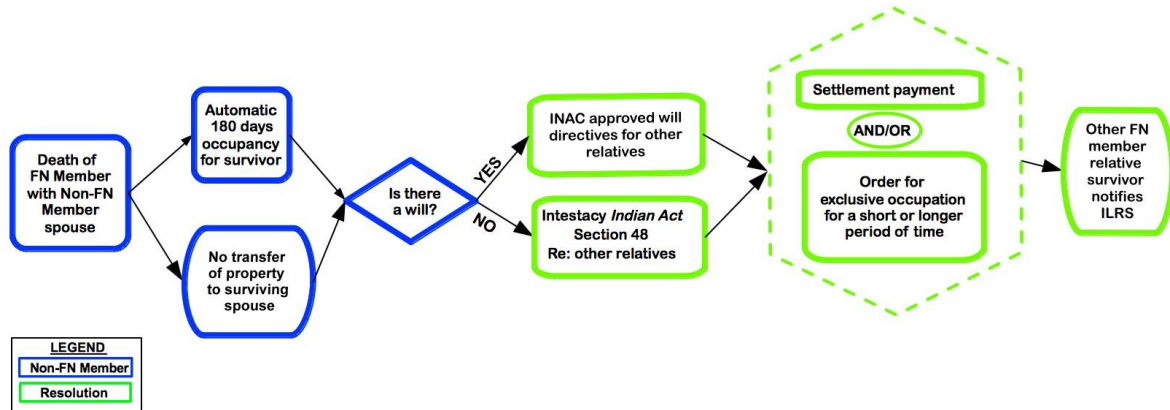
This example is basic: two First Nation members have been married 20 years. They are joint tenants in a property and both are named on the Certificate of Possession (CP).



When one spouse dies, and because they are joint tenants (meaning they both owned the property wholly and indivisibly) the surviving spouse assumes possession of the matrimonial real property, land and house. A new CP will have to be issued to reflect the surviving spouse as sole owner. It is the survivor's responsibility to complete and submit an Application for Transfer, attaching a certified true copy of the Death Certificate or Funeral Director's Statement of Death for registration in the ILRS, either to the First Nation or directly to INAC.

Similar situation: Had the surviving spouse not been named on the CP, but was named in a will as sole heir, the outcome would be the same.

Situation 2 – FN Member Survivorship



Practical application using the Provisional Federal Rules in the case of the **Death of a First Nation member where the surviving spouse is also an FN member.**

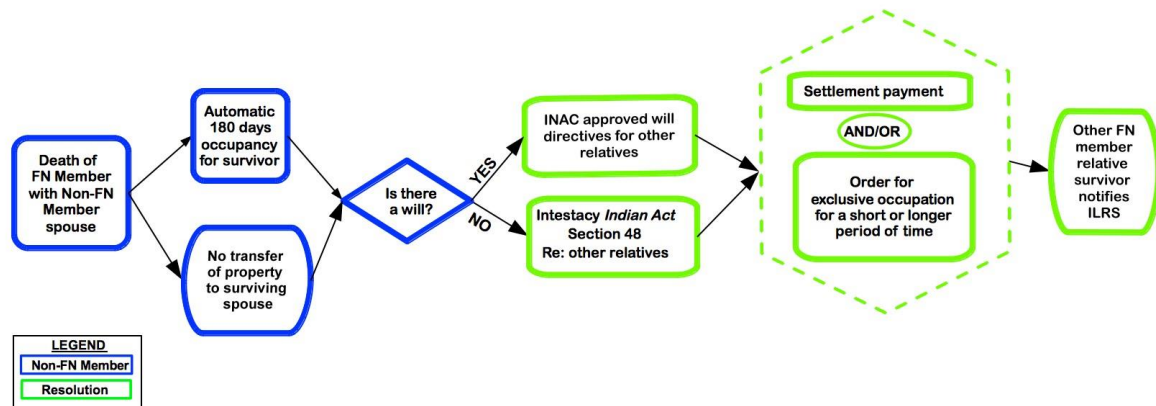
After the death of an FN member, the surviving FN spouse has an automatic 180 days of occupancy of the matrimonial home. What happens beyond the 180 days depends on several factors:

- 1) If the CP lists the couple as joint tenants this means they both owned the property wholly and indivisibly. Upon notification of the death, INAC could begin the process of transferring the matrimonial real property to the surviving spouse. Because it is held as joint tenants, it does not form part of the deceased's estate.
- 2) If the CP lists the couple as tenants in common, they both owned a divisible percentage of the property. The deceased's portion would form part of his or her estate and would be disposed of in accordance with the will or intestacy provisions of the Indian Act.
- 3) If only the deceased was listed on the CP, the survivor has the automatic 180 days and the opportunity to apply for exclusive occupation for a further period of time. In addition, the survivor must choose between inheriting under the will or the intestacy provisions OR making an application under section 34 of FHRMIRA

Once all is settled, any change in the title of the property must be recorded in the Indian Land Registry System (ILRS).

Situation 3 – Non-FN Member Survivorship

Practical application using the Provisional Federal Rules in the case of the **Death of a First Nation member where the surviving spouse NOT an FN member**. In this example, the couple had been married for 20 years and had no children.



After the death of the husband, a First Nation member, the surviving non-FN wife had an automatic 180 days of occupancy of the matrimonial home. What happens beyond the 180 days depends on several factors:

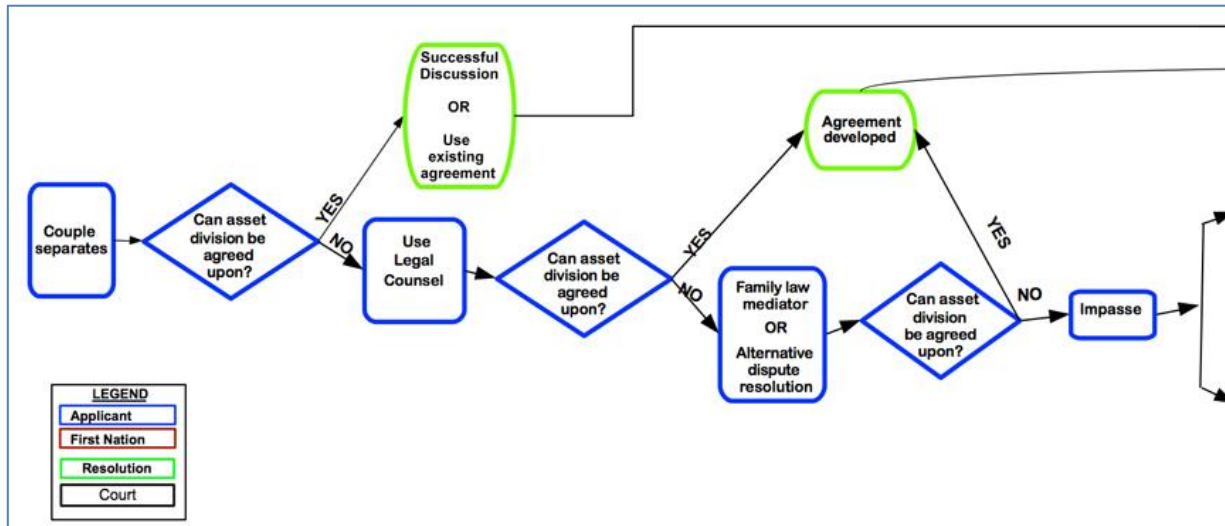
There was a will in which he bequeathed the house and land to his oldest child as there can be no transfer of property to a non-FN surviving spouse. The will was approved and the heir agreed that the survivor would remain in the home until she could no longer do so. Had they been unable to come to an agreement, the survivor could have made an application to the courts for exclusive occupation under s. 21 of FHRMIRA. She could also have made an application for half the value of the family home which would have become a debt against the estate. No transfer of the CP would be approved until the matrimonial real property interest had been resolved.

A will usually names an executor and that person is appointed by the Minister. Once appointed, that executor is entirely responsible for the administration of the estate and is accountable to the heirs.

The transfer of the Certificate of Possession must be recorded in the Indian Land Registry System (ILRS), under the *Indian Act*. A new CP will then be issued to the heir. The executor of the will is responsible for forwarding the application to transfer to INAC so that these changes can be approved and recorded in the ILRS. In the case of the deceased being in a First Nation under FNLMA, or a self-governing band, or the Kanasatake Mohawk Interim land base, the copy of the order is delivered directly to the First Nation.

Situation 4 – Separation

Practical application using the Provisional Federal Rules in the case of the **Separation of two married or common-law First Nation members**. They have been married for 20 years and have two children. The matrimonial real property consists of house valued at \$100,000, and a camp property valued at \$25,000. The chart (in two parts) shows the logic and steps to follow.



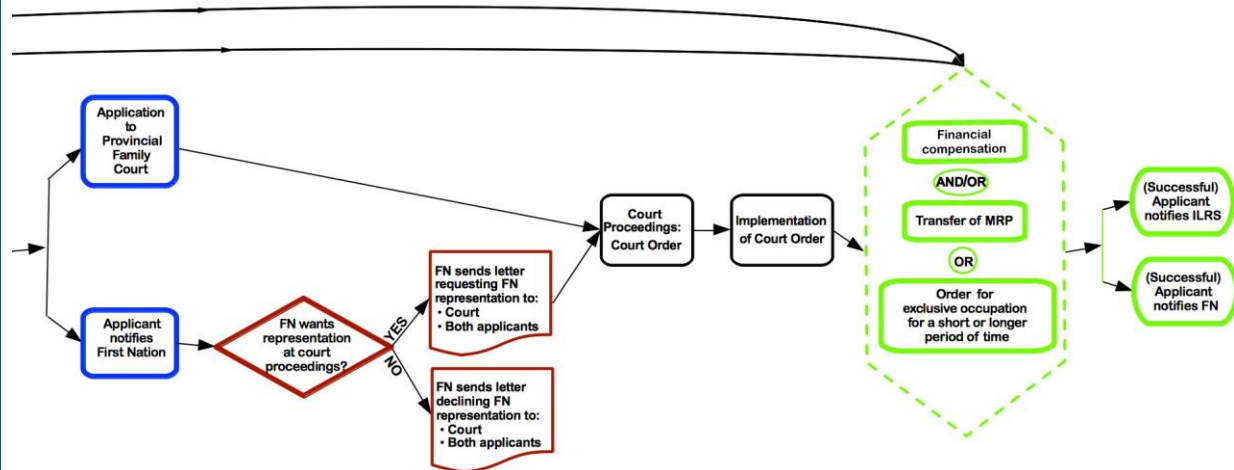
Upon separation of these two married people, division of assets was difficult and complicated. Before looking to apply the Matrimonial Real Property law, whether the Provisional Federal Law or a law enacted specifically within the First Nation, there were several steps taken to achieve an agreement.

The simplest case would be where the couple could agree on how to divide the assets either through discussion or by using an existing agreement (such as a domestic agreement). In this case, the choices would include any mix of the items listed in the second last box in the chart on the next page.

In this case, where an agreement could not be reached at the outset, the two spouses chose to seek legal counsel, (or it could have been a family law mediator, or through alternative dispute resolution). If through any of these measures, an agreement had been reached, and a formal agreement developed, choices would include any mix of the items listed in the second last box in the chart on the next page.

However none of these methods proved successful, and an impasse was reached; the applicants then progressed to the next step.

Scenario – Separation (continued)



The wife made an application to the Provincial Family Court for exclusive occupation for her and the two children. Concurrently she was required to notify the First Nation of this action. The FN must at this point decide whether or not it wants representation at the court proceedings. If the FN wishes to make representation at the court proceedings, it would be required to send a notification stating its intention to the Court.

The Family law court proceedings resulted in a binding Court Order spelling out the terms of the division of assets. Depending on the terms, any mix of the following directives would apply:

- financial compensation, calculated taking into account the \$125,000 real property, car, furniture, child and spousal support (lump sum and/or monthly support), and/or
- transfer of the Matrimonial Real Property to one of the spouses, and/or
- exclusive occupation for the wife and mother.

If an Order to transfer the property is made, the change in lawful possession of the property must be recorded in the Indian Land Registry System (ILRS) under the *Indian Act*. The responsibility lies with the successful applicant to whom the property is being transferred, to send a copy of the Order to the Minister of INAC so that these changes can be recorded in the ILRS. In the case of the applicant being in a First Nation under FNLMA, or a self-governing band, or the Kanasatake Mohawk Interim land base, the copy of the order is delivered directly to the First Nation.

Chapter 11 - Additional Resources

Reading and References

In the sections that follow, you will find a number of additional items that may be of use to you.

Further reading and references:

- 1) A copy of the *Act* is provided as an Annex in this Toolkit package.
- 2) A sample MRP law is provided as an Annex in this Toolkit package.
- 3) The *Indian Act*; available online at:
<http://laws.justice.gc.ca/PDF/I-5.pdf>
- 4) INAC's Land Management Manual, available online at:
http://www.aadnc-aandcINAC.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr_ids_pubs_lmm_1315105451402_eng.pdf
- 5) The Indian Referendum Regulations, available online at:
http://laws.justice.gc.ca/PDF/C.R.C.,_c._957.pdf

Centre of Excellence for Matrimonial Real Property

- The Centre of Excellence operates at arm's length from the Government of Canada to support First Nations in:
 - developing their own matrimonial real property laws,
 - effectively implementing the Provisional Federal Rules, and
 - provide assistance with creating dispute resolution mechanisms.
- The Centre will focus on disseminating knowledge to First Nation individuals, communities and organizations to assist them in understanding and implementing the legislation.
- The Centre will not provide legal advice or opinions

Our Role

- The Centre of Excellence can provide:
 - guidance and best practices for the development of your own matrimonial real property law,
 - assistance in understanding and implementing the Provisional Federal Rules once in force,
 - assistance with researching alternative dispute resolution mechanisms,
 - assistance to First Nation residents, committees and organizations to assist in understanding and implementing the legislation.
- The Centre will not provide legal advice or opinions.

Contact Us

Centre of Excellence for Matrimonial Real Property
 c/o National Aboriginal Lands Managers Association
 1024 Mississauga Street
 Curve Lake, Ontario, K0L 1R0

Christopher E. Angecneb LL.B
 Legislative Analysis Coordinator
cangecneb@coemrp.ca

Kathy McCue
 Administration and Communications Coordinator
kmccue@coemrp.ca

Our website: <http://www.coemrp.ca>



National Aboriginal Land Managers Association



NALMA

Bringing Lands Managers Together

Our Mission

A national organization of First Nations Lands Managers which will actively network towards the enhancement of professional development and technical expertise in the functions of Lands Management and which will also incorporate First Nation values and beliefs in Lands Management always keeping in mind the grass-root practices when dealing with Lands Management.

Our History

For many years the idea of forming a National Lands Managers Association had been on the minds of Lands Managers across Canada. In June of 1999 a group of Lands Managers gathered and elected an Ad Hoc Committee and developed a plan of action for the establishment of such an association. The Plan of Action developed provided the basic

direction and the mandate of the association.

On December 21, 2000, the National Aboriginal Lands Managers Association (NALMA) became officially incorporated as a non-profit, non-political organization. There are now over 100 members in NALMA.

Becoming A Member

First Nations belonging to their respective Regional Lands Association are members of NALMA. Although there is currently no membership fee for NALMA, a membership fee may be required to join your Regional Lands Association. Membership fees vary from region to region.

The NALMA Board has placed a high priority on the establishment and continued support of the Regional Lands Associations. In essence, the Regional Lands Associations constitute the structure of NALMA, and

together they share similar goals and objectives. See the NALMA website for contact information on your Regional Lands Association.

The website is:

www.nalma.ca

Member Professional Recognition & Success

As a National organization, it is important to recognize the successful work of Lands Managers and their dedication and commitment in the field of First Nations Lands Management across Canada.

NALMA acknowledges these accomplishments by honouring Graduates of the Professional Lands Management Certification (PLMCP) and providing awards of excellence.

NALMA Objectives

The objective of NALMA is to provide a working environment that will be comfortable to all First Nations Lands Managers; to network between each other on land-related issues; and at the same time create a system that will address First Nations issues in various land management functions. Therefore, NALMA will strive to:

DEVELOP

- ongoing communications across Canada;
- fair and consistent processes for administering First Nations Lands;
- systems of lands management mechanisms and models which can be used by all First Nations;

PROMOTE

- and market the National and Regional Lands Associations across Canada;
- the incorporation of First Nations values, culture and beliefs into Lands Management systems and processes;
- the recognition of First Nations Managers for the successful work they have done in the area of Lands Management;

PROVIDE

- Professional Lands Management Certification Program (PLMCP) to maintain and improve the qualifications and standards of professionals;
- technical expertise and guidance to First Nations and INAC regarding lands management issues;
- unified process for Regional Lands Associations to share information and establish and maintain links across Canada through the Board of Directors;

PARTICIPATE

- at National, Regional and International Aboriginal Lands Management meetings and conferences;
- in the development and implementation of First Nations Lands policies and procedures.

NALMA headquarters



NALMA Members

There are eight corporate members of NALMA with 116 First Nations and Inuit communities membership at large.



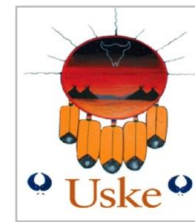
Atlantic Region Aboriginal Lands Association (ARALA)

First Nations Lands Managers Association for Québec and Labrador (FNLMAQ&L)



Ontario Aboriginal Lands Association (OALA)

Manitoba Uske (Lands)



Saskatchewan Aboriginal Lands Technicians (SALT)

Treaty and Aboriginal Land Stewards Association of Alberta (TALSA)



Planning and Land Administrators of Nunavut (PLAN)

British Columbia Aboriginal Lands Managers (BCALM)



NALMA Membership Services

Professional Development

An objective of NALMA is to raise the professional standards for First Nations Lands Management. NALMA is committed to taking a leadership role to ensure that Lands Managers receive adequate training opportunities required to efficiently and effectively manage their lands.

NALMA is pleased to offer a Professional Lands Management Certification Program (PLMCP) that will meet the existing and emerging needs of First Nations Lands Management. The PLMCP has two levels of certification: Level One - Post-Secondary Training, and Level Two - Technical Training, developed and delivered by NALMA.

NALMA also offers specialized training to First Nations; the first course in this set is the 3-day training on Additions to Reserves. The training component is complemented by a Toolkit with a comprehensive manual, detailed process flowchart, checklist, and journal.

Networking

NALMA provides a channel for successful networking through open lines of communication, knowledge sharing, gatherings, and the encouragement of partnerships and strategic alliances across Canada.

Centre Of Lands Excellence (COLE)

To effectively deliver programs and services, NALMA has created a Centre of Lands Excellence whereby committed professionals share their experience, skills and knowledge in the areas of instruction, mentoring and technical expertise. Applications to COLE are available on the NALMA website: www.nalma.ca

Resources

NALMA is committed to ensuring that members have access to lands management resource information. NALMA has established a Resource Library, which is available to members. The NALMA website also shares information and links to current lands management information.

Future Focus

NALMA will continue to provide capacity building opportunities to First Nations Lands Managers that they may better serve their communities in the important profession of FN Lands Management.

National Lands Managers Gathering

NALMA holds National Lands Managers Gatherings in order to provide the opportunity for Lands Managers to network and the capacity build through the exchange of ideas, information, and shared professional development. Every opportunity is sought to maximize partnership opportunities.



Acronyms and Abbreviations

AANDC	Aboriginal Affairs and Northern Development Canada
ADM	Assistant Deputy Minister
AFN	Assembly of First Nations
BCR	Band Council Resolution
BGO	Band Governance Officer
CP	Certificate of Possession
DEO	Deputy Electoral Officer
DJ	see DOJ
DM	Deputy Minister
DMO	Deputy Minister's Office
DOJ	Department of Justice
EFN	Entitlement First Nation
EO	Electoral Officer
EPO	Emergency Protection Order
FA	Framework Agreement
FMV	Fair Market Value
FN	First Nations
FNCR	First Nation Council Resolution
FNLMA	<i>First Nations Land Management Act</i>
FNLRS	First Nations Land Registry System
FRPA	<i>Federal Real Property Act</i>
FRPFIA	<i>Federal Real Property and Federal Immovables Act</i>
ILR	Indian Lands Registry
ILRS	Indian Lands Registry System
INAC	Indigenous and Northern Affairs Canada
IRR	Indian Referendum Regulations

LMM	Land Management Manual
LMO	Land Management Officer
LMTP	Land and Environment Management Training Program
LTS	Lands and Trust Services
MO	Ministerial Order
MP	Member of Parliament
MRP	Matrimonial Real Property
NALMA	National Aboriginal Lands Managers Association
PLMC	Professional Land Managers Certification
RLAP	Regional Land Administration Program
RLEMP	Reserve Land and Environment Management Program
SCC	Supreme Court of Canada
SGFNLR	Self-Governing First Nations Land Registry
TEA	Treaty Entitlement Agreement
TLE	Treaty Lands Entitlement

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Appendix A – Provincial Legal Services Resources

Alberta

Dial-A-Law is a free service operated by Calgary Legal Guidance that provides general information on a wide variety of legal issues in the Province of Alberta. To listen to a Dial-A-Law topic, please call the Dial-A-Law Operator between 8:30 a.m. and 4:30 p.m. during normal business hours, Monday to Friday. In Calgary Dial-A-Law can be reached at **(403) 234-9022** and from anywhere in Alberta **1-800-332-1091** (toll free). If, after listening to that information, you still think you need a lawyer, contact Lawyer Referral for help in locating the right one for you.

For Lawyer Referral call **(403) 228-1722** in Calgary and toll free from anywhere in Alberta, Saskatchewan, Lower Mainland BC, Yukon, NWT and Nunavut at **1-800-661-1095**. A Lawyer Referral operator will answer your call. Once you describe the nature of your problem, the operator will give you the names and telephone numbers of up to three lawyers practicing in the area of law that best suit your needs. The first half-hour of the conversation with any referral lawyer is free.

Legal Aid Alberta (LAA) provides a wide range of legal services for low-income Albertans. You must meet eligibility requirements to qualify for these services. LAA's toll free number (**1-866-845-3425**) connects callers to Legal Services Centres located throughout Alberta. LAA offices are open Monday to Friday, 8:30am - 4:00pm, except closed Wednesdays at 2:30 pm.

Family Justice Services (FJS) is a group of programs and services offered by the Government of Alberta, Justice and Solicitor General in collaboration with the courts of Alberta. FJS staff work directly with individuals to find appropriate solutions for family law issues. Programs are available to qualifying parties either at no cost or for a nominal charge. FJS offices are located throughout the province. For more information go to the website at <https://albertacourts.ca/resolution-and-court-administration-serv/family-justice-services>

Family Law Information Centre - Family Law Information services are provided at various locations throughout Alberta. Staff at these locations help the public (including self-represented individuals), the legal community, the judiciary and government offices/agencies, by providing the following: general information about family law; plain language explanations of court procedure; court forms for most family law applications in either Court of Queen's Bench or the Provincial Court; help in making sure that the court forms are properly filled out; and Child Support Guidelines calculations to self-represented litigants and to the judiciary. For contact information see the website at <https://albertacourts.ca/resolution-and-court-administration-serv/family-justice-services/family-law-information>

British Columbia

Dial-A-Law is a library of legal information prepared by lawyers. It offers general information on a variety of topics on law in British Columbia. Dial-A-Law is a free service that is available in English, Chinese and Punjabi by telephone and on the Internet. Dial-A-Law can be accessed via internet at www.dialalaw.org. Dial-A-Law is also available 24 hours a day, 7 days a week. To access Dial-A-Law by telephone, call **(604) 687-4680** in the Lower Mainland or **1-800-565-5297** in British Columbia.

The Lawyer Referral Service program enables the public to access lawyers and provides the opportunity to have a consultation with a lawyer for up to 30 minutes for a fee of \$25 plus tax. The Lawyer Referral Service operates by telephone. Please call during business hours, 8:30 am to 4:30 pm, Monday - Friday at **(604) 687-3221** or **1-800-663-1919**. Once the area of law is determined the operator will provide you with the name and telephone number of a lawyer in your geographical area. You contact the lawyer to set up an appointment to meet. You are entitled to up to a half hour consultation for \$25 (plus tax).

If you have a legal problem and can't afford a lawyer, the Legal Services Society can help. LSS telephone numbers are **(604) 408-2172** in Greater Vancouver and a toll free number **1-866-577-2525** for all other areas in British Columbia. Service hours are 9:00 a.m. to 4:00 p.m. (Mondays, Tuesdays, Thursdays, and Fridays) and 9:00 a.m. to 2:30 p.m. (Wednesdays).

Manitoba

The Law Phone-In and Lawyer Referral Program provides general legal information over the phone in response to callers' inquiries. Office hours for service are 9 a.m. to 4 p.m. Monday through Friday. The direct number is **(204) 943-2305** or toll free **1-800-262-8800** from outside Winnipeg. For a referral to a lawyer only, you can call **(204) 943-3602**.

Legal Aid Manitoba provides legal advice and representation to eligible low-income individuals and groups for particular types of cases, i.e. most family law matters. Legal Aid Manitoba also has lawyers who offer an alternative called collaborative law, aimed at helping couples find common ground without going to court. You can apply at the Application Centre in Winnipeg or at any of the Legal Aid Manitoba offices outside of Winnipeg.

In Winnipeg, Legal Aid has an Application Centre at 100 - 287 Broadway. The hours are: Mondays & Tuesdays 12:30 pm to 4:30 pm; Wednesdays & Thursdays 1:30 pm to 4:30 pm. People are seen on a first-come, first served basis. Telephone: **(204) 985-8500** or **1-800-261-2960**

Newfoundland and Labrador

The Law Society of Newfoundland and Labrador maintains a comprehensive online directory with lawyer contact information at www.lawsociety.nf.ca. Individuals who need to speak to a law society representative may also call **(709) 722-4740**.

Legal aid is a program available to help people with serious legal problems who are in financial need and cannot afford private counsel. In many cases legal aid may be provided without charge, but not always. In some cases you may be required to pay some or all of the cost of the legal aid coverage you receive. In determining whether someone can afford to cover part of the cost, and if so what portion of the cost they will be asked to pay, the Legal Aid Commission will take a detailed look at your financial position. There are two requirements you must meet to get Legal Aid. First, you must fit within Legal Aid's financial requirements. Second, your legal matter must be one of the types of legal matters that Legal Aid covers.

Family matters include legal disputes that arise because of changes within family relationships.

Legal Aid usually covers family matters that include separation, divorce, and child custody and access.

Legal Aid will sometimes cover other family matters (such as child support, spousal support, or matrimonial property) when they come up in the context of a separation, divorce, or child custody and access dispute. Such other family matters may also be covered in special circumstances. The office where you apply will decide, based on your individual circumstances, whether or not Legal Aid will cover such a matter.

Please contact the legal aid offices by calling **1-800-563-9911**.

Nova Scotia

Dial-A-Law provides legal information on a pre-recorded message service 24 hours a day. Recordings are two to fifteen minutes in length (includes family law and wills and estates). To use Dial-A-Law call (902) 420-1888 or go to <http://www.legalinfo.org/how-lisns-can-help/dial-a-law.html>.

For Lawyer Referral contact the Legal Information Society of Nova Scotia at 1-800-665-9779 (toll free) or at (902) 455-3135.

The Nova Scotia Legal Aid Commission provides legal representation to qualified applicants. Information may be found at www.nslegalaid.ca. Applicants seeking legal aid are directed to call the closest legal aid office directly:

<p>AMHERST, NS Nova Scotia Legal Aid 55 Church Street Amherst, NS B4H 3A7 T 902-667-7544 TF 1-866-999-7544 F 902-667-0030</p>	<p>ANNAPOLIS ROYAL, NS Nova Scotia Legal Aid PO Box 188 56 St. Anthony Street Annapolis Royal, NS B0S 1A0 T 902-532-2311 TF 1-866-532-2311 F 902-532-7488</p>
<p>ANTIGONISH, NS Nova Scotia Legal Aid 70 West Steet, Suite 2 Antigonish, NS B2G 2X7 T 902-863-3350 TF 1-866-439-1544 F 902-863-7598</p>	<p>BRIDGEWATER, NS Nova Scotia Legal Aid 202-141 High Street Bridgewater, NS B4V 1W2 T 902-543-4658 TF 1-866-543-4658 F 902-543-3044</p>
<p>BRIDGEWATER, NS Liverpool Sub-Office Bridgewater, NS T 902-354-3215 TF 1-866-543-4658</p>	<p>DARTMOUTH, NS Nova Scotia Legal Aid (Family) 1210-99 Wyse Road</p> <ul style="list-style-type: none"> • Dartmouth, NS • B3A 4S5 • T 902-420-7921 • TF 1-855-420-7921 • F 420-7804
<p>HALIFAX, NS Nova Scotia Legal Aid 400-5475 Spring Garden Road Halifax, NS B3J 3T2 (Adult Criminal) T 902-420-6583 TF 1-877-777-6583 F 902-420-1260</p>	<p>HALIFAX, NS Nova Scotia Legal Aid 2830 Agricola Street Halifax, NS B3K 4E4 T 902-420-3450 TF 1-866-420-3450 F 902- 420-2873</p>

<p>HALIFAX, NS Supreme Court Family Division Duty Counsel 3380 Devonshire Avenue Halifax, NS B3K 5M6 T 902-424-5616</p>	<p>KENTVILLE, NS Nova Scotia Legal Aid 325 Main Street, Salon B Kentville, NS B4N 1K5 T 902-679-6110 TF 1-866-679-6110 F 902-679-6177</p>
<p>NEW GLASGOW, NS Nova Scotia Legal Aid 116 George Street New Glasgow, NS B2H 2K6 T 902-755-7020 TF 1-877-755-7020 F 902-752-8733</p>	<p>PORT HAWKESBURY, NS Nova Scotia Legal Aid 302-15 Kennedy Street Port Hawkesbury, NS B9A 2Y1 T 902-625-4047 TF 1-888-817-0116 F 902-625-5216</p>
<p>SYDNEY, NS Nova Scotia Legal Aid 401-15 Dorchester Street Sydney, NS B1P 5Y9 T 902-563-2295 TF 1-877-563-2295 F 902-539-0489</p>	<p>SYDNEY, NS Supreme Court Family Division Duty Counsel 136 Charlotte Street, Main Level Sydney, NS B1P 1C3 T 902-563-2200 F 902-563-2224</p>
<p>TRURO, NS Nova Scotia Legal Aid 102-523 Prince Street Truro, NS B2N 1E8 T 902-893-5920 TF 1-877-777-5920 F 902-893-6112</p>	<p>WINDSOR, NS Nova Scotia Legal Aid PO Box 760 151 Wentworth Road, Suite 2 Windsor, NS B0N 2T0 T 902-798-8397 TF 1-866-798-8397 F 902-798-8345</p>
<p>YARMOUTH, NS Nova Scotia Legal Aid 204-164 Main Street Yarmouth, NS B5A 1C2 T 902-742-7827 TF 1-866-742-3300 F 902-742-0676</p>	

Ontario

If you are seeking independent legal representation please consider the following services:

The Law Society Referral Service - This service offered by the Law Society of Upper Canada allows you to locate a lawyer or licensed paralegal in your area who practices the particular area of law in which you seek assistance. Individuals who use this service may receive a free 30 minute consultation.

Contact: <http://lrs.lsuc.on.ca/lrs/> or **1-800-268-8326** or **(416) 947-3330** within the Greater Toronto Area.

Legal Aid Ontario – You may be eligible for a legal aid certificate or other forms of legal advice if you cannot afford a lawyer and meet the necessary criteria established by Legal Aid Ontario.

Contact: <http://www.legalaid.on.ca/en/> or toll free: **1-800-668-8258** for more information

Prince Edward Island

The Lawyer Referral Service is available at **1-800-240-9798** or **902-892-0853** between 9 a.m. and 4 p.m., Monday to Thursday. A lawyer referred by the service will give you an interview of up to 45 minutes at a nominal charge of \$25.00 plus P.S.T and G.S.T..

Legal Aid Priority for Assistance - The objective of family legal aid is to provide legal assistance to those who cannot afford the services of a lawyer in the most urgent family situations. Legal needs are prioritized on two levels. Level One, the highest priority, refers to cases where domestic violence has occurred or where the personal security of applicants or children in their care is endangered in a family situation. Level Two describes the need for essential legal services in family situations where there has been no domestic violence or present threat to the security of the applicant or a child in his or her care. Divorce coverage is provided only where it is determined to be the most effective court procedure for addressing one or more of the foregoing objectives.

In Level Two situations, applicants who require legal assistance to meet the needs of dependant children are given priority. Legal needs in this category include: custody, access, financial support, and housing. Due to the high demand for those services, only very limited resources remain available to assist applicants with legal needs that do not relate directly to the support of dependant children.

Where an applicant's legal needs do not qualify for full service under Level Two, summary advice may be provided. Summary advice generally involves a brief telephone or office consultation with a staff lawyer, with the opportunity for further assistance if the applicant's legal needs change or increase.

Summerside Service Location

120 Harbour Drive

Summerside, PE

C1N 5L2

Telephone: (902) 888-8066

Facsimile: (902) 438-4071

Website: [120 Harbour Drive Website](#)

Charlottetown Service Location

40 Great George Street

Charlottetown, PE

Website: [Customs House, 40 Great George Street, Charlottetown Website](#)

Saskatchewan

If you need to speak with a lawyer, please consult your area phone book or use the "[Find a Lawyer](#)" feature of the Law Society of Saskatchewan website. The "Find a Lawyer" feature allows lawyers to be searched by firm/organization, city or first or last name. A lawyer's contact information is available via this service which allows you to contact lawyers directly.

<https://lss.alinity.com/WebClient/Registrantdirectory.aspx>

Family Justice Services Branch – The branch is the central authority in Saskatchewan responsible for providing family justice services to individuals who need help in dealing with the difficulties arising from family breakdown, separation and divorce. These services are in the area of parenting, custody, access, support obligations and marriage. For program information and resources see the website at <http://www.justice.gov.sk.ca/familyjusticeservices> or call toll free at 1-866-2299712.

Public legal Education Association of Saskatchewan (PLEA) – PLEA is a non-profit, non-governmental organization that exists to educate and inform the people of Saskatchewan about the law and the legal system. It provides general information on the law and produces publications on many areas of law and makes these available to the public at no charge. For available resources got to their website at <http://www.plea.org/>

Legal Aid Saskatchewan provides a range of legal services to low income individuals in Saskatchewan in the areas of family and criminal law. Those who are eligible can access the services of an experienced lawyer located throughout the province of Saskatchewan. An applicant is required to contact the closest of 15 Legal Aid Offices across Saskatchewan.

The list of offices can be found at http://69.27.116.234/contact/office_list.php

Battlefords Area Office

Provincial Building, #L103 - 1192 102nd Street
North Battleford
S9A 1E9
p: 306-446-7700
f: 306-446-7598
Toll Free: 1-877-441-4418
Legal Director: Janice Lawrence, Q.C.
Battlefords@legalaid.sk.ca

Meadow Lake Area Office

Unit #3, 101 Railway Place
Meadow Lake
S9X 1X6
p: 306-236-7636
f: 306-236-7634
Toll Free: 1-800-461-8188
Legal Director: Karen Srodulski
MeadowLake@legalaid.sk.ca

Melfort Area Office

Box 6500, 3rd Floor, 105 Crawford Avenue East
Melfort
S0E 1A0
p: 306-752-6220
f: 306-752-6127
Toll Free: 1-877-424-1901
Legal Director: Rosanne Newman, Q.C.
Melfort@legalaid.sk.ca

Moose Jaw Area Office

#113 - 110 Ominica Street West
Moose Jaw
S6H 6V2
p: 306-694-3700
f: 306-694-3738
Toll Free: 1-877-424-1902
Legal Director: Mervyn Shaw, Q.C.
MooseJaw@legalaid.sk.ca

Northern Area Office

Box 5000, Mistasinik Place, 1328 La Ronge Ave
La Ronge
S0J 1L0
p: 425-4455
f: 425-4472
Toll Free: 1-800-667-4095
Legal Director: Kimberly Earing
Northern@legalaid.sk.ca

Regina City Area Office

#200 - 1871 Smith Street
Regina
S4P 4W5
p: 306-787-8760
f: 306-787-8827
Toll Free: 1-877-424-1897
Legal Director: Jamie A. T. Struthers, Q.C.
ReginaCity@legalaid.sk.ca

Saskatoon City Criminal Legal Aid Area Office

#1053 - 122 3rd Avenue North, Sturdy Stone Centre
Saskatoon
S7K 2H6
p: 306-933-7820
f: 306-933-7827
Toll Free: 1-877-424-1898
Legal Director: Norma J. Sim, Q.C.
[Acting]
SaskatoonCriminalLaw@legalaid.sk.ca

Saskatoon Rural Area Office

#941-122 3rd Avenue North, Sturdy Stone Centre
Saskatoon
S7K 2H6
p: 306-933-7855
f: 306-933-7854
Toll Free: 1-877-424-1899
Legal Director: Donald Mullord, Q.C.
SaskatoonRural@legalaid.sk.ca

Prince Albert Area Office

Box 3003, 11th Flr, L.F. McIntosh Bldg, 800 Central Ave
Prince Albert
S6V 6G1
p: 306-953-2850
f: 306-953-2866
Toll Free: 1-877-424-1900
Legal Director: Lisa Wilhelm Skopyk
[Acting]
PrinceAlbert@legalaid.sk.ca

Regina Rural Area Office

#102 - 2400 College Avenue
Regina
S4P 1C8
p: 306-787-1141
f: 306-787-2316
Toll Free: 1-877-424-1906
Legal Director: David Andrews, Q.C.
ReginaRural@legalaid.sk.ca

Saskatoon City Family Legal Aid Area Office

#155 - 122 3rd Avenue North, Sturdy Stone Centre
Saskatoon
S7K 2H6
p: 306-964-2200
f: 306-964-2222
Toll Free: 1-877-324-2200
Legal Director: Kelly Shaw
SaskatoonFamilyLaw@legalaid.sk.ca

Swift Current Area Office

3rd Floor, 350 Cheadle Street West
Swift Current
S9H 4G3
p: 306-778-8272
f: 306-778-8307
Toll Free: 1-877-424-1905
Legal Director: Adrian McBride
SwiftCurrent@legalaid.sk.ca

South East Area Office

Box 5000-170; Main Floor, 1302 3rd Street
Estevan
S4A 2V6
p: 306-637-4620
f: 306-637-4625
Toll Free: 1-877-424-1903
Legal Director: Robert Grimsrud
Estevan@legalaid.sk.ca

Yorkton Area Office

#301 - 120 Smith Street East
Yorkton
S3N 3V3
p: 306-786-1440
f: 306-786-1405
Toll Free: 1-877-424-1904
Legal Director: David Bright
Yorkton@legalaid.sk.ca

Québec

Lawyer Referral

Island of Montreal - For a lawyer referral by field of law, contact the 514 866-2490 or write to: reference@barreaudemontreal.qc.ca (First 30 minutes consultation for \$ 30)

Regions of Québec, Beauce and Montmagny - For a lawyer referral by field of law, contact the 418 529-0301 or fill in the form available on the Barreau de Québec website. (First 30 minutes consultation for free)

Any other region in Québec - For a lawyer referral by field of law, call, toll free, to 1 866 954-3528, or write to: referenceaap@barreau.qc.ca (First 30 minutes consultation for \$ 30)

Longueuil - Phone: 450 468-2609 / Fax: 450 468-1895 / info@barreaudelongueuil.qc.ca (First 30 minutes consultation for \$ 50)

Family Law Information

General information on family law in the Province of Québec may be found at: <http://www.educaloi.qc.ca/en/categories/families-and-couples>

New Brunswick

To find a lawyer, call the Law Society of New Brunswick at **(506) 458-8540**. Or, you can look in the Yellow Pages, under "**Lawyers**".

For free general information on family law matters and guidance with family law forms and court procedures go to the Public Legal Education and Information Services of New Brunswick website at <http://www.legal-info-legale.nb.ca/en/index.php> or call toll free at 1-888-236-2444.

The New Brunswick Legal Aid Services Commission provides legal assistance to low income individuals for certain family matters. Legal Aid gives priority to screening cases that are urgent or can directly benefit children. Individuals interested in applying for legal aid assistance are asked to contact their area service provider for specific information about their situation:

Bathurst

216 Main Street, Suite 205
Bathurst NB E2A 1A8
Telephone: 506-546-5010

Moncton

860 Main Street, Suite 402
Moncton NB E1C 1G2
Telephone: 506-853-7300

Campbellton

19 Aberdeen Street, Suite 201
Campbellton NB E3N 2J6
Telephone: 506-753-6453

Saint John

15 Market Square, 12th Floor
Saint John NB E2L 1E8
Telephone: 506-633-6030

Edmundston

121 rue de l'Église, Suite 209
Edmundston NB E3V 1J9
Telephone: 506-735-4213

Tracadie-Sheila

3512 Principale Street, Suite 1
Tracadie-Sheila NB E1X 1C9
Telephone: 506-395-1507

Fredericton

500 Beaverbrook Court, Suite 501
Fredericton NB E3B 4X5
Telephone: 506-444-2777

Woodstock

633 Main Street, Unit 122
Woodstock NB E7M 2C6
Telephone: 506-328-8127

Miramichi

673 King George Hwy., Suite 103
Miramichi Law Courts
Miramichi NB E1V 1N6
Telephone: 506-622-1061

Family Advice Lawyers are available at the new **Family Law Information Centre** in Saint John. If you live in Saint John, call **658-2261** for an appointment for up to two hours of consultation on how the court works, the rules of court, and the forms you must file in family law actions. You can also get general information on family law matters. Individuals in other regions can call toll free **1-855-266-0266** to find a Family Advice Lawyer in their area.

