

Case Law - Toney v. Toney Estate, 2018 NSSC 179



October 27, 2025



Toney Vs. Toney, 2018 NSSC 179

- In *Toney vs Toney*, the court addressed the division of matrimonial interests and the right of exclusive occupation concerning a family home located on reserve. The application for exclusive occupation was made by the survivor following the death of her spouse.





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Facts

- The applicant, Mrs. Toney, is the widow of a former chief of a band who died in July 2016.
- The applicant is not an Indian or a member of the band.
- The Applicant, together with her late husband, had occupied the family home for over 30 years; she had been active within the reserve community until her health deteriorated; and she has limited financial means





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- Applicant applied for an order for indefinite exclusive occupation of the family home on reserve, as well as a division of value of the matrimonial real property in her late husband's estate (pursuant to sections 21 and 34 of the FHRMIRA, respectively).
- The First Nation made representations to the court providing helpful context; in particular the First Nation requested that exclusive occupation be limited to 12 months, citing among other things housing shortages, and made submissions that assisted with the court's valuation of the MRP





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Decision

- Decision issued by the Supreme Court of Nova Scotia on July 25, 2018.
- After considering the 11 factors set out in s. 21(3) of the FHRMIRA, and applying s. 34 of the FHRMIRA to the facts, the judge awarded the following:
 - indefinite exclusive occupation of the family home on the condition that the applicant not cohabitate with anyone other than her children or grandchildren and that she maintain the home and not commit waste; and
 - an amount equal to one-half of the value of the family home (\$70,000) based on what the judge considered the most reliable, fair and appropriate valuation of the home at the time of Mr. Toney's death.
 - No entitlement for the applicant was found respecting a second Certificate of Possession





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- Pursuant to the Indian Act, Mr. Toney's Will was approved by the Minister of Indigenous Affairs in September 2016. In the Will, he left his estate to his wife and alternatively to their two sons.
- As Mrs. Toney is not a band member or an Indian, she is not eligible to obtain the Certificate of Possession under the Will.
- A non-member, non-Indian, named in a Will as beneficiary of a right to possession of reserve land may choose to:-
 - Refuse the gift; OR
 - Trigger a sale under section 50 of the Indian Act and receive the proceeds from the sale





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- Refusal of the gift in the Will may mean that the right to possession of reserve land could pass to the heirs under the intestacy provisions of the Indian Act.
- Mrs. Toney chose to make application under the FHRMIRA so she may not also benefit from the Will or intestacy provisions.
- Also important to note that the judge made it a condition of the order for exclusive occupation that the applicant not cohabit with anyone during her occupation, other than with one of her children or grandchildren,





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- Court disallowance of the gift in the Will may mean that the right to possession of reserve land could pass to the heirs under the intestacy provisions of the Indian Act.
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Relevant Provisions of FHRMIRA

- **Section 4 – Purpose:** Establishes provisional federal rules governing the use, occupation, and possession of family homes on First Nation reserves, and the division of value of MRP during or after a conjugal relationship.
- **Sections 16–21 – Exclusive Occupation Orders:**
Allow courts to grant one spouse exclusive occupation of the family home in cases of relationship breakdown, death, or family violence.





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Relevant Provisions of FHRMIRA continued

- **Sections 28–31 – Division of Matrimonial Interests:**
Provide that the court may order the division or transfer of the value of matrimonial rights or interests, even when land is held under a certificate of possession or other recognized interest under the **Indian Act**.
- **Section 48 – Determination by Court:**
Empowers the court to determine interests or rights in dispute under FHRMIRA.





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Summary

The judge applied FHRMIRA's provisional federal rules to grant:

- Exclusive occupation of the family home to the applicant spouse for a defined period under section 20;
- A monetary division reflecting the applicant's share of matrimonial interests under sections 28–31;
- Directions ensuring the First Nation Council received notice and had opportunity for input (sections 41–42).





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Summary continued

- The decision emphasized that FHRMIRA bridges the legislative gap left by the inapplicability of provincial family property law to reserve lands, ensuring equitable treatment while respecting Indigenous land tenure systems.
- *Toney v. Toney* reaffirmed that FHRMIRA provides the governing federal framework for resolving matrimonial property disputes involving reserve lands. It allows courts to recognize the occupational, possessory, and equitable rights of spouses, balancing individual fairness with collective First Nation interests.





Contact Information:

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Questions?



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