

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR
RIGHTS ACT: PROVISIONS IN PLAIN LANGUAGE

This document is a plain language version of the Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada).

Important Disclaimer

This document has been prepared for convenience only. It is intended as a plain language version of the federal Act. Because the federal Act is so complex, this version must remain very detailed and not too simple.

This document is not an official statement of the Family Homes on Reserves and Matrimonial Interests or Rights Act. Users should note that no responsibility is assumed for the accuracy or reliability of the contents of the document.

While every effort has been made to ensure the accuracy of the information in this document, no representation or warranty, express or implied, is made and no legal liability or responsibility for the completeness, accuracy or usefulness of any of the information is assumed.

For all purposes of interpreting and applying the law, users should consult the authoritative text of the Family Homes on Reserves and Matrimonial Interests or Rights Act. It can be viewed at <http://laws-lois.justice.gc.ca/eng/acts/F-1.2/>

In addition, this document does not provide any legal advice. Users should contact their own lawyer regarding any questions they may have with respect to the information provided.

PREAMBLE

Note: The Preamble only makes general statements of principle. Preambles are not binding statements of law.

This Act deals with certain family law matters on First Nation reserves. Provincial and territorial laws and the *Indian Act* do not cover these matters.

This Act sets out rules for spouses or common-law partners respecting their family home and their real property on reserves.

These rules apply

- during a conjugal relationship;
- on breakdown of the relationship; and
- on the death of a spouse or common-law partner.

Canada believes it is important that when resolving disputes between spouses or common-law partners, the court take into account

- the best interests of the children,
- the interest of a child who is a First Nation member to maintain a connection with that First Nation,
- the First Nation's views regarding the cultural, social and legal context.

Canada has recognized the inherent right of self-government as an aboriginal right. Canada views negotiations as the best method for implementing that right.

This Act is not intended to define the nature and scope of any right of self-government or to prejudge the outcome of any self-government negotiation.

Parliament wishes to advance First Nations law-making power over family homes on reserves and matrimonial interests and rights relating to lands and structures on reserves, subject to the Constitution.

SECTION 1: SHORT TITLE

1. This Act is called the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

SECTION 2: INTERPRETATION

2. (1) This section defines words and terms in the Act.

"council" means "council of the band" in the *Indian Act*.

"court" means a superior court in a province. [*see s. 2(1) of the Divorce Act*].

"designated judge" means a justice of the peace or judge designated by the cabinet of a province under this Act:.

"family home" means the home where the spouses or common-law partners normally live. It is the structure only, not the land. It need not be affixed to land but must be on reserve land. (e.g. a mobile home). If part of the home is used for work, only the residential part is included.

"First Nation" means a band under the *Indian Act*.

"First Nation member" means a person who is on the band list of a First Nation or who is entitled to have their name on that list.

"interest or right" means

- (a) the following rights or interests referred to in the *Indian Act*:
 - (i) a right to possession, Certificate of Possession or Certificate of Occupation allotted in accordance with s. 20 of the *Indian Act*,
 - (ii) a permit referred to in s. 28(2) of the *Indian Act*, and
 - (iii) a lease under ss. 53 or 58 of the *Indian Act*;
- (b) a right or interest on a reserve that is subject to
 - a land code or First Nation law under the *First Nations Land Management Act*,
 - any First Nation law enacted under a self-government agreement with Canada,

- any land governance code or Kanesatake Mohawk law under the *Kanesatake Interim Land Base Governance Act* ; and
- (c) a right or interest on a reserve
- in or to a structure recognized by the First Nation, or
 - recognized by a court order under s. 48.

"matrimonial interests or rights" means real property rights or interests held by a spouse or common-law partner, other than the family home. To be considered matrimonial, these interests and rights must have been

- (a) acquired during the conjugal relationship;
- (b) acquired before the conjugal relationship but in specific contemplation of the relationship; or
- (c) are not covered by (a) or (b) but appreciated in value during the relationship.

They do not include anything received as gifts or an inheritance.

"Minister" means the Minister of Indian Affairs and Northern Development.

"peace officer" has the same meaning as a "peace officer" under the *Criminal Code*.

"spouse" includes either of two persons who have entered in good faith into a marriage that is voidable or void.

(2) Other words and expressions used in this Act have the same meaning as in the *Indian Act*. [e.g. the term "common-law partners" means persons who have been living together in a conjugal relationship for a period of at least one year].

(3) An agreement between spouses or common-law partners includes an agreement reached through the use of dispute resolution.

(4) A former spouse or common-law partner is included when using the term "matrimonial interests or rights" in these sections: s. (1), s. (3), s. 6, ss. 15(2), (4) and (5) and ss. 16, 20, 26, 28-33, 43, 45, 48, 49 and 54.

(5) The term "application" does not limit the name, form and manner of the court proceeding under the court's rules.

(6) A reference to a "reserve" is also a reference to the Kanesatake Mohawk interim land base defined in the *Kanesatake Interim Land Base Governance Act*.

SECTION 3: HER MAJESTY

3. This Act is binding on Her Majesty in right of Canada or a province. (i.e. the federal and provincial Crown).

SECTIONS 4-6: PURPOSE AND APPLICATION

4. The purpose of this Act is to authorize First Nations to make laws regarding the use, occupation and possession of family homes on reserves and the division of the value of any rights or interests held by spouses or common-law partners in or to lands and structures on reserves. The Act establishes provisional rules and procedures that apply to First Nations that have not made their own laws. These laws and rules apply

- during a conjugal relationship,
- on breakdown of the relationship, or
- on the death of a spouse or common-law partner.

5. For greater certainty,

- (a) this Act does not affect title to reserve lands;
- (b) reserve lands continue to be set apart for the use and benefit of the First Nation; and
- (c) reserve lands continue to be lands reserved for the Indians within the meaning of Class 24 of s. 91 of the *Constitution Act, 1867*.

6. This Act applies to spouses or common-law partners only if at least one of them is a First Nation member or an Indian.

SECTIONS 7-11: ENACTMENT OF FIRST NATION LAWS

SECTION 7: POWER OF FIRST NATIONS

7. (1) A First Nation has the power to enact laws respecting

- the use, occupation and possession of family homes on its reserve(s)
- dividing the value of any rights or interests held by spouses or common-law partners in or to lands and structures on its reserve(s).

These laws apply during the conjugal relationship, on breakdown of the relationship or on the death of a spouse or common-law partner.

(2) These laws must include procedures for amending and repealing them and may also include

- (a) administrative provisions; and
- (b) provisions for enforcing certain court orders.

(3) A First Nation must notify the provincial Attorney General when it intends to enact laws.

(4) The federal *Statutory Instruments Act* does not apply to First Nation laws. [This means that there is no need to get federal approval for these laws.]

SECTIONS 8-10: COMMUNITY APPROVAL

8. (1) Before enacting its law, the council of the First Nation must give it to its members for approval.

(2) Every adult member of the First Nation (+18 years) is eligible to vote in the community approval process. This includes both resident and non-resident members.

(3) The council must 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 voting, and
- the content of the proposed law.

(4) The council must publish notice of the date, time and place of the vote.

9. (1) A First Nation law must be approved by a majority of the voters who participate in the vote.

(2) At least 25% of the eligible voters must participate in the vote.

(3) A council can, by resolution, increase the 25% requirement.

10. The council must quickly inform the Minister in writing of the result of the vote. The council must also send a copy of the approved law to the Minister, any organization designated by the Minister, and the provincial Attorney General.

SECTION 11: COMING INTO FORCE

11. (1) The First Nation's law comes into force legally when approved by the voters or any later day specified by the law. Courts must recognize these laws.

(2) A certified copy of the First Nation law made by an officer of the First Nation can be used in court. There is no need to prove the officer's signature or official position.

(3) The council must keep an up-to-date copy of the First Nation law for public inspection at locations designated by the council.

(4) If a First Nation amends its law, the council must send a copy of the amended law to the Minister, any organization designated by the Minister, and the provincial Attorney General.

(5) If a First Nation repeals its law, the council must notify the Minister, any organization designated by the Minister, and the provincial Attorney General.

(6) The Minister must maintain a list of the First Nations whose laws are in force and must publish it and any amendments to it in any manner that he or she considers appropriate.

SECTIONS 12-52: PROVISIONAL FEDERAL RULES

SECTION 12: APPLICATION

12. (1) The provisional rules set out in ss. 13-52 only apply to First Nations that do not have their own laws in force. First Nations under the *First Nations Land Management Act* or with a self-government agreement are covered by s. (2) and (3).

(2) The provisional rules (ss. 13-52) only apply to a First Nation under the *First Nations Land Management Act*, if

- (a) its land code is not in force; and
- (b) it does not have its own law or procedures in force.

(3) The provisional rules (ss. 13-52) only apply to a First Nation that manages its reserve land under a self-government agreement with Canada if

- (a) the Minister declares that they apply, on the recommendation of the parties to the agreement; and
- (b) the First Nation does not have its own law in force.

(4) The Minister's declaration in s. (3)(a) must specify that ss. 13-52 apply until the First Nation's law come into force.

(5) The Minister must keep and publish an up-to-date list of First Nations covered by the declaration.

(6) A First Nation covered by a declaration must notify the Minister when it makes its own law.

SECTIONS 13-27: FAMILY HOME

SECTIONS 13-15: OCCUPATION

13. A spouse or common-law partner may occupy the family home during the conjugal relationship. This includes non-members and non-Indians.

14. When a spouse or common-law partner dies, the surviving spouse or partner, may occupy the family home for a period of 180 days. This includes non-members and non-Indians.

15. (1) Subject to the *Indian Act*, a spouse or common-law partner must not dispose of or encumber [e.g. mortgage] the family home during the conjugal relationship without the free and informed consent in writing of the other spouse or partner.

(2) A court may set aside a disposition or encumbrance contrary to s. 15(1) and impose conditions on any future transaction. The spouse or partner must apply to the court.

(3) The disposition or encumbrance cannot be set aside if some other person paid for it in good faith.

(4) A spouse or common-law partner who did not consent to the transaction may claim damages from the other spouse or partner.

(5) The spouse or common-law partner who made the transaction is the one who must prove they got consent.

(6) A court may allow a spouse or common-law partner to dispose of or encumber the family home without getting consent if the other spouse or common-law partner

- cannot be found,
- is not capable of consenting, or
- is unreasonably withholding consent.

SECTIONS 16-19: EMERGENCY PROTECTION ORDER

16. (1) A spouse or common-law partner may apply to the court for an emergency protection order. The application may be made without notice to the other spouse or common-law partner. The order may last for up to 90 days and may contain one or more provisions in s. 16(5). The judge may make the order if satisfied that

- (a) family violence has occurred; and
- (b) the order should be made because of the seriousness or urgency of the situation to protect persons or property.

(2) A spouse or common-law partner may apply even if he or she was forced to vacate the family home as a result of family violence.

(3) A peace officer or other person may apply for the emergency protection order on behalf of the spouse or common-law partner with that person's consent. If consent is not given, they may apply with permission of the judge. The judge must follow federal regulations on this point.

(4) The judge must consider the following:

- (a) the history and nature of the family violence;
- (b) the existence of immediate danger to persons at risk of harm or property at risk of damage;
- (c) the best interests of any child in their care, including a child's interest in keeping a connection with their First Nation;
- (d) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner;
- (e) whether someone else holds a right or interest in or to the family home;
- (f) how long the applicant has lived on the reserve; and
- (g) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse).

(5) The order may:

- (a) give the applicant exclusive occupation of the family home and reasonable access to the home;
- (b) require any person to leave the family home and not come back;
- (c) direct a peace officer to evict the other spouse or common-law partner and any other person from the family home;
- (d) prohibit any person who was required to leave the family home from going near the family home;
- (e) direct a peace officer to accompany the other spouse or common-law partner or other person in order and supervise the removal of their personal belongings; and
- (f) order anything else the judge considers necessary to protect persons or property at risk.

(6) Everyone named in the order must obey it when they learn of it.

(7) A peace officer must give a copy of the order to the persons named in the order, either directly or in another way allowed by the court. The peace officer must inform the applicant as soon as each person gets a copy.

(8) The peace officer is not personally liable for anything done (or not done) in good faith.

(9) In this section, "family violence" means any of the following things done by one spouse or common-law partner against the other, a child cared for by either them, or any other person who normally lives in the family home:

- (a) wilful and unlawful force, (not including self-defence);
- (b) intentionally or recklessly causing bodily harm or damage to property;
- (c) intentionally or recklessly doing (or threatening) something that causes a reasonable fear of bodily harm or damage to property;
- (d) sexual assault, sexual abuse or threatening to do either of those things;
- (e) unlawful forcible confinement; or
- (f) criminal harassment.

17. (1) The justice of the peace or judge must forward a copy of the order under s. 16 and all the supporting materials to the court.

(2) The court must review the order within three working days or as soon as a judge becomes available.

(3) The court, after reviewing the order and the materials, must:

- (a) confirm the order, if satisfied that it was supported by sufficient evidence; or
- (b) order a new hearing of the matter by the court, if not satisfied that it was supported by sufficient evidence.

(4) The court must notify the parties and any person named in the order of its decision and of any resulting procedures.

(5) A confirmed order is deemed to be an order of the court.

(6) Even if the court orders a new hearing, the order remains effective unless the court orders otherwise.

(7) The new hearing must consider

- the materials present at the original hearing,
- any new evidence presented at the new hearing, and
- any evidence about the collective interests of First Nation members.

(8) At the new hearing, the court may confirm, change or revoke the order under s. 16 and make it last longer than the 90-day period [s. 16(1)].

(9) An application made under s. 18 must be considered at the new hearing, unless the new hearing has already begun.

18. (1) Any person involved in an exclusive occupation order [ss. 16 or 17] can apply to the court to have it changed or revoked. The application must be made

- (a) within 21 days after receiving notice of the order, or within any longer time that the court allows; and
- (b) at any time, if the situation has changed significantly.

(2) The court may confirm, change or revoke the order and may make it last longer than the 90-day period [s. 16(1)].

(3) The court hearing must consider

- the materials present at the original hearing,
- any new evidence presented at the new hearing, and
- any evidence about the collective interests of First Nation members.

19. (1) Subject to s. 19(2), the court may order:

- (a) a ban on the public attending all or part of a s. 17 new hearing or a s. 18 hearing;
- (b) a publication ban on the identity of a party, witness or child; and
- (c) a disclosure ban on any related information in a court document or record.

(2) The court may only make the order under s. 19(1) if satisfied that

- (a) it is necessary for the safety of a party or witness or the safety or physical or emotional well-being of a child; or
- (b) protecting a party, witness or child from undue hardship or adverse effect outweighs the public's right to the information.

SECTIONS 20–21: EXCLUSIVE OCCUPATION ORDER

20. (1) A court may order that exclusive occupation of and reasonable access to the family home be given to a spouse or common-law partner – whether or not the person is a First Nation member or an Indian. The court may attach conditions to and limit the time of the order.

(2) The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s. 20(1).

(3) The court must consider the following when making an exclusive occupation order:

- (a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;
- (b) the terms of any agreement between the spouses or common-law partners;

- (c) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;
- (d) how long the applicant has lived on the reserve;
- (e) the financial situation and the medical condition of the spouses or common-law partners;
- (f) the availability of other suitable housing on the reserve;
- (g) any existing order related to the breakdown of the conjugal relationship;
- (h) any family violence;
- (i) any psychological abuse by one of the spouses or common-law partners against the other, any child in their care, or any other family member who normally lives in the family home;
- (j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse);
- (k) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner;
- (l) whether someone else holds a right or interest in or to the family home; and
- (m) the views given by any other person the court allows.

(4) The order may:

- (a) require any person to leave the family home and not come back;
- (b) require the other spouse or common-law partner to preserve the family home until they leave;
- (c) direct the applicant to pay the other spouse or common-law partner for the cost of other housing; and
- (d) requiring either spouse or common-law partner to pay costs for repair and maintenance of the family home and other related costs.

(5) When the court makes the exclusive occupation order under this section, any previous order made under ss. 16-18 is revoked, unless the court says otherwise.

(6) If the situation changes significantly, any party or person named in the order, or who holds a right or interest in or to the family home, may apply to the court to have the order changed or revoked. The court will then confirm, vary or revoke the order.

(7) Anyone who applies for an order under this section must quickly send a copy of it to

- any adult who is being asked to vacate the family home,
- any person who holds a right or interest in or to the family home, and
- any other person specified in the court's rules.

21. (1) If a spouse or common-law partner dies, the survivor can apply to the court for exclusive occupation. This includes survivors who are non-members. The court may order that the survivor get exclusive occupation of and reasonable access to the family home, subject to the conditions and time specified by the court.

(2) The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s. 21(1).

(3) The court must consider the following when making an exclusive occupation order:

- (a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;
- (b) the terms of the will;
- (c) the terms of any agreement between the spouses or common-law partners;
- (d) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;
- (e) the medical condition of the survivor;
- (d) how long the survivor has lived on the reserve;
- (g) whether the family home is the only property of significant value in the estate;
- (h) the interests or rights of any other person in or to the family home;

- (i) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner;
- (j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse); and
- (k) the views given by any other person the court allows.

(4) The order may require:

- (a) the survivor to preserve the condition of the family home;
- (b) any person to leave the family home and not come back; and
- (c) the executor or administrator handling the estate or a person with an interest or right in or to the family home to pay for the costs of the repair and maintenance of the family home and other related liabilities.

(5) The survivor must quickly notify the other parties about the order. However, a peace officer must give a copy of the order to those persons if the court directs.

(6) If the situation changes significantly, any party or person named in the order, or who holds of a right or interest in or to the family home, may apply to the court to have it changed or revoked. The court will then confirm, vary or revoke the order.

(7) Anyone who applies for the order must quickly send a copy of the court application to

- the executor or administrator handling the estate, if known to the applicant,
- the Minister,
- any adult who is being asked to vacate the family home,
- any person who holds a right or interest in or to the family home, and
- any other person specified in the court's rules.

SECTIONS 22-27: OTHER PROVISIONS

- 22.** A court has authority to decide that family violence has occurred regardless of any criminal proceeding.
- 23.** An exclusive occupation order [ss. 16-18, 20 or 21] does not
- change who holds a right or interest in or to the family home,
 - prevent an executor or administrator handling the estate from transferring the right or interest to a beneficiary, or
 - prevent a court from ordering the transfer of the right or interest [ss. 31 or 36].
- 24.** The person who got an order under ss. 17, 18 or 20 must quickly give notice of the order to anyone named in the order. However, a peace officer must give a copy of the order to those persons if the court directs.
- 25.** The family home includes all the adjacent land necessary to use and enjoy it, if the family home was allotted under s. 20 of the *Indian Act*. [See: ss. 16, 20 and 21]
- 26.** A spouse, common-law partner or survivor who gets an exclusive occupation (ss. 16-18, 20 or 21) is bound by any lease given to another, during the order.
- 27.** Any person who disobeys an order under ss. 16-19, s. 20(4)(a) or s. 21(4)(b) is guilty of an offence punishable on summary conviction and is liable
- (a) for a first offence, to a maximum fine of \$2,000 or to imprisonment for a maximum term of three months, or to both; or
 - (b) for a subsequent offence, to a maximum fine of \$5,000 or to imprisonment for a maximum term of one year, or to both.

SECTIONS 28-40: DIVISION OF THE VALUE OF MATRIMONIAL INTERESTS OR RIGHTS

SECTIONS 28-33: BREAKDOWN OF A CONJUGAL RELATIONSHIP

- 28.** (1) When a conjugal relationship breaks down, each spouse or common-law partner is entitled to receive 50% of the value of the other spouse or partner's right or interest in the family home as well as other compensation under ss. 28(2) and (3). The values are calculated as of the valuation date. The spouse or partner must make an application under s. 30.

(2) A spouse or common-law partner who is a member of a First Nation gets additional compensation totalling the amounts in s. (a) plus (b) plus (c):

- (a) 50% of the value of matrimonial rights or interests in or to lands and structures acquired both
 - during the relationship, and
 - before the relationship (but in specific contemplation of the relationship);
- (b) the larger of the amounts in s. (i) and (ii):
 - (i) 50% of the amount by which the value of the matrimonial rights or interests in or to lands and structures acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the conjugal relationship started and the valuation date, and
 - (ii) an amount equal to the difference between
 - any payments made by the spouse or common-law partner towards improvements made to these lands and structures, and
 - the amount of debt outstanding for making those payments as of the valuation date; and
- (c) if the lands and structures referred to in s. (b)(i) did not increase in value during the relationship, an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these lands and structures, and
 - the amount of debts outstanding for making those payments as of the valuation date.

(3) A spouse or common-law partner who is NOT a member of the First Nation, gets additional compensation totalling the amounts in s. (a) plus (b) plus (c) below:

- (a) 50% of the value of matrimonial rights or interests in or to structures only [*not lands*] acquired both
 - during the conjugal relationship, and
 - before the conjugal relationship (but in specific contemplation of the relationship);
- (b) the larger of the amounts in s. (b)(i) and (b)(ii):

- (i) 50% of the amount by which the value of the matrimonial rights or interests in or to structures only [*not lands*] acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the relationship started and the valuation date, and
 - (ii) an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these structures, and
 - the amount of debts outstanding for making those improvements as of the valuation date; and
- (c) the amounts of s. (c)(i) plus s. (c)(ii):
- (i) for lands (other than the family home) acquired
 - during the relationship,
 - before the relationship (but in specific contemplation of the relationship) or that increased in value during the relationship,an amount equal to the difference between
 - payments made by the spouse or common-law partner towards improvements made to these lands, and
 - the amount of debts outstanding for making those improvements as of the valuation date, and
 - (ii) for structures acquired before the conjugal relationship (but not in specific contemplation of the relationship) that did not increase in value during the relationship, an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these structures, and
 - the amount of debts outstanding for making those improvements as of the valuation date.
- (4) The value of the above rights or interests is the difference between
- (a) the amount a buyer would reasonably be expected to pay for comparable rights or interests to the ones at issue; and
 - (b) the amount of any debts outstanding for acquiring those rights or interests or to improve or maintain the lands and structures.

(5) Spouses or common-law partners may agree on another way to value their rights or interests.

(6) In this section, "valuation date" means

- (a) in the case of spouses, the earliest of the following days:
 - (i) the day they separated, with no reasonable prospect of reconciliation,
 - (ii) the day they divorced,
 - (iii) the day when the marriage was declared a nullity,
 - (iv) the day when a spouse made an application to court about the breakdown of the marriage, and
 - (v) the day when a spouse made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests; or
- (b) in the case of common-law partners, the earliest of the following days:
 - (i) the day when a common-law partner showed they did not want to continue the relationship,
 - (ii) the day when a common-law partner made an application to court about the breakdown of the relationship, and
 - (iii) the day when a common-law partner made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests.

29. If a spouse or common-law partner applies, a court may change the amount owed [s. 28] if that amount is unjust given the following factors:

- (a) the applicant's financial responsibility for the children;
- (b) the amount of debts of each spouse or common-law partner;
- (c) any significant change in the value of the rights or interests between the valuation date and the day the order was made;
- (d) whether a spouse or common-law partner can get exclusive occupation of the family home by agreement or order;

- (e) the availability of comparable housing;
- (f) the length of their relationship;
- (g) any agreement between the spouses or common-law partners;
- (h) whether the value of the rights or interests is less because of something done by the other spouse or common-law partner, e.g. selling for too little, improvident depletion and improperly selling or encumbering; or
- (i) anything else decided by the court.

30. (1) If a spouse or common-law partner applies within 3 years after no longer living together, a court may decide any matter about what they owe each other [ss. 28 and 29] including the following:

- (a) the amount payable by a spouse or common-law partner to the other; and
- (b) the following methods for settling the amount payable:
 - (i) payment of a lump sum,
 - (ii) payment by installments,
 - (iii) transferring a right or interest [s. 31],
 - (iv) setting-off any amounts owed by a spouse or common-law partner to the other, or
 - (v) any combination of the above methods.

(2) If a spouse or common-law partner applies after the 3-year period, a court may extend the 3-year period however long it considers appropriate, if the court is satisfied that the applicant did not apply on time because

- (a) the delay was beyond the applicant's control; or
- (b) the applicant only became aware of the rights or interests after the 3-year period had expired.

31. (1) If a spouse or common-law partner who is a First Nation member applies, a court may transfer to him or her the following rights or interests:

- a right to possession of land or structures allotted under s. 20 of the *Indian Act* (with or without a Certificate of Possession or a Certificate of Occupation),
- a right or interest (on reserve) subject to a land code or First Nation law under the *First Nations Land Management Act*,
- a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada,
- a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the *Kanesatake Interim Land Base Governance Act*,
- another right or interest (on reserve) in or to a structure recognized by the First Nation, or
- a right or interest (on reserve) recognized by a court order under s. 48.

Before making the transfer, the court must be satisfied that

- (a) the spouses or common-law partners already freely agreed in writing to the transfer and the agreement is not unjust considering the factors in s. 29;
- (b) the applicant already held the right or interest while living together; or
- (c) the transfer is appropriate because the spouses or common-law partners hold more than one such right or interest.

(2) The court's power to order a transfer under s. 31(1)

- (a) can be made despite ss. 24 and 49 of the *Indian Act*;
- (b) is subject to any land code or First Nation's law under the *First Nations Land Management Act*;
- (c) is subject to any First Nation law enacted under a self-government agreement with Canada; and
- (d) is subject to any land governance code or Kanesatake Mohawk law under the *Kanesatake Interim Land Base Governance Act*.

32. If a spouse or common-law partner applies, a court may make any order it considers necessary to restrain the improvident depletion of the family home and the matrimonial rights or interests in order to protect the following:

- (a) the potential right or interest the applicant might get from a court under ss. 20 or 31; or
- (b) the value of the rights or interests used to calculate what might be payable to the applicant under s. 30.

33. If the spouses or common-law partners make a written agreement that sets out the amount payable to each other and the methods for settling the amount by at least one of the methods referred to in s. 30(1)(b)(i), (ii) or (iv), a court may enforce that agreement if

- the party's consent to the agreement was free and informed, and
- the agreement was not unjust.

SECTIONS 34-40: DEATH OF A SPOUSE OR COMMON-LAW PARTNER

34. (1) When a spouse or common-law partner dies, the survivor is entitled to receive 50% of the value of the deceased spouse or partner's right or interest in the family home as well as other compensation under s. 34(2) and (3). The values are calculated as of the valuation date. The survivor must make an application under s. 36.

(2) A survivor who is a member of the First Nation gets additional compensation totalling the same amounts as in s. 28 (2).

(3) A survivor who is NOT a member of the First Nation gets additional compensation totalling the same amounts as in s. 28(3).

(4) The rights or interests are valued the same way as in s. 28(4).

(5) The survivor and the executor or administrator handling the estate may agree on another way to value the above rights or interests.

(6) The "valuation date" for the purposes of this section means

- (a) in the case of spouses, the earliest of the following days:
 - (i) the day before the death of the spouse,
 - (ii) the day when the spouses stopped living together because of their breakup, and

- (iii) the day when the survivor made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests; or
 - (b) in the case of common-law partners, the earliest of the following days:
 - (i) the day before the death of the spouse, and
 - (ii) the day when the survivor made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests.

35. If the executor or administrator handling the estate applies, a court may change the amount owed to the survivor [s. 34] if

 - the spouses or partners had already resolved the issue by agreement or court decision or
 - the amount would be unjust, e.g. children of the deceased would not be adequately provided for.

36. (1) If the survivor applies within 10 months after the day their spouse or common-law partner died, a court may make an order about the survivor's entitlement [ss. 34 and 35] including:

 - (a) the amount payable by a spouse or common-law partner to the other; and
 - (b) the following methods for settling the amount payable:
 - (i) payment of a lump sum,
 - (ii) payment by installments,
 - (iii) if the survivor is a First Nation member, transferring the following rights or interests:
 - a right to possession of land or structures allotted under s. 20 of the *Indian Act* (with or without a Certificate of Possession or a Certificate of Occupation),
 - a right or interest (on reserve) subject to a land code or First Nation law under the *First Nations Land Management Act*,

- a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada,
- a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the *Kanesatake Interim Land Base Governance Act*,
- another right or interest (on reserve) in or to a structure recognized by the First Nation, or
- a right or interest (on reserve) recognized by a court order under s. 48; or

(iv) any combination of the above methods.

(2) If the survivor applies after the 10-month period, a court may extend the 10-month period for however long it considers appropriate, if the survivor did not apply on time because:

- (a) the survivor did not know of the death of their spouse or common-law partner until after the 10-month period expired;
- (b) the delay was beyond the survivor's control; or
- (c) the applicant only became aware of the rights or interests after the 10-month period had expired.

(3) The court's power to order a transfer under s. (1)

- (a) can be made despite ss. 24 and 49 of the *Indian Act*;
- (b) is subject to any land code or First Nation's law under the *First Nations Land Management Act*;
- (c) is subject to any First Nation law enacted under a self-government agreement with Canada; and
- (d) is subject to any land governance code or Kanesatake Mohawk law under the *Kanesatake Interim Land Base Governance Act*.

(4) If a survivor or the executor or administrator handling the estate applies, the court may change of the terms of any trust under the will in order to allow payment of the amount.

(5) Anyone who applies for the order must quickly send a copy of the application to the Minister, to any other person specified in the court's rules and to:

- (a) the executor or administrator handling the estate, if the applicant is the survivor and those persons are known to the survivor; or
- (b) to the survivor, if the applicant is the executor or administrator.

(6) The executor or administrator handling the estate (or the Minister if no executor or administrator) must quickly send a copy of the application to the beneficiaries.

37. A survivor cannot benefit from the deceased individual's will or from ss. 48 to 50.1 of the *Indian Act* in respect of the family home or matrimonial rights or interests, once a court decides that an amount is payable to the survivor [ss. 30 or 36].

38. (1) Subject to ss. 38(2), the executor or administrator handling the estate must not distribute the assets of the estate until:

- (a) the survivor consents in writing to the proposed distribution;
- (b) the 10-month period and any extension allowed by the court have expired and no s. 36(1) application has been made within those periods; or
- (c) an application made under s. 36(1) is finished.

(2) Subsection 38(1) allows reasonable advances of money to be made to survivors or other dependants of the deceased spouse or common-law partner for their support.

(3) In a case where an amount is payable [s. 36] to two survivors (namely a common-law partner and a spouse with whom the deceased individual was no longer living together), the executor or administrator handling the estate must pay the surviving common-law partner first before paying the surviving spouse.

39. If a survivor applies, a court may make any order it considers necessary to restrain the improvident depletion of the family home and the matrimonial rights or interests in order to protect the following:

- (a) the potential right or interest the applicant might get from a court under ss. 21 or 36; or
- (b) the value of the rights or interests used to calculate what might be payable to the applicant under s. 36.

40. If a survivor and the executor or administrator handling the estate make a written agreement that sets out the amount payable to the survivor and the methods for settling the amount by at least one of the methods referred to in s. 36(1)(b)(i) or (ii), a court may enforce that agreement if

- the survivor's consent to the agreement was free and informed, and
- the agreement was not unjust.

SECTIONS 41-42: NOTICE TO COUNCIL AND VIEWS OF COUNCIL

41. (1) Anyone who applies for an order must quickly send a copy of the application to the First Nation council. This rule does not apply to emergency protection orders (s. 16) and confidentiality orders (s. 19).

(2) Before making a decision, the court must hear any representations the council wants to make regarding the cultural, social and legal context of the application and council's views on whether or not the order should be made.

42. Anyone who gets a court order must send quickly a copy of the order to the First Nation council. This rule does not apply to confidentiality orders (s. 19).

SECTIONS 43 – 46: JURISDICTION OF COURTS

43. (1) In this section, “application” means an application for any of the following:

- setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15),
- granting exclusive occupation of the family home (s. 20),
- varying the amount owed on division of the value of matrimonial rights or interests (s. 29),
- determining the amount payable to the spouse or common-law partner and the methods for settling the amount payable, when dividing the value of matrimonial rights or interests (s. 30),
- transferring rights or interests (s. 31),
- restraining the improvident depletion of the family home and the matrimonial rights or interests (s. 32),
- enforcing a written agreement between spouse or common-law partners setting out and settling the amount payable after they stop living together (s. 33),
- determining whether a spouse, a common-law partner or a survivor holds a right or interest (s. 48) or

- enforcing an order as if it had been made in favour of a First Nation, on the application of a person who is not a First Nation member or an Indian (s. 52).

(2) The divorce court will handle the application during the divorce proceeding.

(3) During other family law proceedings (not divorce), the court handling that matter will handle the application.

(4) If there are no divorce or other family law proceedings, the application will be handled by the following court:

- the normal court in the province where the lands and structures are situated; or
- if the property is in more than one province, the court in one of those provinces agreed upon by both spouses or common-law partners or if the parties cannot agree, in the province where they normally lived.

(5) If the court referred to in s. 43(3) is not a superior court, the application must be heard by the superior court of the province.

44. (1) The court handling the distribution of property on the death of a spouse or common-law partner will handle an application made by a survivor, the executor or administrator handling the estate for

- granting exclusive possession of the family home (s. 21),
- varying the amount owed when dividing the value of matrimonial rights or interests (s. 35),
- determining the amount payable and the methods for settling the amount after dividing the value of matrimonial rights or interests (s. 36),
- restraining the improvident depletion of the family home and matrimonial rights or interests (s. 39), or
- a written agreement between a survivor and the executor or administrator handling the estate that sets out the amount payable to the survivor and methods for settling the amount (s. 40).

(2) If no court is handling the application referred to in s. 44(1), the application will be handled by the following court:

- the normal court in the province where the lands and structures are situated; or
- if the property is situated in more than one province, the court in one of those provinces agreed upon by both spouses or common-law partners or if the parties cannot agree, in the province where they normally lived.

(3) If the court referred to in s. 44(1) is not a superior court, the court handling the application must be the superior court of the province, unless the Minister has consented to that court or directed the matter to that court [s. 44 of the *Indian Act*].

45. Any application can be heard together with another application, except the following:

- applications for emergency protection orders (s. 16),
- applications to vary or revoke orders of a designated judge (s. 18), and
- applications for confidentiality orders (s. 19).

46. (1) An order made in a divorce proceeding under this Act is appealed in the same way any order under the *Divorce Act*.

(2) Any other order made under this Act may be appealed to the normal appeal court, except the following:

- emergency protection orders (s. 16)
- orders sent to the court of jurisdiction of the designated judge for review (s. 17),
- applications to vary or revoke orders of a designated judge (s. 18) and
- confidentiality orders (s. 19).

SECTION 47: RULES OF COURT

47. (1) These definitions apply in s. 47:

“appellate court” means the court that hears an appeal from a court.

“competent authority” means the body, person or group that makes the procedural rules for a court or an appellate court.

(2) The competent authority may make rules of procedure for cases involving emergency protection orders, including rules for:

- (a) regulating the court’s practice and procedure, including the addition of parties to the proceedings;
- (b) hearing family law proceedings without an oral hearing;
- (c) regulating the court’s sittings;
- (d) fixing and awarding of costs;
- (e) prescribing and regulating the duties of officers of the court;
- (f) the transfer of proceedings under this Act to or from the court; and
- (g) prescribing and regulating other related matters.

(3) A competent authority's power to make rules must be exercised in the same way as other court rules in the province.

(4) The *Statutory Instruments Act* (Canada) applies to the rules made by a competent authority (other than a judicial or quasi-judicial body).

SECTIONS 48–52: OTHER PROVISIONS

48. A court can decide whether a spouse, a common-law partner, a survivor or a deceased party's estate holds a right or interest in or to a land or structure.

49. (1) An application by a spouse or common-law partner to divide the value of matrimonial rights or interest (ss. 29-33) may be continued by or against the executor or administrator handling the estate, if at least one party dies before the application is heard.

(2) If the survivor dies before the application is heard, the executor or administrator handling the survivor's estate may carry on applications on the following matters:

- determining the amount payable and the methods for settling the amount after dividing the value of matrimonial rights or interests (s. 36),
- restraining the improvident depletion of the family home and matrimonial rights or interests (s. 39), or
a written agreement between a survivor and the executor or administrator that sets out the amount payable to the survivor and methods for settling the amount (s. 40).

(3) If the survivor dies before the application is heard, the executor or administrator handling the estate on the following matters may carry on application against the executor or administrator if the survivor dies before the application is heard:

- varying the amount owed after dividing the value of matrimonial rights or interests (s. 35), or
- enforcing a written agreement between a survivor and the executor of the will or the administrator of the estate that sets out the amount payable to the survivor and methods on settling the amount payable (s. 40).

50. Anyone who applies for the order must quickly send a copy of the order (except a confidentiality order s. 19) to the Minister or to the council if

- (a) the First Nation has a land code under the *First Nations Land Management Act*;
- (b) the reserve is on the Minister's list [s. 12(5)]; or

- (c) the land is the Kanesatake Mohawk interim land base under the *Kanesatake Interim Land Base Governance Act*.

51. Provincial laws of evidence apply to proceedings under this Act.

52. (1) The council may enforce the following orders on request by a person who is not a First Nation member or an Indian:

- orders on the amount payable to the spouse, common-law partner or survivor [ss. 30(1) & 36(1)];
- orders on how the amount will be paid [ss. 30(1) & 36(1)];
- orders enforcing a written agreement on the amount payable and the methods for paying it [s. 33 & 40];

(2) If council does not enforce the order, the court may require the person against whom the order was made to pay the amount into court.

SECTION 53: REGULATIONS

53. (1) The federal cabinet may make regulations that they consider necessary for carrying out the purposes and provisions of this Act, including regulations regarding rules for proceedings under this Act and prescribing anything required under this Act.

(2) The regulations on rules for proceedings under this Act prevail over the rules of practice and procedure in s. 47.

SECTIONS 54-55: TRANSITIONAL PROVISIONS

54. (1) **If the provisional federal rules (ss. 13-52) begin to apply to a First Nation,**

- (a) **the provisional federal rules on dividing of the value of matrimonial rights or interests (ss. 28-33) apply to spouses or common-law partners, if those sections had already begun to apply to that First Nation when they stopped living together; and**
- (b) **the following provisional federal rules apply to survivors, if those sections had already begun to apply to that First Nation when the death occurred**
- **the occupation of the family home for a period of time after the day a spouse or common-law partner died (s. 14),**
 - **the exclusive occupation of the family home after a**

- spouse or common-law partner died (s. 21), and
- the provisions regarding dividing the value of matrimonial rights or interest when a spouse or common-law partner dies (s. 34-40).

(2) If the provisional federal rules (s. 13-52) stop applying to a First Nation,

- (a) proceedings started under those rules must be completed under those rules;**
- (b) the rule on getting an authorization for or setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15) continues to apply, if the rules still applied when the transaction occurred, and proceedings are governed by the notice, jurisdiction and practice and procedure and other requirements in ss. 41-51;**
- (c) the rules on dividing the value of matrimonial rights or interests (ss. 28-33) continue to apply if the rules still applied when the spouses or common-law partners stopped living together, and proceedings are governed by the notice, jurisdiction, practice and procedure and other requirements in ss. 41-52; and**
- (d) the following rules continue to apply to survivors, if the death occurred before those rules stopped applying:**
 - the occupation of the family home after a spouse or common-law partner dies (s. 14),
 - the exclusive occupation of the family home after a spouse or common-law partner dies (s. 21), and
 - dividing the value of matrimonial rights or interest on after a spouse or common-law partner dies (s. 34-40),**and proceedings under ss. 21, 35, 36, 39 or 40 are governed by**
 - the rule that a right or interest in or to the family home is not affected by an order under ss. 16-18, 20 or s. 21 and is transferrable (s. 23),
 - the rule that the exclusive occupation of the family home includes adjacent property (s. 25),
 - the rule that a spouse or common-law partner or survivor who is granted exclusive occupation of the family home is bound by a lease (s. 26),
 - the provision of offences for disobeying orders (s. 27) and
 - the notice, jurisdiction, practice and procedure and other requirements (s. 41-52).

55. The provisional federal rules do not apply to a First Nation defined in s. 2(1) of the *First Nations Land Management Act* for the first three years after this section comes into force. [June 19, 2013.]

SECTION 56: COMING INTO FORCE

56. (1) This Act comes into force on a day or days to be fixed by order of the federal Cabinet [December 16, 2013], except

- **the provisional federal rules (s. 12-52), and**
- **the transitional provisions (s. 54 and 55).**

(2) The provisional federal rules (s. 12-52) come into force one year after the day on which the provision regarding the power of First Nations to enact First Nation laws (s. 7) comes into force. [December 16, 2014]

[Note: Ss. 54 - 56 came into force when the Bill was given Royal assent – June 19, 2013.]