

# St. Mary's Indian Band

---

**Draft Matrimonial Real Property Law**

**Community Meeting January 29, 2015**

**5pm-7pm**



# The Issue

---

- When a relationship breakdown occurs in a First Nation community, the rules of how spouses can divide property are uncertain.
- This is because provinces have no authority to legislate in respect of matrimonial property on reserves.
- The Indian Act makes no reference to the issue of matrimonial property, creating a legislative gap on-reserve.

# Housing Shortages

---

- This has meant that when a relationship breakdown occurs, if the spouse with custody of the children is not named on the CP, he or she may have to leave the reserve with the children.
- Housing shortages on reserve land add to the problem. For a non-member living on a reserve with a band member, the end of the relationship usually means the end of the opportunity to live on the reserve.

# Members Have No Remedy

---

- Even when two members are in a relationship and are named jointly on the CP, if there is a disagreement over who should stay in the home, a judge has had no authority to decide which spouse can stay in the home with the children. The situation cannot be resolved in the courts.

# Compensation Orders

---

- The court can, however, order one spouse to pay money to the other spouse to compensate for the spouse's share of the value of the matrimonial home.
- These court orders are hard to enforce due to restrictions on the seizure of property and garnishment on reserves.

# On-Reserve Uncertainty

---

- The lack of laws related to on-reserve matrimonial property means that those in relationships living on Reserve do not have the same legal rights or access to the same legal remedies as people who live off a reserve.

# Family Violence

---

- Although it is possible to obtain a restraining order under the *Criminal Code*, the courts cannot order an abusive spouse to leave the matrimonial home if the Certificate of Possession is in the abusive spouse's name.

## *Family Homes on Reserves and Matrimonial Interests or Rights Act*

---

- On December 16, 2013, this Act came into force.
- St. Mary's Indian Band will be bound by this law if they do not develop their own law by **December 16, 2017**. Until then the new law does not apply.
- The Band must develop its own law under Land Code.

# How will the new law be passed?

---

- Council will approve a draft law
- The draft law must be approved at a meeting of members
- Quorum is 10% of eligible voters
- Prior to the vote, St. Mary's Indian Band will provide information on the new law and ask for member feedback

# The MRPL

---

## Principles

- The focus of is on the family home and only if located on the Reserve.
- The law does not deal with custody, spousal support or division of money or possessions.

# Land Codes

---

- Rights of the children to stay in the home and community
- Best interests of the children are paramount
- Legal recognition of agreements between members (marriage contracts)
- Ability of members to have access to courts
- Recognition of temporary interest to remain in the family home if spouse with custody is not a member
- Ability of a spouse to stay in the family home if the other spouse passes away for 180 days and to have a presumed 50% interest in the home

# Who does it apply to?

---

- Married and common-law relationships where one or both are members and they live on-Reserve in a family home which they have made improvements to or which has appreciated during the relationship
- A family home could be:
  - Social housing, Rent to own/CMHC, Mobile home, Rental housing
  - Home with no mortgage on CP lands
  - Home with no mortgage on lands that have not been allotted

# Matrimonial Contracts

---

- Members can contract out of the division of the family home sections of the law by entering into a marriage agreement with their spouse.

# Mediation

---

- Mediation is promoted.
- Parties may also access alternate dispute resolution
- Unless otherwise agreed, the parties share the cost
- Mediation generally costs much less than going to court
- Members could also use the binding adjudication process under the Land Code if they both agree and they both agree to share the cost

# Non-Member Interests in St. Mary's Indian Band Lands

---

- A court could order that a non-member spouse receives up to a “life interest” in the matrimonial home. This means that when the non-member spouse dies the interest will go back to the member spouse.
- Usually done where there are children in the home or significant disability of dependant spouse.
- A non-member cannot sell, assign or transfer an interest in the matrimonial home.

# Access to Courts

---

Some examples of what a Courts can order are:

- (a) where both are members, make an order that the family home be transferred to one spouse;
- (b) order a lease by one Spouse to the other Spouse or to a third party;
- (c) order that one party has to pay rent to the other for living in the family home;
- (d) order that a Spouse preserve the property and not damage it;
- (e) an order to enforce a written marriage agreement.

# Consent of Spouse Required for Sale

---

- If you are married or common-law and you have a CP you cannot sell, transfer, or mortgage it without the consent of your spouse.

# General – Gifts and Inheritances of Land

---

- Gifts and inheritances of lands on-Reserve are not covered by the Law unless the family home is located on these lands, or was located on these lands

# Presumed 50:50 Interest in Family Home

---

- Regardless of which Spouse has the CP, if a couple is married or common-law there is a presumption of 50:50 interest in value of the family home or improvements to the family home and a Spouse can apply for an order:
  - for the other Spouse not to damage the family home;
  - give one Spouse the right to live in the house;
  - if both Spouses are members, transfer the home from one member to the other under limited circumstances.

# Issues #1 Common-Law

---

- Definition of common-law – how long?
  - In BC it is two years of living together in a marriage-like relationship.
  - Should this period of time be longer unless there is a child of the relationship?
  - Should common-law spouses be required to opt in if they want the law to apply?

# Scenario A – Common-law

---

- Susan and Andy are both members. They live in a home on Reserve that Andy inherited from his mom. They don't have any kids together, this is the third relationship for both of them and they have six adult kids between them. Susan gets some money from a residential school settlement and puts in a new kitchen and bathroom in the house. After three years of living together, Andy kicks Susan out.
- *Should she have any right to make a claim for compensation? She wants to help her son go to school.*

## Scenario B – Common-law

- Bill is a member and Cathy is a non-member. They have lived together for two years. They both work off-Reserve, but together they have decided to buy a CP from another member and move in and fix up the existing house. They get a loan together for \$100,000 to fix everything up. Unfortunately, they break up. Cathy refuses to leave the house. Bill wants her out because the CP is in his name.
- *Should Cathy be able to go to court and get an order letting her stay in the home or compensating her for the money she spent?*

# Issue #2 –Rent-to-Own/CHMC/Private Mortgages?

---

- Many of these homes are legally held by the Band until the mortgage is paid out.
- Should there be any value in the family home which is subject to division under the law when legal title is in the name of the Band?

## Scenario C – CMHC Home

- ~~Joan is a member. Art is a non-member. They have~~ two children. They have been married for twelve years and they live in a CMHC house. They have been paying for the mortgage and expenses for the family home mostly from Art's income for twelve years, and have eight years left before the mortgage is paid out. They break up and Art leaves the reserve. He wants compensation for half of the value of the family home so he can rent a bigger home and have the kids weekends.
- *Should he be able to get it? Should Joan be able to stay?*

## Scenario D – CMHC Home

---

- This is the same set of facts as scenario C, except Joan leaves the home and leaves the kids with Art. She has fallen in love with a man she met online and moves in with him. She wants to get compensation for half of the value of the family home so she and her new boyfriend can buy a house together and she can have the kids half-time. She doesn't want to live on-Reserve as her family are all mad at her. Should she be able to get the order?

# What is a home on Reserve worth?

---

- Value is based on what a buyer would reasonably be expected to pay a seller for comparable interests and/or rights and also takes into account any associated outstanding debts or liabilities.
- Value could also be how much someone paid to improvements to the home.
- Usually an appraisal is required to determine this type of value.

# Issue 3- Valuation for Members

---

- There are a number of ways to determine how much a fifty percent interest in a family home is worth upon breakdown of the marriage. The two that are set out in the draft law right now are fifty percent of the greater of:
  1. The amount the **family home and lands** has appreciated between the start and end date of the relationship
  2. The amount the spouse has paid for improvements to the **family home and lands** between the start and the end date of the relationship, less any debt taken on to make the payments.

# Issue 3 – Valuation Where One Spouse is a Non-Member

---

Fifty percent of the greater of:

- The amount the **family home (structure only)** has appreciated between the start and end date of the relationship
- The amount the spouse has paid for improvements to the **family home and lands** between the start and the end date of the relationship, less any debt taken on to make the payments.

# Scenario E - Valuation

---

- *How would Joan and Art's interests be valued?*
- *Do you agree with this method of valuation?*

# Issue 4 – Death of a Spouse

---

- When a spouse passes away should there be a right to any share of the value of the home?
- Right now the draft provides for a 50% interest
- Should the surviving spouse be permitted to stay in the home for the rest of their life if they make all required payments?
- Right now they can stay for 180 days and can then apply for an order of exclusive occupation.

*Should this apply to band-owned housing? Social housing included?*

# Scenario F

---

- Janet and Michelle are in a same-sex marriage. Michelle is a member, Janet is a non-member. They've been together for twenty years and they live in social housing on Reserve. Michelle passes away. Janet wants to stay in social housing. She is on a low income and all of her ties are with the reserve community and she doesn't own a car.

*Should she have a right to apply to court to stay? If so, for how long?*

# Scenario G

---

- Mike is a member and has a CP. Mike is married to Darlene. They live in a house on Mike's CP and have done so since they got married ten years ago. Darlene is not a member. Eighteen months ago Mike and Darlene separated. They have no signed premarital or separation agreement. After separation Darlene moved out and Mike's girlfriend, Anne, a non-member, moved in. Mike and Anne have no children. Anne and Mike break up after two years and Anne moves out.

# Questions

---

- 1. *Darlene wants to claim an interest in Mike's CP – can she?*
- 2. *Anne claim an interest in the family home?*
- 3. *Could Darlene or Anne claim an interest in Mike's CP if they each had signed a valid premarital agreement stating that they had no interest in the property?*

# Questions

---

- 4. *What if Anne had children from a previous relationship when she moved in with Mike and they lived with Mike and Anne? Could Anne claim an interest in the family home when Mike and Anne broke up?*
- 5. *If Darlene is awarded the right to reside in the matrimonial home, can she sell the CP if she decides to move off-Reserve?*

# Scenario H

- Helen is a member and has CP. Helen is married to Bill. They live in a house on Helen's CP and have done so since they got married twelve years ago. Bill is not a member. They have two boys together. Both boys are members. Two years ago Helen and Bill separated. Helen moved out while Bill, a stay-at-home father, stayed in the house with the boys. Bill takes care of Devon and Darryl Monday to Friday and Helen is with the boys on the weekends. They have no signed premarital or separation agreement.

# Questions

---

- *Bill wants a court order allowing him to live in the house with the boys. Can he get it?*

# Scenario I

---

- John and Jane are divorcing. They live in a home on John's CP on-Reserve. Jane is not a member. John and Jane have children together, and the children are not members. Jane has full custody of the children.
- *Who has a better claim to stay in the family home?*

# Scenario J

---

- Jane is awarded the Matrimonial Home in Scenario Three. She then marries Bill who is a PIB member. Jane and Bill separate and Jane moves out with her children.
- *Who has rights to the home?*

# Scenario K

---

- Bill and Sue are both members and own a CP together. They have no children. They are in the process of divorcing and have no written agreement in place about division of the home.
- *Who gets to stay in the home?*

# Scenario L

---

- John is a member and Jane is a non-member. They are married, live in the family home on John's CP, and have children together. The children are not members. John and Jane are separating and Jane will have full custody of the children. John has been violent to the spouse and the spouse has filed for an order of protection.

*Who gets the home?*

Questions?

