

**M'Chigeeng Anishinabek Matrimonial Real Property (MRP) Law – Consultation Memo**  
February 2016

***M'Chigeeng Reserve lands continue to be lands reserved for M'Chigeeng band members within the meaning of section 91(24) of the Constitution Act, 1867; non-band members will never have title to or ownership of M'Chigeeng lands***

KEY QUESTIONS:

In order to assist members in understanding the issues, this memo will address the following questions:

- 1. What is the M'Chigeeng Anishinabe Matrimonial Real Property Law?**
- 2. Why is the law important?**
- 3. How does it differ from the default federal MRP law?**
- 4. How does the law get passed?**

BACKGROUND:

The M'Chigeeng First Nation is in the process of enacting its own land code. There is a community referendum scheduled on September 3, 2016, to vote on whether to enact the land code. Once the land code is enacted, M'Chigeeng must enact matrimonial real property rules under the land code.

Since M'Chigeeng started the process of developing a land code in 2012, the *Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA* or the “*Matrimonial Property Act*”) became law. The *Matrimonial Property Act* allows First Nations to develop their own MRP law. It also automatically applies federal MRP law to those First Nations that do not have their own MRP law in force (see Note 1). *Because M'Chigeeng does not yet have a MRP law, the federal MRP law currently applies on M'Chigeeng lands (See Note 2).*

On February 3, 2016, Council passed a motion that M'Chigeeng will have a community referendum to vote on a M'Chigeeng MRP law on June 18, 2016.

As part of the land code and *First Nations Land Management Act* consultations, there has already been some information about matrimonial real property shared in the community. The information provided below is intended to be a review and clarify what M'Chigeeng is proposing to do now that the federal *Matrimonial Property Act* is in force.

ANSWERS:

**1. What is the M'Chigeeng Anishinabek Matrimonial Real Property Law?**

The M'Chigeeng Anishinabek Matrimonial Real Property Law sets out the matrimonial real property rights and interests of members and non-members upon separation, divorce or death. Matrimonial real property refers to land and fixed things on land, such as a matrimonial home that spouses occupy. Matrimonial real property law deals with how such property should be divided when relationships end. The law applies to everyone who has a matrimonial interest in

M'Chigeeng's reserve lands, and structures attached to reserve lands. It sets out what procedures one must follow if there is a matrimonial real property dispute and the rules and principles that will guide the decision makers in resolving the dispute.

The M'Chigeeng MRP law was initially drafted in 2013. It has been modeled from other First Nations' MRP laws and follows the principles set by M'Chigeeng to guide the development of the land code and MRP rules:

- a) recognition of First Nation jurisdiction;
- b) access to justice and dispute resolution; and
- c) addressing underlying issues such as housing and economic security.

There are certain core elements of M'Chigeeng's relationship between the Government of Canada and the land that will not change:

- Title to reserve lands is not automatically affected by the proposed law; in a dispute, however, the Ojibwe Tribunal could order that one's CP be partitioned into two plots, or sold
- Reserve lands continue to be set apart for the use and benefit of M'Chigeeng for which they were set apart; non-band members can never hold more than a life estate interest for a set period of time in real property, and they can never hold title
- Reserve lands continue to be lands reserved for the Indians within the meaning of section 91(24) of the Constitution Act, 1867; non-band members will never have title to or ownership of M'Chigeeng lands

The "*M'Chigeeng Anishinabek Matrimonial Real Property Law – Overview of Law*" handout, provides a detailed review of the different parts of the law.

## 2. Why is this law important?

The government acknowledged that First Nations women have historically been denied rights to matrimonial real property equal to those of non-First Nations women living off-reserve. There is a distinction in law between real property (the family home and the land it is on) and personal property (such as cash and cars). Off-reserve, provincial laws determine how real property and personal property are divided when a married couple separates or when one spouse dies. However, because the province has no jurisdiction over reserve lands, provincial laws about the division of real property do not apply on reserve.

Up until the entering into force of the federal *Matrimonial Property Act*, there was no federal law that applied in this area. This means there were no rules to determine the rights of spouses with respect to MRP – for example, who gets to live in the home, who gets the money if it is sold, etc. Often, women were disadvantaged by this because their names may not be on CPs or leases so, even if they have lived in the home for many years, they may have no legal right to the home if their husband dies or they divorce. This can become especially problematic when there are children involved. It is in the interest of the entire community to ensure that there are clear rules in place with respect to on-reserve MRP. These rules should protect the rights of spouses and children *and* ensure that a First Nation's reserve lands are maintained for the use and benefit of band members.

In response to the need for matrimonial real property law on reserve lands, the federal government has enacted a two option (or “two track”) law that fills the historic legislative gap. The law allows First Nations to pass their own MRP laws, *and* sets out federal MRP law that applies to all First Nations that do not have their own MRP laws.

M'Chigeeng is currently governed by the default federal MRP law, but it doesn't need to be. M'Chigeeng has the option to enact a MRP law to ensure that the community is governed by its own practices, beliefs and needs – as opposed to the federal law, which is written by the government and not tailored to M'Chigeeng.

A M'Chigeeng MRP law would be paramount – which means that it would have more authority than the federal law and M'Chigeengers would not be automatically subject to the Canadian common law on matrimonial real property.

### 3. How does it differ from the default federal MRP law?

<b>(1) M'Chigeeng First Nation MRP Law</b>	<b>(2) Federal default MRP provisions</b>
<p><i>Amend and repeal the law</i></p> <ul style="list-style-type: none"> <li>The law must include provisions about how C&amp;C can amend and repeal the law</li> </ul>	<p><i>Amend and repeal the law</i></p> <ol style="list-style-type: none"> <li>Parliament has the authority to amend &amp; repeal the law</li> </ol>
<p><i>Enforcement</i></p> <ul style="list-style-type: none"> <li>The law includes provisions about how M'Chigeeng would enforce it</li> </ul>	<p><i>Enforcement</i></p> <ul style="list-style-type: none"> <li>The law would be enforced by M'Chigeeng and UCCM police</li> </ul>
<p><i>Content</i></p> <ul style="list-style-type: none"> <li>M'Chigeeng can decide what MRP rights and interests it wants to recognize</li> <li>The law must generally deal with the “use, occupation and possession of family homes ... and the division of the value of any interests or rights held by spouses or common-law partners in or to structures and lands”</li> <li>M'Chigeeng can incorporate Ojibwe teachings and laws</li> </ul>	<p><i>Content (sections 12-52)</i></p> <ul style="list-style-type: none"> <li>Occupation of family home</li> <li>Emergency protection orders</li> <li>Exclusive occupation orders</li> <li>Division of matrimonial interests and rights               <ul style="list-style-type: none"> <li>when relationships break down</li> <li>when a partner dies</li> </ul> </li> <li>Non-members cannot be given permanent interests in the land               <ul style="list-style-type: none"> <li>they may be granted exclusive occupation orders for a period of time</li> <li>or a life estate</li> </ul> </li> </ul>
<p><i>Dispute Resolution</i></p> <ul style="list-style-type: none"> <li>M'Chigeeng can decide what dispute resolution mechanisms to use</li> <li>Generally, First Nation MRP laws include an internal community mediation option as well as access to the Canadian court system</li> </ul>	<p><i>Dispute Resolution</i></p> <ul style="list-style-type: none"> <li>Disputes would be adjudicated in the Canadian court system</li> </ul>

#### **4. How does the law get passed?**

The *M'Chigeeng Anishinabek Matrimonial Real Property Law* is passed the same way that the land code would be passed. The law is brought to the people for a community vote, or referendum. The referendum is scheduled on June 18, 2016.

Council is required to take steps to inform the community about the law. M'Chigeeng, with the assistance of legal counsel, has set up consultation meetings with the community. M'Chigeeng will inform the community of how, when and where community members can vote on June 18<sup>th</sup>.

Every M'Chigeeng member, on or off reserve lands, over 18 years of age is eligible to vote. At least 25% of eligible voters must participate in the vote for it to be valid. If the 25% threshold is reached, then the law will pass if the majority of voters vote in favour of the law.