

M'Chigeeng Anishinabek Matrimonial Real Property Law
DRAFT LAW – March 10, 2016

PREAMBLE

Section 1.0 Title

Section 2.0 Principles

- 2.1 Purpose and Application
- 2.2. For Greater Certainty

Section 3.0 Definitions

Section 4.0 Written Agreements

- 4.1 Intention to Respect Written Agreements
- 4.2 Conditions of Written Agreement Validity
- 4.3 Ojibwe Tribunal Enforcement of Written Agreements
- 4.4 Retroactive Application of this Law

Section 5.0 M'Chigeeng Anishinabek Mediation

- 5.1 Compulsory Mediation
- 5.2 Notification of Mediation
- 5.3 Mediation Procedure
- 5.4 Mediation Outcomes
- 5.5 Certificate of Compliance or Non-Compliance

Section 6.0 Ojibwe Dispute Resolution Tribunal

- 6.1 Application to the Ojibwe Tribunal
- 6.2 Application to the Ojibwe Tribunal without Mediation
- 6.3 Ojibwe Tribunal Procedures
- 6.4 Ojibwe Tribunal Orders
- 6.5 Ojibwe Tribunal Urgent Orders
- 6.6 Expiration of Ojibwe Tribunal Urgent Orders

Section 7.0 General Rules of Appeal and Application to Ontario and Federal Court

- 7.1 Ojibwe Tribunal Appeal
- 7.2 Application to Ontario and Federal Court
- 7.3 M'Chigeeng Anishinabek Submissions to an Ontario or Federal Court

Section 8.0 Matrimonial Home

- 8.1 Interest in the Matrimonial Home
- 8.2 Disposition or Encumbrance of an Interest in the Matrimonial Home
- 8.3 Ojibwe Tribunal Orders Relating to a Matrimonial Home
- 8.4 Child Caregiver Consideration

Section 9.0 Exclusive Occupation of a Matrimonial Home

- 9.1 Exclusive Occupation Orders

10.0 Enforcement

11.0 Amendment or Repeal

12.0 General provisions

- 12.1 Transition under the *M'Chigeeng Land Code*
- 12.2 Severability and Entering into Force

- WHEREAS** M'Chigeeng Anishinabek is part of the Three Fires Confederacy, who have resided on and occupied traditional lands since time immemorial;
- WHEREAS** M'Chigeeng Anishinabek's status as an independent nation was affirmed by the Covenant Chain Wampum Belt of 1764;
- WHEREAS** M'Chigeeng Anishinabek have historically been led by hereditary chiefs notably Chief Ogaa, Chief Niibaakhom and Chief Taibosegai, Chief Ogah was explained by Chief Wakegijig as a great chief of the Ojibwe and one who best understood the Indian Laws;
- WHEREAS** M'Chigeeng Anishinabek have and continue to exercise an inherent right bestowed by the Creator to self-determination, which includes the inherent right to govern ourselves and our presence on and use of our lands;
- WHEREAS** M'Chigeeng Anishinabek are a member of the community of nations of Canada and have Aboriginal and treaty rights, including the inherent right of self-government, as recognized and affirmed in the *Constitution Act, 1982*, of Canada, as well as lands for the exclusive use and benefit of our M'Chigeeng Anishinabek members;
- WHEREAS** M'Chigeeng Anishinabek have adhered and continue to adhere to a system of governance based upon our society's concerns, beliefs, culture, customs, traditions, land and spirituality;
- WHEREAS** M'Chigeeng Anishinabek is guided by the principles and way of life of the Seven Sacred Gifts of Love, Truth, Respect, Wisdom, Humility, Honesty and Bravery;
- WHEREAS** M'Chigeeng Anishinabek have continuously exercised its authority and jurisdiction while endeavouring to strengthen self governance and cultural institutions;
- WHEREAS** it is the custom and convention of the Council of M'Chigeeng Anishinabek to establish laws for the protection and preservation of our culture and way of life on our lands, and for the safety and integrity of our band members on our lands;
- WHEREAS** M'Chigeeng Anishinabek does not wish to be subject to the *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)*;
- WHEREAS** provincial laws respecting real property do not apply to M'Chigeeng Anishinabek lands;
- WHEREAS** M'Chigeeng Anishinabek have an Aboriginal right to establish and maintain our own processes to resolve disputes that arise regarding the division and distribution of matrimonial real property of our members who reside on M'Chigeeng Anishinabek lands;

WHEREAS M'Chigeeng Anishinabek intends to honour its undertaking to provide matrimonial real property rights and remedies, without discrimination on the basis of sex, to spouses, and to formalize community policy in regards to these rights and remedies that have been in effect;

WHEREAS M'Chigeeng Anishinabek intends to respect the following principles with respect to the use, occupancy or possession of matrimonial real property on reserve lands, and the division of interests in that land upon separation, divorce or death of spouses:

Firstly, the right of the parties in a marriage or common-law partnership to make their own agreement as to the disposition of their rights or interests in M'Chigeeng Anishinabek lands upon separation, divorce or death and to resolve their disputes amicably;

Secondly, the value and necessity for mediation where the parties have not or are unable to reach their own agreement as described above;

Thirdly, the right of the parties to have access to fair hearing procedures to deal with their real property rights, entitlements and obligations upon separation, divorce or death, subject to M'Chigeeng Anishinabek law where their real property includes an interest in M'Chigeeng Anishinabek lands; and

Fourthly, the interests and welfare of children should be paramount when determining the rights and interests of spouses, and the matrimonial home should be a place of safety and comfort.

NOW THEREFORE, M'Chigeeng Anishinabek hereby enacts the following Law:

1. Title

This law may be cited as the M'Chigeeng Anishinabek Matrimonial Real Property Law.

2. Principles

2.1 Purpose and Application

(1) M'Chigeeng Anishinabek lands are lands reserved for Indians within the meaning of section 91(24) of the *Constitution Act, 1867*, and pursuant to this Law, will continue to be set apart for the use and benefit of M'Chigeeng Anishinabek band members.

(2) This Law applies to interests in, or claimed pursuant to this Law in, lands, as that term

is defined herein. For greater certainty, structures located on but not affixed to M'Chigeeng Anishinabek lands are subject to this Law.

(3) This Law applies in respect of the use, enjoyment, occupation and possession of matrimonial homes on M'Chigeeng Anishinabek lands; and spouses' rights to and interests in M'Chigeeng Anishinabek lands.

(4) Recognition of other laws is a salutary gesture of the M'Chigeeng Anishinabek and does not confer or acquiesce to other jurisdictions without due process of the Royal Proclamation of 1763.

(5) Nothing in this Law shall derogate or abrogate from M'Chigeeng Anishinabek Aboriginal and treaty rights.

(6) This Law does not limit or preclude any right or remedy available under any other law that does not address the lands of the M'Chigeeng Anishinabek, subject to parties complying with this law as regards any matter related to a right to or interest in matrimonial real property on M'Chigeeng Anishinabek lands.

2.2 For Greater Certainty

(1) Non-Discrimination and equitable application

(a) It is the intention of this Law that all rights, entitlements and obligations of spouses be dealt with equitably on the basis of the totality of their circumstances, including rights, entitlements and obligations in respect of interests in reserve land, but subject to the provisions set out in this Law.

(b) Subject to the limitations inherent in the legal nature of reserve land, spouses have an equal interest in matrimonial real property; band-member spouses have an equal right to possession of a matrimonial home; and non-band member spouses have a right to possession of a matrimonial home that can be no greater than a life estate as defined herein.

(c) This Law applies to heterosexual and homosexual couples and does not discriminate on the basis of sex, or sexual orientation.

(d) A common-law partnership is considered to start upon two (2) years of co-habitation or upon the birth of a child, or the customary adoption of a child.

(2) Non-Member Life Estate

Nothing in this Law awards, acknowledges or creates an interest in M'Chigeeng Anishinabek land greater than a life estate in favour of a spouse who is a non-band member.

(3) Ojibwe Tribunal Decisions are Paramount

All matters involving interests in reserve land shall be resolved by the Ojibwe Tribunal.

Ojibwe Tribunal decisions, including the decisions of the appellate panel of the Ojibwe Tribunal, are final.

(4) Testator Paramountcy

For greater certainty, a spouse does not have an election on the death of the other spouse to claim, take or pursue an interest in reserve lands held by the other spouse under this Law, and his or her interest will be determined by the will of the administration of the estate of the other spouse and the Ojibwe Tribunal.

(5) Inheritance

Family real property does not include any asset acquired by a spouse by way of inheritance, unless it can be shown that the inheritance was devised or made with the intention of benefiting both spouses.

(6) Intention to Separate

Persons are deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other, or continued to live together but their marriage or common-law partnership had ended.

(7) Non-Residential use of Matrimonial Home

If a matrimonial home is also normally used for other non-residential purposes, the rules on matrimonial homes apply to only the portion of the structure that is reasonably regarded as the residential portion of the matrimonial home.

(8) This Law applies to Matrimonial Real Property

This Law will not deal with personal property, spousal or child support, child custody or membership.

3. Definitions

In this Law:

"Agreement" includes a written agreement entered into between parties, such as a marriage agreement or separation agreement, defined herein.

"Band" means the M'Chigeeng Anishinabek.

"Band Member" means a person whose name appears on the M'Chigeeng Anishinabek Band list, or who is entitled to have his/her name appear on the M'Chigeeng Anishinabek Band list pursuant to the *Indian Act*, RSC 1985, c I-5, and the *Membership Code 1987* of the M'Chigeeng Anishinabek.

"Child" means a band member who is under the age of eighteen (18) years of age, who is a

biological child in or out of wedlock or a common-law partnership where at least one spouse is a band-member; or a child legally adopted in accordance with Indian custom and who has Indian Status; or a child whom a spouse has demonstrated a settled intention to treat as a child of his or her family.

“Code” means the *M’Chigeeng First Nation Land Management Code*.

“Common-law partner” means an individual who, in respect of another person, is not married to the other person, but has been living together with the other person in a marriage-like relationship continuously for a period of at least two (2) years; has been living together with the other person in a marriage-like relationship and together they are the biological parents of a child.

“Common-law partnership” means the relationship between common-law partners.

“Council” means the Chief and Council of the M’Chigeeng Anishinabek, or any successor elected government of the M’Chigeeng Anishinabek.

“Court” means an Ontario or Federal Court.

“Designated judge” means a justice of the peace or court appointed judge.

“Enforcement officer” means a peace officer, police officer, police constable, or other person authorized by Council to enforce M’Chigeeng Anishinabek law.

“Extended family”, in respect of a person, means the person's grandparent, uncle, aunt, first degree cousin, grandchild, and/or any other relation or relationship that Council may add by law.

“Interest in First Nation land” or “interest in reserve lands” means for a non-band member spouse, an equitable interest that does not include a right to possession of reserve land and is no greater than a life estate defined herein; or for a band member spouse, any legal or equitable interest held in possession by said band member spouse, including:

- (a) a Certificate of Possession;
- (b) a Certificate of Occupation;
- (c) any other right to possession allotted in accordance with section 20 of the *Indian Act*;
- (d) a permit referred to in subsection 28(2) of the *Indian Act*; or
- (e) a right or interest in or to land that is subject to *the M’Chigeeng Land Code*.

“Lands” or “reserve land” means all lands defined as a “Reserve” within the meaning of the *Indian Act*, RSC 1985, c I-5, and set apart for the use and benefit of the M’Chigeeng Anishinabek and lands held in trust.

“Land Code” means the *M’Chigeeng Land Code*, and sets out the basic provisions regarding the exercise of the M’Chigeeng First Nation’s inherent rights and powers over its land.

“Law” means the *M’Chigeeng Anishinabek Matrimonial Real Property Law*.

“Life estate” means for a non-band member, a period of time not greater than ten years, or until the youngest band-member child reaches the age of eighteen (18) years of age.

“Marriage” means two people who have entered into a marriage agreement, under customary or provincial law, whether by traditional customary, religious or civil ceremony.

“Marriage agreement” means a document entered into between two people who are married to each other, or intend to marry, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in reserve land subject to this Law.

“Matrimonial home” means an interest in reserve land that is, or if the spouses have separated, was at the time of separation, ordinarily occupied by the person and his or her spouse as their family residence, and, where a parcel of reserve land that is an interest in reserve land for purposes of this Law includes a matrimonial home and is normally used for a purpose other than residential, the matrimonial home is only the part of the interest in reserve land that may reasonably be regarded as necessary to the use and enjoyment of the family residence.

“Matrimonial real property” means a right or interest held by at least one of the spouses that was acquired during the marriage or common law partnership; or acquired before the marriage or common-law partnership to co-habit during the contemplated marriage or common-law partnership.

“M’Chigeeng Anishinabek” means the M’Chigeeng First Nation and M’Chigeeng Indian Band, who are a part of the Three Fires Confederacy, who have resided on their traditional lands since time immemorial.

“Mediation” means a process provided for herein whereby a neutral third party facilitates communication among spouses to a dispute, to assist them in reaching a mutually agreeable resolution.

“Mediator” means a neutral third party trained to facilitate mediation to resolve disputes.

“Mortgage” means the conveyance of real property on M’Chigeeng Anishinabek lands to the M’Chigeeng Anishinabek as security for the payment of a debt with the real property being redeemable on the payment or discharge of such debt.

“Non-Band Member” means a person whose name does not appear on the M’Chigeeng Anishinabek Band list nor is entitled to have his/her name appear on the M’Chigeeng Anishinabek Band list pursuant to the *Indian Act*, RSC 1985, c I-5, and *the Membership Code 1987* of the M’Chigeeng Anishinabek.

“Ojibwe Tribunal” means the hearing body of first instance and appellate panel of the Ojibwe Tribunal established under Section 6.0 of this Law.

“Order” means an Order made by the Ojibwe Tribunal.

“Personal property” means anything other than land or structures affixed to land, and includes, but is not limited to such things as vehicles, boats, furniture, money, bank accounts, and wages or debts owed to an individual.

“Reserve lands” or “lands” means all lands defined as “Reserve” within the meaning of the *Indian Act*, RSC 1985, c I-5, and set apart for the use and benefit of the M’Chigeeng Anishinabek and lands held in trust.

“Separation agreement” means an agreement entered into between two people who are married to each other and are living separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in reserve land, subject to this Law.

“Spouse” means a person who is in a marriage or common-law partnership and who has entered into such an arrangement in good faith.

“Tribunal decision maker” means a person who is appointed to serve on the Ojibwe Tribunal.

4.0 Written Agreements

4.1 Intention to Respect Written Agreements

It is the purpose and intention of this Law to respect the agreement of the parties to a marriage or common-law partnership as to the use, possession, occupancy, disposition or partition of an interest in reserve land, including an interest that is a matrimonial home, subject to the requirement under this Law that non-band members receive no more than a life estate interest in reserve land.

4.2 Conditions of Written Agreement Validity

(1) Subject to this Law, a provision in an agreement that reflects the parties wishes with respect to an interest in reserve land, including an interest in a matrimonial home, is valid, binding and enforceable if:

- (a) it is made in writing;
- (b) it is signed by the parties; and
- (c) the signatures of the parties are witnessed.

(2) For greater certainty, a provision in an agreement that would give award, acknowledge or create an interest in reserve land greater than a life estate to occupy or possess an interest in reserve land, in favour of a spouse who is not a band member, is void.

4.3 Ojibwe Tribunal Enforcement of Written Agreements

(1) On application to the Ojibwe Tribunal, the Tribunal will act to enforce an Agreement and may set aside provisions of an Agreement with respect to an interest in reserve lands:

- (a) if a spouse, or third party, failed to disclose to the other all of his or her interests in reserve land, or any other material information that changes his or her interests in reserve land;
- (b) if there is a material change in circumstance regarding the custodial caregiving of a child or children; or
- (c) if a spouse did not reasonably understand the nature or consequence of a provision of the Agreement.

(2) All provisions of an Agreement declared void by the Ojibwe Tribunal are severable from the other provisions of the Agreement.

4.4 Retroactive Application of this Law

This Law applies retroactively, applying to Agreements entered into before and after this Law comes into effect.

5.0 M'Chigeeng Anishinabek Mediation

5.1 Compulsory Mediation

(1) It is the intention of this Section that spouses who, on the breakdown of their marriage, do not have and are unable to conclude an Agreement with respect to interests in reserve land, submit to mediation as a compulsory first step of dispute resolution in respect of interests in reserve land under the direction of M'Chigeeng Anishinabek.

(2) A spouse who intends to seek a remedy in relation to an interest in reserve land pursuant to this Law shall give notice of a request for compulsory mediation within a reasonable period that is no longer than six (6) months after he or she has commenced living separate and apart from the other spouse.

5.2 Notification of Mediation

(1) A spouse may, upon the breakdown of a marriage, give notice of a request for compulsory mediation to M'Chigeeng Anishinabek, setting out in writing that:

- (a) his or her marriage or common-law partnership has resulted in a breakdown
- (b) he or she and the other spouse are living, or intend to live, separate and apart with no reasonable prospect for the resumption of cohabitation; or
- (c) either spouse has, or both spouses have, an interest in reserve land, and
 - (i) the spouses do not have an agreement including provisions in respect of an interest in reserve land;
 - (ii) there is no reasonable prospect that the spouses will conclude an agreement including provisions in respect of an interest in reserve land within a reasonable period of time; or
 - (iii) the parties have concluded an agreement, but one of the parties intends to seek relief pursuant to this Law.

(2) It is the responsibility of the spouse requesting compulsory mediation to ensure that the

notice referred to in section 5.2(1) is served on the other spouse before it is delivered to M'Chigeeng Anishinabek. For greater certainty, service of notice may be effected by personal service, by delivery to a solicitor representing the other spouse in the matter of the breakdown of the marriage, as provided in an agreement, or by registered mail to the address where the other spouse is known or believed to be residing. Service by registered mail shall be deemed to be effected four days after the day the notice is mailed.

(3) Proof of service on the other spouse shall be delivered to M'Chigeeng Anishinabek at the same time the notice referred to in section 5.2(1) is delivered.

5.3 Mediation Procedure

(1) M'Chigeeng Anishinabek may provide for:

- (a) the discharge of any function under this Law by an employee of M'Chigeeng Anishinabek;
- (b) rules and procedures applicable to the conduct of compulsory mediation pursuant to Section 5.0;
- (c) the qualifications of mediators and the establishment of a roster of qualified mediators for the purposes of Section 5.0, including non-band member Anishinabek mediators;
- (d) an option for the parties to mutually agree upon their own mediator, and in default of such option, the selection by the Council of the M'Chigeeng Anishinabek of a mediator, who has no personal connection to either party;
- (e) setting an appointment with the mediator and giving notice to the spouses of an appointment with the mediator;
- (f) forms, certificates, and other documents or instruments deemed necessary or advisable for the purposes of this Section;
- (g) issuing a Certificate of Non-Compliance with this Section where it appears that a party is refusing to comply with the requirements of this Section, or taking action in a manner calculated to frustrate the intention of this Section that the parties have a reasonable opportunity to resolve any dispute with respect to interests in reserve land;
- (h) fees, costs and consequential relief in respect of the provision of mediation services.

(2) M'Chigeeng Anishinabek shall arrange for a qualified mediator to be available to the parties within thirty (30) days after the notice referred to in section 5.2(1) is received.

That period may be extended by M'Chigeeng Anishinabek:

- (a) at the joint request of the parties; or
- (b) where M'Chigeeng Anishinabek is unable to secure the services of a qualified mediator to be available to the parties within the thirty (30) day period.

(3) The mediator shall proceed expeditiously with the mediation and use best efforts to assist the parties in resolving any and all issues with respect to interests in reserve land.

5.4 Mediation Outcomes

(1) Where the mediation is successful, the agreement of the parties with respect to interests in reserve land shall be reduced to writing in a separation agreement, and that agreement shall expressly provide that each party waives all rights to challenge its provisions with respect to reserve lands under this Law.

(2) A separation agreement shall include provision for all interests in reserve land held by either spouse, or both spouses, and shall be a sufficient agreement for purposes of this Law if it deals only with those interests.

(3) Where the mediation is unsuccessful, the mediator shall deliver a confidential report to the parties and to Council upon the completion of the mediation and the points remaining in dispute between the parties with respect to interests in reserve land.

5.5 Certificate of Compliance or Non-Compliance

(1) At the conclusion of compulsory mediation under this Section, Council shall provide certificates to each spouse attesting to their compliance with mediation.

(2) If a Spouse complies with the mediation requirement he or she will receive a Certificate of Compliance; if a Spouse does not comply with the mediation requirement then he or she will receive a Certificate of Non-Compliance.

(3) No party shall proceed with any application in respect of an interest in reserve land, or seek any remedy pursuant to Sections 6.0 and 7.0, unless a certificate referred to in 5.5(2) has been obtained and is filed with Council and the Ojibwe Tribunal.

6.0 Ojibwe Dispute Resolution Tribunal

6.1 Application to the Ojibwe Tribunal

Where mediation is unsuccessful, a spouse may apply to the Ojibwe Tribunal to determine disputes in relation to interests in reserve land.

6.2 Application to the Ojibwe Tribunal without Mediation

The requirement of compulsory mediation set out in Section 5.0 applies with respect to Section 6.0, except that the Ojibwe Tribunal may entertain:

- (a) an application under Section 6.0 where the Tribunal is satisfied that mediation is not feasible in the circumstances;
- (b) an application as a matter of urgency, but shall only make an order if the matter is an urgent one and the scope of the order is limited specifically to the urgent matter, having regard to the conduct of the party making the application and whether the situation relates to domestic violence or the death of both of the applicant's parents; and
- (c) an application for the possession or exclusive occupation of a matrimonial home by an extended family member, who plays a custodial care-giving role in the upbringing and acts in the interests of a child whose parents are in dispute.

6.3 Ojibwe Tribunal Procedures

- (1) The body to settle disputes and make final decisions on interests in reserve lands and structures affixed to or on reserve lands, including matrimonial homes and trailers, shall be the Ojibwe Tribunal.
- (2) The Tribunal will be composed of members from M'Chigeeng Anishinabek and other nearby Ojibwe communities on Manitoulin Island. There shall be nine (9) Tribunal judges on the Tribunal roster, only three (3) of which will sit at any one time on a case.
- (3) The Tribunal shall follow the rules and procedures set out in regulations under this Law.
- (4) The Ojibwe Tribunal will also be comprised of an appellate panel, which may hear appeals of decisions from the Ojibwe Tribunal hearing body of first instance.

6.4 Ojibwe Tribunal Orders

- (1) The Ojibwe Tribunal may make orders, including, but not limited to:
 - (a) the division of matrimonial real property;
 - (b) that a band-member spouse's right to reserve land be subject to an interest by a non-band member spouse for a period of time not exceeding a life estate;
 - (c) that the share of either or both spouses in the matrimonial real property be transferred to or placed in trust for a band member child; or
 - (d) the partition or sale of matrimonial real property in the interest of an equitable division.
- (2) When making an order, the Tribunal shall consider all the circumstances of the parties, including:
 - (a) The interests and welfare of any affected children;
 - (b) Any existing orders under this Law and any existing support orders;
 - (c) The financial position and medical condition of the spouses;
 - (d) The provisions of any agreement;
 - (e) The availability of other suitable and affordable accommodation on Manitoulin Island;
 - (f) Any violence committed by a spouse, or risk of violence or harm by a spouse to another spouse, child or other person in the matrimonial home;
 - (g) The length of time each spouse has resided in the matrimonial home;
 - (h) Whether any third party holds a right or interest in the family home;
 - (i) The interests of any elderly person, or person with a disability, who habitually resides in the family home, if one of the spouses is the primary caregiver;
 - (j) Any other factors, or exceptional circumstances related to a person, other than the spouses or children, who is occupying the family home; and
 - (k) The collective rights of M'Chigeeng Anishinabek and any financial interest of the M'Chigeeng Anishinabek in the family home.

(3) The Tribunal may make any appropriate and equitable order on the ground of unconscionability where a spouse has intentionally, recklessly or fraudulently depleted his or her net family property that is an interest in reserve land.

(4) Should the Tribunal order the partition of an interest in reserve land, the Council of M'Chigeeng Anishinabek shall direct the transaction, and may by resolution make provision for a survey and for the allocation of the costs of the transaction unless the Tribunal has already made an order to that effect.

(5) Should the Tribunal order the sale of an interest in reserve land, that sale shall be by auction directed by the Council of M'Chigeeng Anishinabek, which shall by resolution make provision for a reserve bid representing a fair sale price for the interest, and for the allocation of costs of the transaction.

(6) Where the interest of a spouse in reserve land is held through a corporation, the Tribunal may order that she or he transfer shares in the corporation to the other spouse or have the corporation issue shares in the corporation to the other spouse.

(7) Where spouses jointly hold a mortgage in real property on M'Chigeeng Anishinabek lands, upon the dissolution of a marriage, a non-band member spouse must be bought out of the mortgage by a band-member spouse.

(8) For greater certainty, no order shall be made under this Law so as to require the sale of an operating business or farm on reserve land, or so as to impair seriously its operation, unless there is no reasonable alternative method of achieving an equitable result between the parties.

6.5 Ojibwe Tribunal Urgent Orders

(1) The Tribunal may make an order on an urgent basis pursuant to section 6.2(b) and without prior notice to another party.

(2) Any Tribunal order made on an urgent basis pursuant to section 6.2(b) shall be served by an enforcement officer on the party against whom the order was made.

6.6 Expiration of Ojibwe Tribunal Urgent Orders

An order made under Section 9.0 shall name a date on which it expires, which shall be a date not later than six (6) months after the order is rendered, unless the Tribunal is satisfied that a longer period of time is necessary in the circumstances.

7.0 General Rule of Appeal and Application to Ontario and Federal Court

7.1 Ojibwe Tribunal Appeal

A party to a hearing before the Ojibwe Tribunal can appeal the decision to the appellate panel of the Ojibwe Tribunal.

7.2 Application to Ontario and Federal Court

(1) A spouse may apply to an Ontario or Federal Court to determine disputes before a designated judge in relation to interests in matrimonial personal property, provided that she or he does not bring forward a matter before the court that deals with an interest in reserve lands.

(2) The fact that an interest in reserve land does not include future or contingent interests in reserve land shall not be taken to confer jurisdiction upon a court over such interests under this Law.

(3) Nothing in this Law relieves a party of the requirement to observe the rules and procedures of a court in relation to matrimonial causes.

(4) Nothing in this Law limits the application of valid laws of Ontario and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with interests in reserve land and to that extent this Law applies.

7.3 M'Chigeeng Anishinabek Submissions to an Ontario or Federal Court

If M'Chigeeng Anishinabek parties to a dispute proceed to an Ontario or Federal Court to resolve matrimonial personal property matters, M'Chigeeng Anishinabek shall be considered to make submissions before the court to provide M'Chigeeng Anishinabek the opportunity to share its community interest in and contribution to the resolution of the dispute through the mediation and Ojibwe Tribunal procedures that were exhausted.

8.0 Matrimonial Home

8.1 Interest in the Matrimonial Home

(1) When only one spouse holds a right to possession of reserve land that is a matrimonial home, the other spouse's right of possession:

- (a) is personal against the spouse who holds the right; and
- (b) ends when they cease to be spouses, unless an agreement or Tribunal order provides otherwise in compliance with this Law.

(2) Subject to this Law and the limitations inherent in the legal nature of real property on a reserve, each spouse has an equal interest in the value of the real property and improvements to the real property.

8.2 Disposition or Encumbrance of an Interest in the Matrimonial Home

(1) No spouse shall dispose of or encumber an interest in reserve land that is a matrimonial home unless:

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights in respect of that interest by agreement; or
- (c) the Ojibwe Tribunal has authorized the transaction or has released the

interest in reserve land from the application of this section.

(2) If a spouse disposes of or encumbers an interest in First Nation land that is a matrimonial home in contravention of section 8.2(1), the transaction may be set aside on an application to the Ojibwe Tribunal.

8.3 Ojibwe Tribunal Orders Relating to a Matrimonial Home

(1) The Ojibwe Tribunal may, on the application of a spouse or a person claiming an interest in reserve land that is a matrimonial home:

- (a) make a declaration whether or not the interest in reserve land is a matrimonial home;
- (b) authorize a disposition or encumbrance of the interest in reserve land, provided that such disposition or encumbrance is otherwise authorized under M'Chigeeng Anishinabek law, if the Tribunal finds that the spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, and the Ojibwe Tribunal may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the Tribunal considers appropriate; and
- (c) make an order under section 9.1, subject to such terms and conditions as the Ojibwe Tribunal determines to be equitable and just in all the circumstances.

(2) Regardless of which spouse holds an interest in reserve land that is a matrimonial home, the Ojibwe Tribunal may on application:

- (a) order the delivering up, safekeeping and preservation of the interest in reserve land that is a matrimonial home;
- (b) direct that one spouse be given exclusive possession of the interest in reserve land that is a matrimonial home, or part of it for such period as the Tribunal may direct consistent with this Law, and release any other interests in reserve land that is a matrimonial home from the application of this Section;
- (c) make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a spouse; or
- (d) make any ancillary order which the Tribunal deems necessary to give effect to this Law.

8.4 Child Caregiver Consideration

The Ojibwe Tribunal, in considering whether to direct that a band-member spouse has exclusive possession, or a non-band member spouse has exclusive possession no greater than a life estate, of an interest in reserve land that is a matrimonial home, the Tribunal shall be guided by the M'Chigeeng Anishinabek customary policy that the parent who maintains care for the children shall remain in the matrimonial home for a period sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority and has the opportunity to complete

his or her education.

9.0 Exclusive Occupation of a Matrimonial Home

9.1 Exclusive Occupation Orders

The Ojibwe Tribunal, on application, may order that:

- (1) One spouse or child be given exclusive rights to use, enjoy and occupy the matrimonial home or part of it for a period that the Tribunal directs and release other property that is a matrimonial home from the application of this Law;
 - (a) an enforcement officer can remove a named person in a Tribunal order from the matrimonial home;
 - (b) an enforcement officer can escort a named person who is required to vacate the matrimonial home back to the home to supervise the removal of personal belongings;
- (2) A spouse or other person preserve and deliver up the matrimonial home and its contents to a spouse, a child, or another member of M'Chigeeng Anishinabek;
- (3) A spouse or other person not disturb the occupants of the matrimonial home;
- (4) A spouse make periodic payments, or pay compensation to the other spouse for exclusive use, enjoyment and occupation, depending on the circumstances of both spouses, or for the purpose of adjusting the division of matrimonial property;
- (5) All or part of the contents of the matrimonial home remain in the home or be removed from the home;
- (6) A spouse pay for all or part of the repair and maintenance of the matrimonial home and other related liabilities, or to make periodic payments to the other spouse for these purposes; and
- (7) Exclusive occupation extends to the portion of any land that is contiguous to the matrimonial home and that is necessary for the use and enjoyment of the matrimonial home.

10.0 Enforcement

- (1) Enforcement officers have the power to enforce orders as provided for in this Law.
- (2) An enforcement officer may arrest without warrant any person the s/he believes on reasonable and probable grounds to have contravened a Tribunal order for exclusive occupation.
- (3) An enforcement officer shall, on the request of an applicant or if directed by the Ojibwe Tribunal, assist in the enforcement of any order made under this Law, including serving notice of an order or decision upon any person; and accompanying the applicant or any specified person to the family home or other location in order to supervise compliance with the order or decision.
- (4) A person who contravenes an order made by the Ojibwe Tribunal or a court pursuant to this Law is guilty of an offense and liable, on summary conviction, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or

to both.

(5) A fine payable under this section shall be remitted to the M'Chigeeng Anishinabek.

11.0 Amendment or Repeal

(1) This Law may be amended or repealed only by a subsequent law made by the Chief and Council through referendum.

(2) The Council must hold at least three meetings that are open to all members to consider and discuss any amendment or repeal of this Law.

(3) The Council must, at least thirty (30) days in advance of the first meeting, take reasonable measures that are in accordance with the practices of M'Chigeeng Anishinabek to inform its members of the time and place of all meetings; their right to attend and participate in the meetings; and a summary of the proposed amendments or repeal.

(4) Every member who is eighteen (18) years of age or over, whether or not resident on M'Chigeeng Anishinabek, is eligible to vote on whether to approve the amendment or repeal.

(5) An amendment or repeal of this Law is not valid unless approved by a majority of the eligible members, who participated in the final meeting.

12.0 General Provisions

Where a proceeding has been commenced under this Law, and either spouse dies before all issues relating to interests in matrimonial real property have been disposed of by the Tribunal, the surviving spouse may continue the proceeding against the estate of the deceased spouse.

12.1 Transition under the *M'Chigeeng Land Code*

(1) This Law will be automatically considered by Chief and Council as the interim matrimonial real property on reserve law to be passed under section 39.5 of the *M'Chigeeng Land Code* within ten (10) business days of the Code entering into effect.

(2) When Chief and Council enact the *M'Chigeeng Anishinabek Matrimonial Real Property Law* as a Land Law under the Code, this Law will automatically cease to be in effect.

12.2 Severability and Entering into Force

(1) Should a court determine that a provision of this Law is invalid for any reason, the provision shall be severed from the Law and the validity of the rest of this Law shall not

be affected.

(2) This Law comes into force on the day of enactment.

M'Chigeeng Anishinabek Consultations occurred on **February 16, 2016, February 25, 2016, and Saturday, March 5, 2016.**

THIS BYLAW IS HEREBY ENACTED BY THE M'CHIGEENG ANISHINABEK by a vote of the people this __ day of _____, 2016.