

M'Chigeeng Anishinabek Matrimonial Real Property Law – Overview of Law

March 11, 2016

Preamble

- Recognizes M'Chigeeng Anishinabek inherent right to govern, system of governance, and history
- Recognizes that M'Chigeeng does not want to be under the default federal MRP law
- The law formalizes customary policy and abides by certain principles:
 - right of community members to enter into their own agreements about how to divide interests in reserve lands
 - the need for mediation where no agreement can be reached
 - the right of the parties to have access to a fair hearing procedure to deal with property disputes
 - for the interests and welfare of children to be paramount and the need for a safe family home

Section 2.0 Principles

- The law applies to **all spouses** who have an interest in real property and structures affixed to/on real property (matrimonial homes and trailers)
 - **Non-discrimination**: the law applies equally to all people, irrespective of sex and sexual orientation (s 2.2(1)(a))
- **Non-band member**: non-band members cannot be awarded a **life estate** in reserve land or a matrimonial home greater than 10 years or until the youngest band-member child turns 18 (s 2.2(2), also see definition of “life estate”)
- A **child** means a band member younger than 18 years of age (see definition of “child”), who is either the biological child of the spouses in dispute, or a **legally adopted child through Indian custom** and who has Indian Status
 - Children adopted under Ontario law do not apply; unless they are also adopted under Indian custom
- **Common law partners**: two (2) years co-habitation or upon birth of child or adoption of child (see definition of “common law partner” and “common law partnership”)
 - The law recognizes common law partnerships – as well as marriages that are entered into by traditional customary, religious, or civil ceremonies
 - People who are married, or who are in a common-law partnerships, are all recognized as “spouses” for the purpose of the law
- **Internal community dispute mechanism**: matrimonial real property disputes must be resolved by the Ojibwe Tribunal (section 2.2(3))
 - There is only recourse to provincial courts for matrimonial property interests that do not include reserve lands and things affixed to reserve lands (e.g. matrimonial home), or structures on reserve lands (e.g. trailers) (s 2.2(8))
- **Inheritance**: all real property that is inherited or gifted to someone with the intention that this person benefit from the inheritance/gift, shall not be considered as part of the

matrimonial real property in dispute (e.g. an inherited CP or matrimonial home) (s 2.2(5)), unless there is evidence that the inheritance/gift was intended to be shared by the recipient and any future partner

- agreements between people can trump this principle granted that agreements are compliant with the law (e.g. an agreement does not give a non-member spouse more than a life estate in reserve land, and the agreement is written, signed, witnessed etc) (s 4.0)

Section 3.0 Definitions

Section 4.0 Written Agreements

- Agreements entered into will be valid/binding/enforceable subject to conditions:
 - it is made in writing – signed – signatures are witnessed – a non-band member does not have an interest in reserve land greater than a life estate as defined in the law (s 4.2)
- The Ojibwe Tribunal will act to enforce written agreements so long as they are in compliance with the law (s 4.3)
 - if a spouse did not disclose information about his or her interest in reserve land; there is a material change in circumstance regarding the caregiving of children; or a spouse did not reasonably understand the agreement when s/he entered into it, the Tribunal can set parts, or all, of the agreement aside (s 4.3)
- The law applies to all agreements, irrespective of when they were entered into (s 4.4)

Section 5.0 M'Chigeeng Anishinabek Mediation

- If there is no agreement and spouses can't resolve the property division amicably, the law **requires** compulsory mediation (s 5.1)
 - **Except** in some cases where a spouse can immediately apply to the Ojibwe Tribunal (s 6.2):
 - if mediation is not feasible (e.g. one spouse refuses to participate) (s 6.2(a))
 - if the matter is urgent; e.g. a case of domestic violence or where one's parents both die (s 6.2(b))
 - or if an extended family member is applying for exclusive possession of the home in the interests of children whose parents are in dispute (s 6.2(c))
- **Mediation successful** => agreement made in writing => ex-spouses can't challenge the agreement's provisions related to matrimonial real property (s 5.4(1))
- **Mediation unsuccessful** => certificate of compliance with compulsory mediation received and filed with Council and the Ojibwe Tribunal => a spouse can apply for a hearing before the Ojibwe Tribunal (s 5.4(3))
 - Following an unsuccessful mediation, spouses can proceed to the Ojibwe Tribunal
 - Spouses must receive either a certificate of compliance or a certificate of non-compliance to be able to proceed to the Tribunal (s 5.5)

Section 6.0 Ojibwe Dispute Resolution Tribunal

- The Ojibwe Tribunal will determine matrimonial real property disputes on M'Chigeeng reserve lands (s 6.3); spouses can appeal to an appellate panel of the Tribunal following a decision by the Tribunal's hearing body of first instance (s 6.3(4))
 - The Tribunal will be comprised of up to nine (9) decision-makers, and three (3) decision makers will hear a case (s 6.3(2))
- The Tribunal can make various orders (e.g. partition of land or the sale of an interest in land, transfer of corporate shares, s 6.4)
 - The Tribunal will consider all the circumstances of the spouses in dispute, including the interests and welfare of children, the financial position of spouses etc (s 6.4(2))
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- The Tribunal can order the partition (s 6.4(4)), or sale of land (s 6.4(5))
- Unconscionable actions, including reckless, or fraudulent behaviour will be considered by the Tribunal (s 6.4(3))
- The tribunal can make **urgent orders** (s 6.5); these orders will **automatically expire** after six (6) months (s 6.6)

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

- Ontario and federal courts **do not have** the power to make orders about interests in reserve land
 - If a spouse takes issue with the decision of the Ojibwe Tribunal, it can then **appeal** to the appellate panel of the Tribunal (s 7.1)
 - If a spouse applies to Federal court for a judicial review of an appellate level decision of the Ojibwe Tribunal, M'Chigeeng shall be considered to make submissions to the court (s 7.3)
- Ontario and federal courts **have** the power to make orders about personal property

Section 8.0 Matrimonial Home

- The Tribunal may make different orders regarding the interest in and possession of a matrimonial home (s 8.3); when deciding on the disposition of a matrimonial home, the Tribunal will consider the **interests and welfare of children** (s 8.4)

Section 9.0 Exclusive Occupation of a Matrimonial Home

- Exclusive possession of a matrimonial home can be granted by the Tribunal
- The Tribunal can make different orders on exclusive occupation of the family home (s 9.1)
 - Orders can be on an urgent basis (s 6.5)
- The Tribunal must consider various circumstances when making its decision (s 6.4(2))

Section 10.0 Enforcement

- An enforcement officer can arrest people who break Tribunal orders without a warrant (s 10(2))
- An enforcement officer may assist in carrying out the orders of the Ojibwe Tribunal (s 10(3))
 - Contravening the law is an offence on summary conviction, max fine of \$5,000 and/or prison for no more than three months (s 10(4))

Section 11.0 Amendment or Repeal

- The law can only be amended or repealed by following community consultation procedures to enact a new law

Section 12.0 General Provisions

- Transition clause for the law to be enacted under the land code (s 12.1)