

bm: band member
nbn: non-band member

Scenario 1: Intention of Legislation

Bm and nbn spouses separate.

- ***Did they have a written agreement at the time they started their relationship (see Section 4.0)?***
 - **Yes:** the agreement will be enforced if it meets certain conditions (see Section 4.2). If the spouses need help enforcing the agreement (see Section 5.2(1)(c)(iii)), they can apply for mediation; if mediation is unsuccessful, then they can apply to the Ojibwe Tribunal for resolution and it will enforce the agreement in accordance with the law (see Section 4.3).
 - If the agreement gives more than a life estate as defined in the law to a nbn, then that part of the agreement will be made void by the Tribunal (see Sections 4.2(2) and 4.3(2)).
 - **No:** the parties will enter into mediation under Section 5.0 of the law.
 - **Mediation successful?**
 - Following the completion of a successful mediation, the mediator will write a separation agreement, and the parties cannot then challenge the agreement before the Ojibwe Tribunal (see Section 5.4(1)).
 - **Mediation unsuccessful?**
 - Following an unsuccessful mediation, the parties shall receive a certificate of completion (see Section 5.5). The parties can then proceed to settle the dispute before the Ojibwe Tribunal (see Section 6.0).

Scenario 2: Exclusive Occupation and Domestic Violence

A **bm and nbn** partnership goes through episodes of domestic violence.

At some point the **bm spouse** decides that she's had enough and wants exclusive occupation of the family home. She can skip mediation, and apply for an urgent order to the Ojibwe Tribunal (see Section 6.2(b)). The Tribunal can make an order of exclusive occupation under section 9.0. This type of order is generally made very expeditiously and only on the matter of occupation of the matrimonial home; it will also automatically expire within six (6) months (see Section 6.6).

The nbn spouse would need to leave the house after the order is handed down, but could, for example, move to another building on the property. If the nbn spouse sticks around, then both spouses would apply to the Tribunal for an order on other matrimonial real property apart

from the house (that is now exclusively occupied by the bm).

Given that the bm holds the title and has received exclusive occupation of the home under an urgent order, and the nbm does not hold a right to the land, the Tribunal would make an order to the effect that the nbm has no (or limited) interest in the land and must vacate the property either immediately or at some point in the near future.

If the nbm ex-spouse still sticks around on the property, refusing to comply with the order, the police can charge him with an offence under the law and, if the trespass by-law is in effect, then a trespass action can be brought against him (see Section 10.0). If the nbm thinks that the order is unfair, he can appeal the decision to the appellate panel of the Ojibwe Tribunal (see Section 7.1).

If the **nbm spouse** brings forward the application in the case of domestic violence, then the Tribunal could order an exclusive occupation order for this spouse for a period not exceeding six (6) months (see Section 6.6). During this time it would likely be expected that s/he would be sorting out accommodation off reserve, or elsewhere on reserve. The (ex)spouses could proceed to the Tribunal on other matters, to determine whether the nbm spouse has any interest in the land. In any event, the Tribunal would not be able to order that the nbm spouse has anything greater than a life estate (see Section 2.2(1)(b)).

The Tribunal can make an order of a life estate, for example, when a bm spouse has died and the Tribunal makes a compassionate ruling for an elderly nbm spouse, allowing her or him to reside for a life estate of up to ten years. Or, where there are children and the nbm is the surviving parent of bm children. In such a case, the Tribunal can decide that the nbm spouse can stay in the matrimonial home with the bm children until the children are 18 years of age. During this time, the CP is held in trust in the name of the bm child (or children) with the nbm spouse holding only a life estate interest, not a right, in the real property.

In the case that a **spouse operates a business** from part of the matrimonial home, and an exclusive occupation order is granted to the other spouse, the spouse operating the business would not be deprived of access to the part of the house where she or he conducts his or her business (see Sections 2.2(7) and 6.4(8)).

Scenario 3: Band-Member and Non-Band Member Spouse Tribunal Options

Before the Ojibwe Tribunal, **bm and nbm spouses** wish to settle a dispute over the division of matrimonial real property.

The Ojibwe Tribunal will be limited in the type of orders it can make because nbms do not hold any rights to the land; they can only hold an interest in the land, which is limited to a life estate interest of 10 years, or until the youngest bm child is 18 years old (see Section 2.2(1) (b), as well as the definition for “life estate” and “Interest in First Nation land”).

The Ojibwe Tribunal will make determinations, such as:

- ***Was the matrimonial real property inherited?***

- If the real property was inherited by the bm spouse, the bm will keep the property. However, the nbm spouse may still have an interest in the property if the bm and nbm spouse entered into an agreement that the property would be shared (see Section 2.2(5) and 4.0).
 - In this case, the Tribunal could order that the nbm has an interest up to a life estate.
- **Are there children?**
 - The Tribunal will consider the interests and welfare of children at all times (see Section 8.4 and 6.4(2), which notes the type of circumstances the Tribunal will consider when making decisions).
 - The spouse, who is the primary caregiver of the child, will very likely have exclusive possession of the family home (see Section 8.4).
 - **If the custodial parent of the child/children is the bm**, then the CP rests with this person and the person can stay in the home and on the property indefinitely.
 - **If the custodial parent of the child/children is the nbm and non-CP holder**, then this person can be granted an exclusive possession of the home until the youngest bm child is 18 years old (see definition of “life estate”).
 - If there are only nbm children, then the customary policy that the primary caregiver maintains exclusive possession of the family home would not apply (see definition of “child” which does not include nbm children).
- **Can the land under the CP be partitioned?**
 - No because the nbm has no right to the land, so even if she or he was granted possession for a period of time up to a life estate, this would not affect the underlying right of the CP holder to the entirety of the land set out in the CP (see definition of “Interest in First Nation land”).
- **Can the land be ordered to be sold?**
 - While the land cannot be de facto partitioned so that both spouses have property, the Tribunal could order that the land be partitioned so that part of it would be sold with proceeds going to the nbm spouse in the interest of fairness (see Sections 2.2(1)(b) and 8.1(2)).
 - For example: A bm inherits a property that he lives in with a nbm spouse (no children). If they were to break up without any agreement on sharing real property, the bm would have exclusive possession to the home and land. The nbm spouse would not be able to claim a right to the matrimonial real property. However, the nbm can assert an interest in the value of the real property and improvements to the real property (i.e. an addition to the matrimonial home that they did together) (see Section 8.1(2)). In addition, if the bm acted in an unconscionable way, acting intentionally, recklessly or fraudulently to deplete the net family property while they were together, for example destroying part of the matrimonial home, including property of the nbm spouse, the Tribunal may order that part of the bm's CP be partitioned and sold with some or all of the proceeds going to the nbm spouse (see Section 6.4(3)).

Scenario 4: Band Member and Band Member Spouse Tribunal Options

Before the Ojibwe Tribunal, **bm spouses** wish to settle a dispute over the division of matrimonial real property.

The Ojibwe Tribunal will make determinations, such as:

- ***Was the matrimonial real property inherited?***
 - If yes, then the party who inherited the property keeps the property unless:
 - there was an indication that the inherited property was to be shared between the inheritor and her/his partner; or
 - the parties entered into an agreement where they decided that if they were to separate the inherited property would be shared equally.
- ***Are there children?***
 - The Tribunal will consider the interest and welfare of children at all times (see Section 8.4 and 6.4(2), which notes the type of circumstances the Tribunal will consider when making decisions).
 - The spouse, who is the primary caregiver of the child, will very likely have exclusive possession of the family home (see Section 8.4).
- ***Can the land under the CP be partitioned or sold?***
 - Yes the Tribunal could order that the CP be partitioned between the bm spouses (see Sections 6.4(4) and (5)), or that part of the land be partitioned and sold.