

FISHER RIVER CREE NATION
MATRIMONIAL REAL PROPERTY LAW

First Reading on

November 15, 2024

Second Reading on

January 7, 2025

Third Reading on

Approved on

In force on

DRAFT

Preamble

WHEREAS, the ancestors of Fisher River Cree Nation (hereinafter referred to as “FRCN”) were signatories to Treaty #5 on September 24, 1875 and the adhesion to Treaty #5 on September 24, 1908;

WHEREAS, as promised by Treaty #5, FRCN has reserve lands for the exclusive use and benefit of its Members, as initially surveyed in 1877;

WHEREAS, FRCN has the inherent right to govern itself, its Members, and its lands;

WHEREAS, FRCN desires to enact a law appropriate to its culture and traditions with respect to the use, enjoyment and occupation of Family Homes on its reserve lands and the division of real property rights or interests held by Spouses or Common-Law Partners on FRCN Land;

WHEREAS, FRCN intends to provide equal rights, remedies, and protections to each Spouse who has or claims interests in the Family Home situated on FRCN Lands, upon the breakdown of their Marriage or Common-Law Relationship;

WHEREAS, FRCN does not wish to be bound by the default provisions of the federal *Family Homes on Reserves and Matrimonial Interests and Rights Act (Canada)*;

WHEREAS, this Law supersedes the federal *Family Homes on Reserves and Matrimonial Interests and Rights Act* and any provincial matrimonial property laws;

WHEREAS, while FRCN allows Non-Member Spouses to reside on FRCN Lands, Non-Members acquire no rights to the land;

WHEREAS, the best interests and welfare of the Children, including their safety, comfort, and the right to remain in the Family Home where appropriate and desirable, shall be of paramount consideration in the exercise of determining the Rights or Interests of Spouses and to the interpretation and application of this Law;

WHEREAS, FRCN intends to respect the following principles for the use and occupancy of Family Real Property on FRCN Lands and the division of interests in a Family Home, upon the breakdown of a Marriage or Common-Law Relationship:

- i) the right of the Spouses in a Marriage or Common-Law Relationship to make their own agreement as to the disposition of interests in Family Real Property on FRCN Lands in the event of the breakdown of the relationship,
- ii) to encourage the use of mediation where the parties have not or are unable to reach their own agreement upon the breakdown of the relationship and where no pre-existing agreement exists;

WHEREAS, the Council or its designate has the authority to implement and enforce an agreement reached between the Spouses or through the Dispute Resolution Process regarding the Family Home as long as agreements and decisions are consistent with existing FRCN laws; and

WHEREAS, the parties have the right to access a court of competent jurisdiction to deal with all of their property rights, entitlements and obligations on the breakdown of their Marriage, subject to FRCN law relating the property interests of FRCN.

NOW, THEREFORE, this Law, submitted to FRCN members by the Council, is enacted pursuant to the authority granted to FRCN under the *Fisher River Cree Nation Land Code*, in accordance with the *Framework Agreement on First Nation Land Management*, and shall be effective as of the date of the community vote on the Law and being approved by the Minister of Crown-Indigenous Relations and Northern Affairs Canada.

Council of the Fisher River Cree Nation enact as follows:

1. Title

1.1. The title of this Law is the ***Fisher River Cree Nation Matrimonial Real Property Law***.

2. Definitions

2.1. For the purposes of understanding this Law, the following definitions apply:

“Applicant” means a person who has submitted an application to settle a dispute between Spouses concerning the Family Home situated within FRCN.

“Canada” means His Majesty the King in Right of Canada.

“Child” means:

- a) a child of the Spouses born to Married or unmarried Parents;
- b) a child adopted by the Spouses in accordance with the law of a province or territory or in accordance with FRCN custom;
- c) a child of one Spouse and adopted by the other Spouse; or
- d) a child whom the Spouses have demonstrated a settled intention to treat as their child.

“Common-Law Partner” of a person means another person who, not being Married to the other person, cohabited with him or her in a conjugal relationship for a period of at least two (2) years or for a period of at least one (1) year and they are together the Parents of a Child.

“Common-Law Relationship” means the relationship between two (2) Common-Law Partners.

“Council” means the Chief and Council of FRCN.

“Court” means the Court of King’s Bench of Manitoba or an institution established by FRCN to exercise judicial authority, resolve disputes and interpret or apply laws in accordance with the FRCN’s customs, traditions and inherent jurisdiction.

“Dependent” means a person under the age of 18 years who has not withdrawn from, or a person 18 years of age or older who is unable by reason of illness or disability to withdraw from, the care and control of his/her Parents or his/her legal guardian.

“Designated Judge” means a justice of the peace or judge who is authorized to act as designed judge for the purposes of the *Family Homes on Reserves and Matrimonial Interests and Rights Act* or any official appointed under FRCN’s laws to perform equivalent judicial or adjudicative functions.

“Dispose” includes to give, to sell, to exchange, or any other method of disposal or instrument, including a will.

“Dispute Resolution Process” means the dispute resolution framework established under the *Fisher River Cree Nation Land Code*.

“Domestic Agreement” means an agreement in which the parties agree on their respective rights and obligations

- a) under their Marriage or on separation;
- b) on the annulment or dissolution of the Marriage;
- c) while living together or on ceasing to live together; or
- d) on the death of one or both of them.

“Family Home” means a structure:

- a) where the Spouses habitually reside or, if they are separated or one of them has died, where they habitually resided on the day on which they separated or the death occurred; and
- b) in which at least one Spouse has any Right or Interest or that was allocated to at least one of the Spouses by FRCN.

“Family Real Property” means a real property Right or Interest held by at least one of the Spouses that was:

- a) acquired during the Marriage or Common-Law Relationship; or

- b) acquired before the Marriage or Common-Law Relationship, but in specific contemplation of the Marriage or relationship.

“Family Violence” means any violent or abusive behaviour perpetrated within the domestic setting. This includes physical violence, intense verbal abuse, harassment, threats, and any other action that may cause physical, mental, or emotional harm to be suffered by the victim.

“FRCN” has the meaning set forth in the preamble.

“FRCN Land” means Fisher River Indian Reserve No. 44 and Fisher River Indian Reserve No. 44A and includes any other reserve lands that are made subject to the *Fisher River Cree Nation Land Code* by resolution or ministerial order.

“Land Manager” means the individual holding the position of FRCN land manager from time to time.

“Law” means this FRCN Matrimonial Real Property Law.

“Marriage” means the union of two (2) persons and includes marriages that are solemnized by a traditional, customary, religious or civil ceremony, and/or a Common-Law Relationship provided neither person also has another legal Spouse and “Married” shall have a corresponding meaning.

“Member” means a person whose name appears in the Membership Register of FRCN as defined in the FRCN Membership Code.

“Membership Register” means the list containing the name of every Member of FRCN.

“Non-Member” means a person whose name does not appear in the Membership Register of FRCN.

“Parent” in respect of a Child, means the Child’s natural parent, adopted parent, step-parent, and a person who has demonstrated a settled intention to treat the Child as a Child of his or her family, except under an arrangement where the Child is placed in a foster home by a person having lawful custody.

“Peace Officer” means a person referred to in paragraph C of the definition of “peace officer” in section 2 of the *Criminal Code of Canada*, RSC, 1985, c. C-46. For greater certainty, Peace Officer includes a safety officer and a member of the Manitoba First Nations Police Service.

“Right or Interest” means the right or interest held by a person other than FRCN in a structure on FRCN Land or in any fixture or other property permanently affixed to FRCN Land, including:

- a) the right or interest a person has to or in a structure that was built by, paid for by or purchased by a person other than FRCN;
- b) an improvement to a structure owned by FRCN, if the improvement was built by, paid for by or purchased by a person other than FRCN; or
- c) a fixture or improvement to land, if the fixture or improvement was built by, paid for by or purchased by a person other than FRCN.

“Spouse” means a person who is Married to another person whether by a traditional, religious or civil ceremony, and includes a spouse by Common-Law Relationship.

3. Rules of Interpretation

- 3.1. For greater certainty, the rules in section 3 apply to the interpretation and application of this Law.
- 3.2. Subject to its terms, this Law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a Marriage or common law relationship with respect to personal property or other entitlements or obligations of Spouses.
- 3.3. Subject to this Law, FRCN may address interests in land or homes in FRCN held by either Spouse, or both Spouses, in a manner consistent with this Law, relating to the ownership, possession or occupancy of real property or the division of interests in real property in FRCN.
- 3.4. In this Law, reference to the masculine includes the feminine, and references to the singular include the plural.
- 3.5. A person ceases to be considered a Child upon reaching the age of 18 years unless he or she is dependent upon one of the Spouses for care or financial support because he or she is suffering from an illness or disability.
- 3.6. A Marriage is valid if performed in accordance with the law of a province or territory or in accordance with FRCN custom.
- 3.7. The sex or gender of a person is not relevant to the interpretation of “Spouse” or “Common-Law Partner” or to the application of this Law.
- 3.8. A Common-Law Relationship is considered to start when the Common-Law Partners begin living together in a Marriage-like relationship or such other date as they may agree upon in their Domestic Agreement.
- 3.9. Persons are deemed to have lived separate and apart for any period during which they

- a) lived apart and either of them had the intention to live separate and apart from the other; or
 - b) continued to live together but their Marriage or Common-Law Relationship had ended.
- 3.10. A period during which persons have lived separate and apart shall not be considered to have been interrupted or terminated only because they resumed living together for the purpose of reconciliation during one or more periods totaling not more than 90 days.
- 3.11. If a Family Home is also normally used for more than just a residential purpose, the rules on Family Homes include only the portion of the structure that may be reasonably regarded as necessary for the residential purpose.
- 3.12. Family Real Property does not include any asset acquired by a Spouse by way of gift or inheritance, unless it can be shown that the gift or inheritance was devised or made with the intention of benefitting both Spouses.
- 3.13. This Law does not limit or preclude any right or remedy available under any other law, including the common law or FRCN laws, the province or Canada with respect to personal property.

4. Application of the Law

- 4.1 This Law applies in respect of:
- a) the use, enjoyment, occupation and possession of Family Homes on FRCN Land;
 - b) the Rights or Interests of Spouses in structures that are affixed to FRCN Land; and
 - c) the Rights or Interests of Spouses in structures that are located on FRCN Land but not affixed to the FRCN Land, provided such structures form part of the Family Real Property.
- 4.2 For greater certainty, this Law does not apply to the division of a Member's traditional or customary right to occupy or possess land. However, this Law does apply to the division of any structure, fixture, or other property that is permanently affixed to that land.
- 4.3 This Law applies to Spouses only if at least one of them is a Member.
- 4.4 This Law applies in respect of Rights or Interests acquired both before and after this Law takes effect.

5. Purpose

- 5.1. The primary purpose of this Law is to address Family Real Property situated on FRCN Lands in the event of the breakdown of a Marriage or Common-Law Relationship, or upon the death of a Spouse.

6. Domestic Agreements

- 6.1 Individuals entering into a Marriage or Common-Law Relationships are encouraged to also enter into a Domestic Agreement.
- 6.2 A Domestic Agreement may divide the right and interests of Spouses in a structure differently than provided under this Law, subject to the power of the Court to override the Domestic Agreement because it is unfair and inequitable after considering the factors in section 11.4.
- 6.3 A Domestic Agreement is only enforceable if
- a) it is made in writing;
 - b) it is signed by the parties;
 - c) the Domestic Agreement has been notarized or witnessed by a Commissioner of Oaths, and
 - d) the Domestic Agreement is valid according to the standard rules of contract.

7. Use, Enjoyment and Occupation of a Family Home

- 7.1 A Family Home is for the use, enjoyment, and occupation of the Spouses and their Children.
- 7.2 The right of a Spouse or Child to use, enjoy, and occupy the Family Home is a personal right that is enforceable only against each other.
- 7.3 The right of a Child to use, enjoy and occupy the Family Home is:
- a) paramount over the right of a Spouse to use, enjoy and occupy the Family Home; and
 - b) continues until the Court makes an order, or other accommodation is arranged, in the best interests and welfare of the Child.
- 7.4 To avoid uncertainty, Spouses may designate a structure as their Family Home in a Domestic Agreement.

8. Restrictions on Disposition of a Family Home

- 8.1 No Spouse shall Dispose of or encumber a Right or Interest in a Family Home unless one of the following conditions is met:
- a) the other Spouse joins in the instrument or consents to the transaction;
 - b) the other Spouse has released all rights or interests in the Family Home by a Domestic Agreement; or
 - c) the Council consents to or authorizes the transaction or releases the property from the application of this section.
- 8.2 Any disposition or encumbrance contrary to section 8.1 has no effect.
- 8.3 For greater certainty, any sale or encumbrance is subject to any other applicable FRCN law.

9. Application for Exclusive Occupation of a Family Home

- 9.1 The Court may on application, order that:
- a) one Spouse and Child be given exclusive rights to use, enjoy and occupy the Family Home or part of it for the period that the Court directs;
 - b) a Spouse or other person preserve and deliver up the Family Home and its contents to their Spouse and Child;
 - c) a Spouse or other person not disturb the occupants of the Family Home;
 - d) a Spouse makes periodic payments to the other Spouse for exclusive use, enjoyment and occupation;
 - e) all or part of the contents of the Family Home remain in the home or be removed from the home;
 - f) a Spouse pays for all or part of the repairs and maintenance of the Family Home and other related liabilities, or to make periodic payments to the other Spouse for these purposes; and
 - g) exclusive occupation extends to the portion of any land that is contiguous to the Family Home and that it is necessary for the use and enjoyment of the Family Home.
- 9.2 When making an order under section 9.1, the Court shall consider all of the circumstances of the parties including:
- a) the best interests and welfare of any affected Children and their paramount right to use, occupy, and enjoy the Family Home;

- b) any existing order under this Law and any existing support orders;
- c) the financial position and medical condition of the Spouses;
- d) the provisions of any Domestic Agreement;
- e) the availability of other suitable and affordable accommodation;
- f) any risk of Family Violence or harm to a Spouse or Child or another person occupying the Family Home;
- g) the length of time each Spouse has resided in the Family 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 that person's caregiver;
- j) any other exceptional circumstances related to a person, other than the Spouses or Children, who is occupying the Family Home; or
- k) the collective rights of the First Nation and any entitlement or financial interest of the First Nation in or to the Family Home.

9.3 If the Family Home is occupied under a rental agreement or lease, the terms of the rental agreement or lease shall apply to the persons granted exclusive occupancy during the period of the order.

9.4 If an order under this section is needed urgently, the application may be made to a Designated Judge who may make an interim order until the full application can be heard and a final decision rendered.

9.5 For greater certainty, an order made under section 9.1 does not:

- a) change who holds rights in or to the Family Home; or
- b) prevent an executor of a will or an administrator of an estate from transferring an interest or right to a named beneficiary under the will or to a beneficiary on intestacy.

9.6 If the Family Home is owned by FRCN, an order under section 9.1 cannot grant exclusive occupation to a Spouse for more than one year without the consent of the Council, but the order may be renewed by the Court, on application, for successive periods not exceeding one year.

10. Emergency Protection Orders

- 10.1 A Spouse may make an application to the Court for an emergency protection order without the other Spouse being present or notice of the application being provided to them.
- 10.2 A lawyer, Peace Officer, an authorized employee of the First Nation Healing Centre, or other person designated in writing may make the application under this section on behalf of the affected Spouse if they have been provided with the Spouse's consent to do so.
- 10.3 An emergency protection order granted under this section shall be valid for up to 90 days and is subject to any conditions that the judge specifies. The Spouse who has been granted the emergency protection order may apply to the Court for an extension of that order while it remains in effect.
- 10.4 To grant an order under this section, the Designated Judge must be satisfied that:
- a) Family Violence has occurred; and
 - b) that the order is immediately required due to the urgency of the situation and to ensure the protection of those persons who are at risk of further harm or of property that is at risk of damage.
- 10.5 A Peace Officer or other person may make the application under this section on behalf of the affected Spouse if they have been provided with the Spouse's consent to do so.
- 10.6 In deciding whether or not to grant an emergency protection order, the Designated Judge shall take into account the following factors:
- a) the history and nature of the Family Violence;
 - b) whether there is an immediate danger to the person or property that is at risk;
 - c) the best interests of any Children of either Spouse;
 - d) the interests of any third parties, such as any disabled or elderly persons, who habitually reside in the Family Home;
 - e) whether any third party holds an interest or right in or to the Family Home; and
 - f) the existence of exceptional circumstances that require the removal of a third party from the Family Home.
- 10.7 An order granted under this section may contain the following:
- a) a provision granting the Applicant exclusive occupation of the Family Home and access to that home;

- b) a provision requiring the Applicant's Spouse and any other person specified in the order who habitually resides in the Family Home, to vacate the home either immediately or within a specified period, and prohibiting them from re-entering the home for the duration of the order;
- c) a provision directing a Peace Officer to remove the Applicant's Spouse or other specified person from the Family Home pursuant to the terms of the order;
- d) a provision prohibiting the Applicant's Spouse or other specified person from attending near the Family Home;
- e) a provision directing a Peace Officer to accompany the Applicant's Spouse or other specified person to the Family Home in order to supervise the removal of personal belongings; and
- f) any other provision that the Designated Judge considers necessary for the immediate protection of the persons or property who may be at risk of harm.

10.8 An order under this section shall take effect once notice of it has been served on the person against whom the order was made.

10.9 Any person against whom an order under this section is made, may apply to the Court to have the order varied or revoked.

10.10 An application to vary or revoke an order under this section may only be made within two weeks after the day on which the notice of the order was received, or within any further time that the Court allows.

10.11 The Court may confirm, vary, or revoke the order where an application has been made under section 10.9.

11. Division of Family Real Property Upon the Breakdown of a Marriage or Common-Law Relationship

11.1 A Spouse may apply to the Court to divide the value of their Family Real Property upon the breakdown of the Marriage or Common-Law Relationship.

11.2 Each Spouse is entitled to an equal share of the value of their Family Real Property.

11.3 For greater certainty, when Family Real Property is divided or its value is shared, the Rights or Interests in any structure shall not be transferred to or held by a person who is not a Member, however, a non-Member Spouse remains entitled to a monetary equivalent proportionate to their share of the value of any Family Real Property.

11.4 Despite section 11.2, the Court may divide the Family Real Property in unequal shares or adjust any payments, if the Court decides that equal shares would be unfair or inequitable after considering the following:

- a) the best interests and welfare of any affected Child, including the need to provide accommodation and proper support to any affected Children;
- b) any payments payable for the support of a Child and any financial responsibility related to the care and upbringing of the Child;
- c) any Domestic Agreement;
- d) any agreement between one or both Spouses and a third party;
- e) the length of time that the Spouses have lived together;
- f) the length of time, if any, that the Spouses have lived separate and apart;
- g) any significant change in the value of the interests or rights in question between the day for fixing the value date and the day on which the order is made;
- h) whether one Spouse has exclusive occupation of the Family Home by agreement or order;
- i) any contribution, whether financial or in some other form, made directly or indirectly by a third party on behalf of a Spouse to the acquisition, disposition, operation, management or use of the property;
- j) any direct or indirect contribution made by one Spouse to the career or career potential of the other person;
- k) the extent to which the financial means and earning capacity of each Spouse have been affected by the responsibilities and other circumstances of the Marriage or Common-Law Relationship;
- l) any substantial gift of property by a Spouse to a third party or any transfer of property by a Spouse to a third party other than a bona fide purchaser for value;
- m) any previous distribution of property between the Spouses by gift or agreement or pursuant to an order of any court;
- n) any tax liability that may be incurred by a Spouse as a result of any transfer or sale of property or any order made by a court;
- o) any dissipation or reduction in the value of the property caused by a Spouse;
- p) any financial or other interests of the First Nation or third parties in the Family Real Property;
- q) any debts or liabilities of a Spouse, including debts paid during the course of the Marriage or Common-Law Relationship;

- r) the value of other property that is subject to division or has been divided under the applicable family law of a province or territory; and
- s) any other relevant fact or circumstance.

11.5 No application may be made under section 10 more than three years after the day the Spouses lived separate and apart, unless the Court grants leave on the grounds that exceptional circumstances justify the late application.

12. Compensation for Other Real Property

12.1 If one Spouse has a Right or Interest that is not Family Real Property, the other Spouse is entitled on division of the Family Real Property to compensation for that Right or Interest in accordance with section 12.2.

12.2 The Spouse is entitled to be paid to the greater of the following amounts calculated for each structure, fixture, or other property to which the Right or Interest applies:

- a) one half of the amount by which it appreciated in value from the beginning of the Marriage or Common-Law Relationship to the valuation date; and
- b) the difference between any amounts paid by the Spouse for improvements to it and any liability incurred to make those payments.

13. Death of a Spouse or Common-Law Partner

13.1 Upon the death of a Spouse or Common-Law Partner, the survivor is entitled, on application made under this section, to an amount equal to one half of the value, on the valuation date, of the Right or Interest that was held by the deceased individual in or to the Family Home, and to other real property rights or interests that were held by the deceased individual on FRCN Land, besides those of in the Family Home, in the same manner as provided under section 12.2.

13.2 An Applicant for an order under this section must, without delay, send a copy of the application to the following persons:

- a) where the Applicant is the survivor, to the executor of the will or the administrator of the estate, if the Applicant knows who those persons are; or
- b) where the Applicant is the executor of a will or an administrator of an estate, to the survivor.

13.3 On application by an executor of a will or an administrator of an estate, the Court may, by order, vary the amount owed to the survivor under this section.

13.4 An application by the surviving Spouse must be made within 10 months after the date of the death of their Spouse or Common-Law Partner.

13.5 On application by the surviving Spouse, the Court may, by order, extend the 10-month limitation period by any amount of time that it considers appropriate, if the Court is satisfied that the survivor failed to make an application within that period because the survivor:

- a) did not know of the death of their Spouse or Common-Law Partner until after the period expired;
- b) circumstances existed that were beyond the control of the survivor; or
- c) only became aware of the existence of any matrimonial rights or interests after the period expired

13.6 On application under this section, the Court may, by order, determine any matter in respect of the survivor's entitlement under this section, including:

- d) determining the amount payable to the survivor; and
- e) providing for the method or combination of methods of payment of that amount to the survivor.

13.7 An executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:

- a) the survivor consents in writing to the proposed distribution;
- b) the 10-month period under section 13.4 and any extension to that period provided for under section 13.5 have expired without an application having been made; or
- c) an application under this section has been disposed of.

13.8 Section 13.7 does not prohibit reasonable advances being provided to survivors or other Dependents of the deceased Spouse or Common-Law Partner for their support.

13.9 A Spouse who is a Non-Member and is occupying the Family Home when the Member Spouse dies is entitled to continue to occupy the Family Home for a minimum of 180 days after their Spouse's death. Where the surviving Non-Member Spouse occupies the Family Home without any Children from the Marriage, any extension of the 180-day period is at the discretion of the Council.

13.10 Where the surviving Non-Member Spouse continues to reside and care for Children of the Marriage, the Non-Member Spouse and Dependent Children may continue to occupy the Family Home until the Children reach the age of majority. Where the Children have a disability, this period of time may be extended indefinitely.

14. Valuation of Rights and Interests

14.1 Unless the Court determines that another value is more appropriate, Rights or Interests must be valued at the cost of replacing the structure, fixture, or other property, to which the Right or Interest right applies, minus the following amounts:

- a) the amount of any accrued depreciation applicable to it;
- b) the amount of any outstanding debts or other liabilities assumed for acquiring it; and
- c) the amount of any outstanding debts or other liabilities assumed for improving or maintaining it.

14.2 For greater certainty, the value of a structure, fixture or other property affixed to land does not mean its insured value or the value of an equivalent one off-reserve.

14.3 The date for determining the value of Rights or Interests is the earliest of the following dates:

- a) the date a divorce is granted;
- b) the date the Marriage is declared a nullity;
- c) the date the Spouses began to live separate and apart;
- d) the date on which a Spouse manifested the intention not to continue the Marriage or Common-Law Relationship;
- e) the date one Spouse dies; or
- f) the date an application is made to the Court for:
 - i. exclusive occupation of the Family Home;
 - ii. division of Family Real Property; or
 - iii. irresponsible depletion.

15. Mediation

15.1 Spouses who have a dispute about matters under this Law shall first attempt to resolve the dispute through the efforts of a mutually agreed upon mediator, as outlined in this section. The mediation process shall form a mandatory step in the Dispute Resolution Process, ensuring consistency with the traditions, customs, and practices of FRCN.

15.2 Mediation does not prevent a party from seeking a remedy from the Court, especially in urgent circumstances where interim orders may be required.

- 15.3 The Council may create and maintain a roster of designated community members/elders able to act as mediators available to Spouses to assist them in resolving disputes about matters under this Law and if so, a current copy of that roster shall be posted at the administration office in FRCN.
- 15.4 A Spouse may request mediation by filing a notice of request for mediation with the Council in the designated form and with proof of notice having been provided to the other Spouse.
- 15.5 It is the responsibility of the Spouse requesting mediation to ensure that the notice referred to in section 15.4 is served on the other Spouse at least 20 days in advance of the mediation session.

16. Powers of the Court

16.1 The Court may, on application:

- a) determine whether or not a structure is a Family Home and if so, its extent;
- b) authorize the disposition or encumbrance of the Family Home without the consent of a Spouse, if the Spouse:
- i. cannot be found or does not contest the application;
 - ii. is not capable of giving or withholding consent; or
 - iii. is unreasonably withholding consent.
- c) declare as of no effect and set aside any sale or encumbrance of a Family Home made in contravention of section 8.1;
- d) make any order that it considers necessary to stop or restrict the irresponsible depletion of Family Real Property;
- e) determine what is Family Real Property, and any other Right or Interest;
- f) determine the value and the date for fixing the value of a Right or Interest under section 14;
- g) determine the amount payable by one Spouse to the other; and
- h) provide the method by which the amount payable is to be settled, including:
- i. payment of the amount in a lump sum;
 - ii. payment of the amount by installments;
 - iii. the transfer of a Right or Interest, subject to section 11.3;

- iv. the set-off or compensation of any amounts owed by one Spouse to the other; or
- v. any combination of the methods referred to in subparagraphs (i) to (iv).

17. General Provisions for Orders

- 17.1 The Court may attach any conditions it considers appropriate to its decision or order under this Law and give such directions as are necessary for those purposes.
- 17.2 The Court may, on application, make a decision or order under one section of this Law, make a decision or order under another section, or combine them.
- 17.3 The Court may make its decision or order on an emergency or temporary basis.
- 17.4 The Applicant for any order or decision under this Law shall serve a copy of the application and a copy of the subsequent order or decision on the FRCN.
- 17.5 The Council is entitled to make representations on any application for an order or decision under this Law.
- 17.6 In determining the best interests and welfare of a Child, the Court shall also consider:
 - a) the possible disruptive effects on the Child of a move to other accommodations; and
 - b) the Child's views and preferences, if they can be reasonably ascertained.
- 17.7 The Court may, on application, confirm, vary or revoke any order or decision made under this Law, including an order made by a Designated Judge on an interim or emergency basis.
- 17.8 For greater certainty, the procedural rules applicable to the Court or Designated Judge apply to orders and decisions made under this Law.

18. Administration

- 18.1 A copy of this Law appearing to be certified as a true copy by an officer of FRCN is proof of the original without proof of the officer's signature or official character.
- 18.2 The Council shall ensure a copy of this Law, as amended from time to time, is available for public inspection at locations designated by the Council and may make it public by any other means of communication that the Council considers appropriate.
- 18.3 An Applicant who obtains an order or decision under this Law shall, without delay, send a copy of it to the Land Manager, or other individual as designated by the Council.

19. Appeals

19.1 An appeal from an order under this Law does not operate as a stay or suspend the operation of the order unless the judge hearing the matter decides otherwise.

20. Enforcement

20.1 A Peace Officer may arrest without warrant any person the officer believes on reasonable and probable grounds to have contravened an order for exclusive occupation.

20.2 A Peace Officer may assist in making an application on behalf of a Spouse or Child with that person's consent, or if that person does not consent, with leave of the Court.

20.3 A Peace Officer shall, at the request of an Applicant or if directed by the Court, assist in the enforcement of any order made under this Law, including:

- a) serving notice of an order or decision upon any person; and
- b) accompanying the Applicant or any specified person to the Family Home or other location in order to supervise compliance with the order of the decision.

19.4 Any person who contravenes the provisions of an order or decision made under this Law is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$5,000.00 or imprisonment for a term not exceeding 60 days, or both.

21. Amendment or Repeal

21.1 This Law may be amended or repealed only by a subsequent law made by the Council, after having put an amendment or repeal to a vote by eligible Members of the FRCN community in attendance at the final community meeting on this issue.

21.2 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.

21.3 The Council must, at least 30 days in advance of the first meeting, take reasonable measures that are in accordance with the traditions, customs and practices of FRCN to inform its Members of:

- a) the time and place of all meetings where amendments to this Law shall be discussed;
- b) their right to attend and participate in these meetings;
- c) a summary of the proposed amendments or repeal; and
- d) the requirements for approval under sections 21.4 and 21.5.

- 21.4 Every Member who is 18 years of age or over, whether or not resident on FRCN land, is eligible to vote on whether to approve an amendment or repeal.
- 21.5 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.
- 21.6 The process outlined in section 21.1 through 21.5 is not required for revisions made to this Law that do not change the substance of the Law. Such revisions include:
- a) an amendment to the description of Family Real Property subject to this Law;
 - b) amendments required should the FRCN establish its own court or justice system;
 - c) a reference to this Law to a clause in another Act or document that was amended and resulted in clause renumbering;
 - d) a reference in this Law to an Act or parts thereof that have expired, or have been repealed or suspended;
 - e) changes in this Law as are required to reconcile seeming inconsistencies with other Acts;
 - f) minor improvements in the language as may be required to bring out more clearly the intention of FRCN without changing the substance of this Law; and
 - g) correcting editing, grammatical, or typographical errors.

22. Coming Into Force

22.1 This Law comes into force on _____.