

Current Rules Governing MRP Matters at Aamjiwnaang

Most people across Canada going through a breakdown of their marriage or conjugal relationship, or the death of a spouse or common-law partner, enjoy legal protections to ensure their matrimonial real property is dealt with fairly and equitably.

Until recently, however, these laws did not apply on-reserve. As a result, many of the legal rights and protections that were afforded to individuals living off-reserve were not available to individuals living on-reserve.

In 2013, the federal government passed the *Family Homes on Reserves and Matrimonial Rights or Interest Act* (the “Act”). The Act is a federal law that applies to matrimonial real property on-reserve. “Real property” means land and buildings erected on land. “Matrimonial real property” therefore refers mainly to the family home where both spouses or common-law partners live during a marriage or common-law relationship. In contrast, “personal property” (such as money in bank accounts, cars, etc.) is subject to provincial family laws that already apply on-reserve.

Rights and protections currently provided under the federal rules include, among other things:

1. an equal entitlement to occupy the family home;
2. requirement of spousal consent for the sale or disposal of the family home;
3. entitlement of each spouse or common-law partner to an equal division of the value of the family home upon sale or disposal;
4. when a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for a specified period of time;
5. Emergency Protection Orders or exclusive occupation orders for victims of domestic violence.

The Act provides that First Nations can opt out of the federal system by enacting their own custom MRP law. As of December 2014, any First Nation that had not yet passed its own custom MRP law would be subject to the federal rules. As a result, since December 2014, Aamjiwnaang’s matrimonial real property matters have been governed on a provisional basis under the new federal law.

Provided at least one person in the relationship is a First Nation member or an Indian, the new federal law applies: during a conjugal relationship, when that relationship breaks down, or on the death of a spouse or common-law partner.

However, First Nations can still choose to enact their own custom MRP laws so that the federal rules will no longer apply to them. Such custom MRP laws can govern:

1. the use, occupation and possession of family homes on-reserve;
2. the division of the value of any interests or rights held by spouses or common-law partners in or to structures and lands on-reserve.

“Pros” of remaining under the federal rules include:

1. They provide a complete/comprehensive list of rules similar to those applicable to people living off - reserve;
2. It can be less costly for the First Nation than developing a custom MRP law;
3. The federal rules now also address domestic violence issues.

Under the federal rules, victims of domestic violence can now apply for Emergency Protection Orders and/or exclusive occupation of the family home. Before the Act, victims were often forced

to leave their homes, as it was the title holder (often the accused abuser) who had the ultimate right to remain in the home.

“Cons” of remaining under the federal rules include:

1. They are imposed by the government;
2. No input from First Nation members;
3. Rules are not necessarily reflective of Aamjiwnaang’s values.

II. What is Involved in Aamjiwnaang Passing its Own MRP Law?

Aamjiwnaang has inherent rights to address matrimonial real property issues, including:

1. Rules around possession of the family home (whether rented or owned);
2. Rules governing the division of other assets; and
3. Rights held by spouses/common law partners relating to buildings and lands on-reserve.

Additionally, Aamjiwnaang can incorporate its own unique legal traditions, customs and practices relating to matrimonial real property into its MRP law.

The heart of the custom MRP law would be the body set up to make orders, provide dispute resolution and enforce the law. If Aamjiwnaang wishes to have a fully community driven process, the community can consider dispute resolution mechanisms that keep family disputes in the community and that only resort to the outside courts in the event of appeals. However, the cost of running this type of body will also be an important consideration (for example, what is practical and affordable for the community and its members to access).

“Pros” to Aamjiwnaang passing its own custom MRP law include:

1. Aamjiwnaang would be taking responsibility and exercising its inherent rights to sovereignty and self-government;
2. Custom MRP law would reflect Aamjiwnaang’s own values, legal traditions and practices;
3. Custom MRP law would be tailored to fit Aamjiwnaang’s existing laws and policies;
4. The community has the ultimate authority to ratify the MRP law; and
5. If Aamjiwnaang does ratify the MRP law, there is no government discretion to block it.

“Cons” to Aamjiwnaang passing its own custom MRP law include:

1. It would result in additional administrative requirements for Aamjiwnaang (e.g. the process to develop and administer the new law);
2. There will be additional costs associated with developing a custom MRP law (legal costs, ratification vote, administration, etc.).

To pass the MRP law, at least 25% of Aamjiwnaang’s total eligible voters must participate in the ratification vote. Of that 25% of eligible voters, a majority must vote in favor of the custom MRP law for it to be ratified.

QUESTIONS & ANSWERS

Question 1: If we do not want to pass our own custom MRP law at this time, can we still do so at a later date?

Answer: Yes. Under the *Act*, a First Nation can pass its own custom MRP law at any time. Until it does so, however, that First Nation will continue to be governed under the federal rules.

Question 2: If we ratify a custom MRP law, but we are not satisfied with it down the road, can we go back to the federal rules?

Answer: Yes. Under the *Act*, a First Nation can repeal its custom MRP law at any time with proper notice to the government. Once repealed, that First Nation will once again be governed under the federal rules.

Question 3: Do the federal rules allow non-members to hold an interest or right to land on-reserve?

Answer: No. The *Act* respects the principle of non-alienation of reserve lands. The federal rules will not lead to non-Indians or non-members acquiring permanent interests in reserve land.