

**LENNOX ISLAND FIRST NATION  
MATRIMONIAL REAL PROPERTY LAW**

DRAFT ONLY

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## Preamble

WHEREAS Lennox Island First Nation has from time immemorial used and lived on their lands;

AND WHEREAS Lennox Island First Nation has the inherent right to govern itself, its Band members and its lands;

AND WHEREAS the lands of the Lennox Island First Nation are for the exclusive use and benefit of its Band members; anyone other than a Band member is a guest on Lennox Island First Nation lands;

AND WHEREAS Lennox Island First Nation protects its Band members living on its reserve lands in accordance with its culture, language, and traditions;

AND WHEREAS Lennox Island First Nation does not wish to be bound by the default provisions of the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (Canada);

AND WHEREAS the long term goal of the Lennox Island First Nation is to have its own tribunal to decide matters of matrimonial real property on reserve, instead of the Courts;

AND WHEREAS provincial laws respecting real property do not apply to reserve lands;

AND WHEREAS Lennox Island First Nation provides a law appropriate to our culture, language and traditions respecting 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 reserve lands;

AND WHEREAS spouses and common-law partners should be enabled to make agreements to deal with their rights and obligations upon separation or divorce and to resolve their disputes by mutual agreement and in accordance with sections 3(10) and 13(3) of this Act;

AND WHEREAS Lennox Island First Nation intends to respect the following general principles respecting the use, occupancy and possession of matrimonial real property on Lennox Island First Nation land, and the division of interests in that land on the breakdown of marriage or a common law relationship:

(a) a child of the spouses has the right to reside in the family home until the age of majority or until other arrangements have been made in the best interest of that child. The primary focus will be the well-being of the child;

(b) the spouses should resolve spousal property matters by contract or agreement

consistent with sections 3(10) and 13(3) of this Act. If spouses are unable to reach an agreement themselves, the principals of mediation are encouraged;

(c) where the family home is owned by one of the spouses and not the First Nation/ Band, each spouse should be entitled to a one half interest in the value of the family home;

(d) whether a family home is a band-owned home must be considered;

(e) Band-owned homes are owned by the First Nation/ Band. Individuals living within First Nation/ Band owned homes have the benefit to use this home as tenants and do not have or gain ownership interests in the band- owned homes;

(f) the spouses have the right to access a Court of competent jurisdiction to deal with their property rights, entitlements and obligations on the breakdown of their marriage or common law relationship; and

(g) the spouses must bear their own costs for proceeding under this Act.

Following a community referendum in favour of this legislation, the Chief and Council of Lennox Island First Nation enacts as follows:

#### Title

1. The title of this Law is the Lennox Island First Nation Matrimonial Real Property Law.

#### Definitions

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

"Act" or "Law" means this Lennox Island First Nation Matrimonial Real Property Law.

"band-owned home" means a home or residence owned by the First Nation or band; including but not limited to Section 10 and Section 95 housing under the *Indian Act*.

"Band/ First Nation" means Lennox Island First Nation.

"Band member" means a person whose name appears on the Band membership list of Lennox Island First Nation.

"child" or "children" mean a child under the age of majority, who is a Band Member or is eligible to become a Band Member, and:

- (a) is a child of the spouses, whether born in wedlock or not;
- (b) is adopted by the spouses in accordance with the law of a province or territory or in accordance with Aboriginal custom of Lennox Island First Nation;
- (c) is a child of one spouse and adopted by the other spouse;
- (d) where one or both of the spouses is the child's legal guardian, foster parent or custodian; or
- (d) one or both of the spouses have demonstrated a settled intention to treat as their child.

"common-law partner" means an individual who is not married to the other person and,

- (a) has been living together with the other person in a marriage-like relationship continuously for a period of at least two (2) year;
- (b) has been living together with the other person in a marriage-like relationship and together they are the natural or adoptive parents of a child; or
- (c) has entered into a domestic agreement that treats their relationship as marriage-like.

"Council" means the Council of the Lennox Island First Nation.

"court" means a court of competent jurisdiction, being the the Supreme Court of Prince Edward Island.

"ex parte application" means an application made to the court by one spouse or person(s), without required notice to the other spouse or person(s).

"designated judge" is any of the following persons who are authorized by the lieutenant governor in council of the province to act as a designated judge for the purposes of this Act, including:

- (a) a justice of the peace appointed by the lieutenant governor in council of the province;
- (b) a judge of the court in the province; or
- (c) a judge of a court established under the laws of the province.

"dispose" includes to give, to sell, to exchange and any other method of disposal or instrument, including by a will.

"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 on Lennox Island First Nation land; or
- (b) if they separated or one of them died, where the spouses habitually resided on Lennox Island First Nation land on the day on which they separated or the death occurred.

"family real property" means a right or interest held by at least one of the spouses on Lennox Island First Nation land that was acquired before or during the marriage or common law relationship; however, does not include the family home or any real property on reserve received through inheritance or gift, unless it can be shown it was intended to be held by the spouses together.

"Lennox Island First Nation land" means any and all reserve land of the First Nation or Band, including any parcels of land that from time to time may become allotted to the First Nation or Band.

"peace officer" means a person referred to in paragraph (c) of the definition of "peace officer" in section 2 of the Criminal Code (Canada).

"personal property" means the other property of an individual that is not "real property".

"right or interest" means

- (a) a Certificate of Possession pursuant to the *Indian Act* (Canada);
- (b) a Certificate of Occupation pursuant to the *Indian Act* (Canada);
- (c) any other right to possession allotted in accordance with section 20 of the *Indian Act* (Canada);
- (d) a permit referred to in subsection 28(2) of the *Indian Act* (Canada);
- (e) a lease under section 53 or 58 of the *Indian Act* (Canada);
- (f) a right or interest in or to land that is subject to the Lennox Island First Nation Land Code;
- (g) any other right or interest in or to a structure recognized by the Council or by the court under section 16(1) or 16(3) herein.

"real property" means any lands or structures affixed to the lands, including homes and buildings.

"spouse" means an individual who,

- (a) is married to the other person;
- (b) has in good faith entered into a marriage with the other person that is void or voidable; or
- (c) is a common-law partner of the other person.

"surviving spouse" means the living spouse on the death of the other spouse.

"tenant" means a person(s) living in a band owned home, where they are paying rent, or rents or funds are being paid on their behalf to reside in the band owned home.

### Rules of Interpretation

3. For greater certainty, the following rules apply to the interpretation and application of this Law:

(1) A person ceases to be considered a child upon reaching the age of 18 years of age, unless he or she is dependent upon one of the spouses for care or financial support because he or she is:

- a. attending school and under the age of 25; or
- b. suffering from an illness or disability.

(2) A marriage is valid if performed in accordance with the law of a province or territory or in accordance with an Aboriginal custom of Lennox Island First Nation.

(3) The sex or gender of a person is not relevant to the interpretation of "spouse" or to the application of this Law.

(4) 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.

(5) 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 for a period up to 90 days.

(6) Structures located on but not affixed to Lennox Island First Nation lands are subject to this Law.

(7) 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 reasonably be regarded as necessary for the residential purpose.

(8) Family real property does not include any asset acquired by a spouse by way of inheritance, or gift unless, it can be proven that the inheritance or gift was devised or made with the intention to be held by the spouses together.

(9) This Law does limit or preclude any right or remedy available under any other law.

(10) Only person(s) who are Band members, acquire the right to live on or possess Lennox Island First Nation lands or structures beyond those limited exceptions set out in sections 6(3), 8 (1)(a), 9 (1)(a) and 11 of this Act.

(11) This Law does not abrogate or derogate from any Aboriginal or Treaty rights or freedoms that pertain to Lennox Island or its members.

#### Application of this Law

4. (1) This Law applies in respect of:

(a) the use, enjoyment, occupation and possession of family homes on Lennox Island First Nation land; and

(b) the rights and interests of spouses in or on Lennox Island First Nation land.

(2) This Law applies to spouses only if at least one of the spouses is a Band member.

(3) This Law applies in respect of rights and interests acquired both before and after this Law takes effect.

(4) This Law does not apply to bank accounts, household goods or other personal property. It only applies to real property on reserve.

(5) If any provision of this Law is held invalid by a Court of competent jurisdiction, the invalid provision shall be severed and shall not affect the remaining provisions of this Law.

#### Domestic Agreements

5. (1) Spouses and people entering into a marriage or common law relationship, or ending a marriage or common law relationship are encouraged to enter into a domestic agreement.

(2) A domestic agreement may divide the rights and interests of spouses differently than provided under this Law, except as provided in sections 3(10) and 13 (3), and subject to the power of the court to over-ride the domestic agreement because it is unfair and inequitable after considering the factors in section 16(4) (a) through (f).

- (3) A domestic contract is only enforceable if:
  - (a) it is made in writing;
  - (b) it is signed and dated by the parties;
  - (c) the parties had legal capacity at the time of execution; and
  - (d) the signatures of the parties are witnessed.

#### Use, Enjoyment and Occupation of Family Home

- 6. (1) A family home is for the use, enjoyment and occupation of Band members, their spouses and their children, subject to the provisions herein.
- (2) The right of a child to use, enjoy and occupy the family home:
  - (a) takes priority 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.
- (3) A spouse, regardless of Indian status or if a Band member, who is occupying the family home, whether a band owned family home or not, when the other spouse dies is entitled to continue to occupy that family home for up to 180 days immediately following the spouse's death before vacating the family home, subject to sections 8 and 9 herein.
- (4) To avoid uncertainty, spouses may designate a structure as their family home in a domestic agreement.

#### Restrictions on Disposition of Family Home

- 7. (1) This section is **not applicable to band-owned homes**, as neither spouse is entitled to sell, dispose or otherwise encumber a band-owned home, regardless of possession or occupancy.
- (2) No spouse shall dispose of or encumber a right or interest in a non- band owned family home unless:

(a) the other spouse joins in the instrument or consents to the transaction; or

(b) the other spouse has released all rights or interests in the family home by a domestic agreement; or

(c) pursuant to subsection (6), the Council consents to or authorizes the transaction or releases the property from the application of this section.

(3) Any disposition or encumbrance contrary to section 7 (1) or (2) has no effect.

(4) The court on application of a spouse may dispense with the consent requirement of the other spouse, if the court is satisfied they are unreasonably withholding consent.

(5) For greater certainty, any sale or encumbrance is subject to any other applicable law of the Band/ First Nation and to the *Indian Act* (Canada).

(6) If the family home is subject to a Ministerial Loan Guarantee, the consent of the Band/ First Nation is required before any encumbrance, sale or disposition of the property can be permitted. Should any disposition or encumbrance of a Ministerial Loan Guaranteed property occur without prior written consent of the Band/ First Nation, the disposition and encumbrance has no effect.

### Application for Exclusive Occupation of Family Home

#### *Band Owned Homes*

8. (1) On application, the court may make an order for exclusive occupancy of a band owned family home as follows:

(a) priority for the exclusive right to use, enjoy and occupy the family home will be given to the spouse with primary custody of the child or children, residing in the family home regardless of whether the primary custodial spouse is a Band member. Should the spouses have joint custody with shared parenting; the spouse that a Band member shall reside in the family home.

(b) if there are no children, then the band owned family home shall be held by the spouse who a Band member; and

(c) if both spouses are Band members, then the court shall consider all the circumstances as outlined in section 8 (6) herein in ordering exclusive occupation.

(2) On application by a surviving spouse, the court may make an order for exclusive occupation of a band owned family home beyond the initial 180 day threshold as follows:

(a) priority for the exclusive right to use, enjoy and occupy the family home will be given to the custodial spouse of the child or children, residing in the family home regardless of whether the custodial spouse is a Band Member;

(b) if there are no children, then the band owned family home may be held by the surviving spouse if he/she is a Band member, and after considering the factors outlined in section 8 (7).

(3) The spouse or surviving spouse obtaining exclusive occupation of the band owned home must submit to and abide by the terms, conditions, lease and policies of the Band/ First Nation respecting its housing.

(4) The court can make an order for exclusive occupation for up a maximum of one (1) year. This order is not renewable after the one (1) year period has lapsed. If no order is in place or the order has expired, then the Band's Housing Policy shall prevail.

(5) To give effect to an order for exclusive occupation as outlined in section 8 (1) or section 8 (2) above, the court may order:

(a) a spouse or other person preserve and deliver up the family home and its contents to a spouse, a child, or another member;

(b) a spouse or other person be removed from and not disturb the occupants of the family home during the term of the order;

(c) a spouse, surviving spouse or deceased spouse's estate, as may be appropriate in the circumstance, make periodic payments to the other for the exclusive use, enjoyment and occupation;

(d) all or part of the contents of the family home remain in the home or be removed from the home;

(e) a spouse, surviving spouse or deceased spouse's estate, as may be appropriate in the circumstance, pay for all or part of the reasonable repairs and maintenance to the family home and other related liabilities, or to make periodic payments to the other spouse for these purposes. Other liabilities include but are not limited to, utilities and insurance;

(f) exclusive occupation extends to the portion of any land that is adjoining the family home and that is necessary for the use and enjoyment of the family home; and

(g) where the family home is band-owned, the court shall identify which spouse is responsible to pay rents or costs associated with occupying the band-owned home.

(6) When making an order under section 8(1)(c) respecting living spouses, the court shall consider all the circumstances of the parties, including:

(a) the best interests and welfare of any affected minors;

(b) any existing orders under this Law and any existing support orders;

(c) the financial position of the spouses;

(d) the medical condition of the spouses;

(e) the provisions of any domestic agreement;

(f) the availability of other suitable and affordable accommodation;

(g) any risk of violence or harm to a spouse or child or another person occupying the family home;

(h) the length of time each spouse has resided in the family home;

(i) whether any third party holds a right or interest in the family home;

(j) 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;

(k) any other exceptional circumstances related to a person, other than the spouses or children, who is occupying the family home;

(l) the collective rights of the Band/ First Nation and any financial interest of the Band/ First Nation in the family home; and

(m) the collective interests of the First Nation Band members in their reserve and the views of the Council regarding culture, social and legal contexts.

(7) When making an order under section 8(2) for a surviving spouse, the court shall consider all the circumstances of the parties including:

- (a) the best interests and welfare of any affected minors;
- (b) the terms of the will;
- (c) the terms of any agreement between the spouses;
- (d) the collective interests of the First Nation Band members in their reserve and the views of the Council regarding culture, social and legal contexts;
- (e) the medical condition of the surviving spouse;
- (f) how long the surviving spouse lived on reserve;
- (h) the interests or rights of any other person in or to 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) the collective rights of the Band/ First Nation and any financial interest of the Band/First Nation in the family home; and
- (k) any other exceptional circumstances related to a person, other than the spouses or children, who is occupying the family home.

(8) At any time the Band may substitute, switch, assign or trade Band Owned Homes between Band Members, in order to best match and make use of Band Owned Home resources and the needs of Band Members. Even if a spouse or surviving spouse is granted an Exclusive Occupation Order by the Court for the current Band Owned Home, the Band may substitute the current Band Owned Home for another suitable Band Owned Home if the Band so requires.

#### *Certificate of Possession or other non Band Owned Family Homes*

9. (1) On application, the court may make an order for exclusive occupation of a non band owned family home as follows:

- (a) priority for the exclusive right to use, enjoy and occupy the family home will be given to the primary custodial spouse of the Band member child or children, residing in the family home regardless of whether the primary custodial spouse is a Band member. Should the spouses have

joint custody with shared parenting; the spouse that is a Band member shall reside in the family home;

(b) if there are no children, then the family home shall be held by the spouse who is a Band member; and

(c) if both spouses are Band members, then the court shall consider all the circumstances as outlined in section 8 (6) herein in ordering exclusive occupation for the period that the court direct.

(2) On application by a surviving spouse, the court may make an order for exclusive occupation of the family home beyond the initial 180 day threshold as follows:

(a) priority for the exclusive right to use, enjoy and occupy the family home will be given to the custodial spouse of the child or children, residing in the family home regardless of whether the custodial spouse is a Band member;

(b) if there are no children, then the family home may be held by the surviving spouse if he/she is a Band member, and after considering the factors outlined in section 8 (7).

(3) If the family home was occupied under a lease or agreement, the terms of the lease or agreement apply to the persons granted exclusive occupancy during the period of the order.

(4) To give effect to an order for exclusive occupation as outlined in section 9 (1) or section 9 (2) above, the court may order:

(a) a spouse or other person preserve and deliver up the family home and its contents to a surviving spouse, a child, or another member;

(b) a spouse or other person be removed from and not disturb the occupants of the family home during the term of the order;

(c) a spouse, surviving spouse or the deceased spouse's estate, as may be appropriate in the circumstance, make periodic payments to the other for the exclusive use, enjoyment and occupation;

(d) all or part of the contents of the family home remain in the home or be removed from the home;

(e) a spouse, surviving spouse or the deceased spouse's estate, as may be appropriate in the circumstance, pay for all or part of reasonable repair and maintenance of the family home and other related liabilities, or to

make periodic payments for these purposes. Other liabilities include but are not limited to, utilities and insurance; and

(f) exclusive occupation extends to the portion of any land that is adjoining to the family home and that is necessary for the use and enjoyment of the family home.

(5) The court can make an order for exclusive occupancy for up to a maximum of one (1) year, which can be renewed in exceptional circumstances.

10. For greater certainty, an order made under section 8(1), 8(2), 9(1) or 9(2) does not:

(a) change who owns or holds a right or interest in the family home; and

(b) prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy.

### Emergency Protection Orders

11. (1) On ex parte application by a spouse or common-law partner, a designated judge of the province in which the family home is situated may make an order for a period of up to 90 days that contains one or more of the provisions referred to in subsection (5) and that is subject to any conditions that the judge specifies, if the judge is satisfied that

(a) family violence has occurred; and

(b) the order should be made without delay, because of the seriousness or urgency of the situation, to ensure the immediate protection of the person who is at risk of harm or property that is at risk of damage.

(2) The spouse or common-law partner or any other adult living in the family home, may make the application even if that person has been forced to vacate the family home as a result of family violence.

(3) A peace officer or regulated health care professional may also make the application on behalf of the spouse or common-law partner with that person's consent, or if that person does not consent, with leave of the designated judge.

(4) In making the order, the designated judge must consider, among other things,

(a) the history and nature of the family violence;

(b) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;

(c) the best interests of any minor in the charge of either spouse or common-law partner;

(d) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either spouse or common-law partner is the caregiver;

(e) the fact that a person, other than the spouses or common-law partners, holds an interest or right in or to the family home;

(f) the period during which the applicant has habitually resided on the reserve;

(g) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse or common-law partner from the family home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions referred to in subsection (9) against the applicant, any child in the charge of either spouse or common-law partner, or any other person who habitually resides in the family home; and

(h) any other circumstances the designated judge considers relevant.

(5) The order may contain,

(a) a provision granting the applicant exclusive occupation of the family home and reasonable access to that home for up to 90 days;

(b) a provision requiring the applicant's spouse or common-law partner and any specified person who habitually resides in the family home — whether or not they are Band members or status Indians — to vacate the family home, immediately or within a specified period, and prohibiting them from re-entering the home;

(c) a provision directing a peace officer, immediately or within a specified period, to remove the applicant's spouse or common-law partner and any specified person who habitually resides in the family home — whether or not they are Band members or status Indians— from the family home;

(d) a provision prohibiting any person who is required to vacate the family home under a provision referred to in paragraph (b) from attending near the family home;

(e) a provision directing a peace officer, within a specified period, to accompany the applicant's spouse or common-law partner or any specified person to the family home or other location in order to supervise the removal of personal belongings;

(f) a provision, should the designated judge deem it appropriate, allowing restricted access to the property for a business or commercial related purpose; however, not to the family home itself. Safety must be the first priority and the designated judge must be satisfied that such restricted access would not impact safety; and

(g) any other provision that the designated judge considers necessary for the immediate protection of the person who is at risk of harm or property that is at risk of damage.

(6) Any person against whom the order is made and any person specified in the order are bound by the order on receiving notice of it.

(7) A peace officer must serve a copy of the order on the persons referred to in subsection (6) directly. The peace officer must inform the applicant as soon as each service is effected.

(8) An action or other proceeding must not be instituted against a peace officer for any act or omission done in good faith in the execution or intended execution of the peace officer's duties under this section.

(9) For the purposes of this section, "family violence" means any of the following acts or omissions committed by a spouse or common-law partner against the other spouse or common-law partner, any child in the charge of either spouse or common-law partner, or any other person who habitually resides in the family home:

(a) an intentional application of force without lawful authority or consent, excluding any act committed in self-defence;

(b) an intentional or reckless act or omission that causes bodily harm or damage to property;

(c) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;

(d) sexual assault, sexual abuse or the threat of either;

(e) forcible confinement without lawful authority; or

(f) criminal harassment, as defined in the Criminal Code.

(10) Should an Emergency Protection Order be issued by the designated judge or the court, a copy of the order shall be immediately delivered to the Council.

(11) Immediately after making an Emergency Protection Order, the designated judge shall forward a copy of the Emergency Protection Order and all supporting materials to the court.

(12) The court must review the Emergency Protection Order within five (5) working days after the day on which it is received or, if a judge is not available within that period, as soon as one becomes available.

(13) The court, on reviewing the Emergency Protection Order and the materials, must either issue an order,

(a) confirming the Emergency Protection Order if the court is satisfied that there was sufficient evidence before the designated judge to support the making of the Emergency Protection Order; or

(b) directing a rehearing of the matter by the court, if the court is not satisfied that the evidence before the designated judge was sufficient to support the making of all or part of the order.

(14) The court must give notice to the parties and any person specified in the Emergency Protection Order made by the designated judge of its decision and of any consequent procedures.

(15) An Emergency Protection Order that is confirmed is deemed to be an order of the court.

(16) If the court directs that a matter be reheard;

(a) the existing Emergency Protection Order continues in effect and is not stayed unless the court orders otherwise;

(b) all materials before the designated judge shall be considered in the rehearing, along with any additional evidence presented by the parties, including evidence on the collective interests of the Band/First Nation, on whose reserve the family home is situated; and

(c) the court may, by order, confirm, vary or revoke the Emergency Protection Order made under section 11 (1) through 11 (5) and may extend the duration of the Emergency Protection Order for a further 90 days, beyond the initial 90 day duration.

#### *Confidentiality*

12. On application by a party or on the courts own motion, the court may make an order relating to section 11 proceedings, prohibiting public disclosure in a record or document, publication or broadcasting of any information, including the identity of the victim, witnesses, children or fact. The court shall only make this order if it is satisfied:

(a) the order is necessary for the safety or well being of a person, with special consideration for any minors involved; or

(b) to protect a person from undue hardship or adverse affect, which outweighs the public's right to information.

#### Division of Real Property

#### Breakdown of the Relationship

#### *Family Home*

13. (1) On the breakdown of the marriage or common law relationship, a spouse may apply to the court to divide the value of their family home, provided the family home is not band owned.

(2) Subject to 13(1), each spouse is entitled to an equal share of the value of their family home.

(3) For greater certainty, when dividing or sharing the value of the family home or family real property, the following rights and interests cannot be transferred to or held by a person who is not a Band member and a status Indian:

(a) a Certificate of Possession;

(b) a Certificate of Occupation; or

(c) any other right to possession allotted in accordance with section 20 of the *Indian Act* (Canada).

#### *Compensation for Other Real Property*

14. (1) If one spouse has a right or interest in family real property on reserve that is not the family home, the other spouse, is entitled to an equal division of the value in the

family real property as compensation for their right or interest, subject to sections 3 (8) and 16 (4).

*Valuation of Real Property*

15. (1) Rights and interests must be valued at the amount that,
- (a) a buyer would reasonably be expected to pay for comparable rights or interests minus the amount of any outstanding debts or other liabilities assumed for acquiring the rights or interests or for improving or maintaining the structures and lands that are the object of the rights or interests, unless the court determines that another value is more appropriate in the circumstances; or
  - (b) the parties mutually agree on another valuation.
- (2) For greater certainty, the value of a right or interest does not necessarily mean its insured value or the value of equivalent property off reserve. When possible, other on reserve property market comparables should be used to assist in the property valuation.
- (3) The date for determining the value of rights and 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;
  - (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, meaning reckless, negligent or wilful damage to the family home or family real property.

## Powers of the Court

16. (1) On application by one of the spouses or common-law partners, or a surviving spouse, made within five (5) years after the day on which they ceased to cohabit or in the case of a surviving spouse, five (5) years after the date of the spouses death, a court may, by order, determine any matter in respect of the spouse's or common-law partner's entitlement under sections 8, 9, 13, 14, 15 or 16 herein.

(2) On application by a spouse, common-law partner or surviving spouse, a court may, by order, extend the period of five (5) years by any amount of time that it considers appropriate, if the court is satisfied that the applicant failed to make an application within that period for either of the following reasons:

- (a) circumstances existed that were beyond the control of the applicant; or
- (b) only after the period expired did the applicant become aware of their interests or rights.

(3) The court may, on application,

(a) determine whether or not a structure is a family home and if so, its extent. If the family home is band owned, the court cannot find otherwise or award compensation to either of the spouses representing the value of the band owned family home;

(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; or

(c) declare as of no effect and set aside any sale or encumbrance of a family home made in contravention of section 7(1) or 7(2).

(4) The court may, on application, make any order that it considers necessary to stop or restrict the irresponsible depletion of family home or family real property, meaning reckless, negligent or wilful damage to the family home or family real property.

(5) The court may, on application,

(a) determine what the family home and family real property is and its value;

(b) determine the date for fixing the value of the family home and family real property under section 15(3);

(c) determine the amount payable by one spouse to the other;

(d) provide for the method by which the amount payable be settled, including:

(i) payment of the amount in a lump sum,

(ii) payment of the amount by instalments,

(iii) the transfer of a right or interest, subject to section 13(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).

(6) Despite sections 13(2) and 14(1), the court may divide the family home and/or the family real property in unequal shares or adjust the compensation payments, if the court finds that it would be unfair and inequitable after considering the following:

(a) the best interests and welfare of any affected child, including the need to provide accommodation or to properly support any affected child;

(b) any child or spousal support orders already in place;

(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) the date when the property was acquired;

(h) 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;

(i) whether one spouse has exclusive occupation of the family home by agreement or order;

- (j) 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;
- (k) any direct or indirect contribution made by one spouse to the career or career potential of the other spouse;
- (l) 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;
- (m) 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;
- (n) any previous distribution of property between the spouses by gift or agreement or pursuant to an order of any court;
- (o) 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;
- (p) any dissipation or reduction in value of the property caused by a spouse;
- (q) any benefit received or receivable by the surviving spouse as a result of the death of his or her spouse;
- (r) any financial or other interests of the Band/ First Nation or third parties in the family real property;
- (s) any debts or liabilities of a spouse, including debts paid during the course of the marriage or common law relationship;
- (t) 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
- (u) any other relevant fact or circumstance.

#### Division of Real Property - Death

17. Shall be in accordance with applicable sections of the *Indian Act*, (Canada).

## General Provisions for Orders

18. (1) With the exception of section 11 herein, a copy of any application made pursuant to this Law, must be served without delay on the other spouse, the Council and other person with an interest in the family home, such as executor of the will, administrator of the estate, Minister, persons over the age of majority residing in the family home. Any person who has the right to be served with a copy of the application, has a right to appear before the court and make submissions regarding their interest in the family home.

(2) The court may, on application to make a decision or order under one section of this Law, make a decision or order under another section, or combine them.

(3) The court may make a decision or order on an emergency or temporary basis.

(4) The Council is entitled to:

(a) receive a copy of every application to the court, with the exception of those pursuant to section 11.

(b) to make representations to the court on the application;

(c) to receive a copy of any order made under this Law; and

(d) may make regulations that the Council considers necessary for the carrying out the purpose and provisions of this Law, including regulations making rules that are applicable to any proceeding under this Law and prescribing anything that by this Law is to be prescribed.

(5) 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 accommodation, especially any accommodation outside of the community;

(b) connection to the First Nation community, culture and traditions; and

(c) the child's views and preferences, if they can reasonably be ascertained.

(6) The court may, on application, confirm, vary or revoke any order or decision made under this Law.

(7) For greater certainty, the applicable rules of the court apply to orders and decisions made by the court under this Law.

### Administration

19. (1) A copy of this Law appearing to be certified as a true copy by an officer of the Lennox Island First Nation is proof of the original without proof of the officer's signature or official character.

(2) The Council shall ensure that a copy of this Law, as amended from time to time, is on the Band/ First Nation's website and 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.

### Mediation

20. (1) Spouses who have a dispute about matters under this Law should make a reasonable attempt to resolve it through the efforts of a mutually agreed upon mediator in a process that accords with the traditions, customs and practices of the Lennox Island First Nation.

(2) Mediation does not prevent a party from seeking a remedy from the court, especially in urgent circumstances.

### Appeals

21. An appeal from an order of the court does not operate as a stay or suspend the operation of the order unless the judge hearing the matter decides otherwise.

### Enforcement

22. Any person who contravenes the provisions of an order or decision made with respect to sections 8, 9 or 11 under this Law is guilty of an offence and is liable upon summary conviction to

- (a) in the case of a first offence, a fine not exceeding \$2,000. Alternatively, if it is a violation to section 8 or 9 and all parties agree, the parties can have a sentencing circle, including any appropriate person, service provider, support or security, to discuss the violation, harm and appropriate next steps; and

- (c) in the case of a subsequent offence, a fine not exceeding \$5,000 or imprisonment for a term not exceeding three (3) months, or both.

#### Amendment or Repeal

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

(2) The Council must hold at least 3 meetings, including 1 on reserve and one off reserve, with the final meeting held on reserve, that are open to all Band members to consider and discuss any amendment or repeal of this Law.

(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 Lennox Island First Nation to inform its Band members of

- (a) the time and place of all the meetings;
- (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 23(4) and 23(5).

(4) Every Band member who is 18 years of age or over, whether or not resident on Lennox Island First Nation land, 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 Band members who participated in the final meeting.

#### Coming Into Force

24. This Law comes into force on \_\_\_\_\_.

VERSION 1 August 2018.