

McLEOD LAKE INDIAN BAND MATRIMONIAL REAL PROPERTY ACT

WHEREAS the McLeod Lake Indian Band has jurisdiction and authority over its reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the *McLeod Lake Indian Band Land Code* effective the 20th day of May 2003;

AND WHEREAS pursuant to the Framework Agreement on First Nation Land Management and the *McLeod Lake Indian Band Land Code*, the McLeod Lake Indian Band has agreed to enact rules and procedures applicable on the breakdown of a marriage to the use, occupancy and possession of Band Land, and the division of interests in that land;

AND WHEREAS the McLeod Lake Indian Band intends to provide rights and remedies, without discrimination on the basis of sex, to Spouses who have or claim an interest in Band Land upon the breakdown of their marriage;

AND WHEREAS the McLeod Lake Indian Band intends to respect the following general principles with respect to the use, occupancy and possession of matrimonial real property on Band Land, and the division of interests in that land on the breakdown of a marriage:

- (a) the children, if any, of spouses should have a right to remain undisturbed in the matrimonial home;
- (b) each spouse should have an equal right to possession of the matrimonial home;
- (c) each spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (d) the rules and procedures shall not discriminate on the basis of sex; and
- (e) no person is entitled to hold a permanent interest in Band Land.

AND WHEREAS the McLeod Lake Indian Band further intends to respect the following procedural principles with respect to the use, occupancy and possession of matrimonial real property on Band Land, and the division of interests in that land on the breakdown of a marriage:

- (a) the right of spouses to make their own agreement as to the disposition of interests in Band Land in the event that their marriage breaks down;
- (b) the value of mediation where the spouses have not, or are unable to reach

- their own agreement; and
- (c) the right of spouses to have access to a court of competent jurisdiction to deal with all of their property rights, entitlements and obligations on the breakdown of their marriage, subject to McLeod Lake Indian Band law where their property includes an interest in Band Land.

AND WHEREAS this enactment has received community input and approval in accordance with sections 10.1(e) and 11.1(h) of the *McLeod Lake Indian Band Land Code*;

NOW THEREFORE this *McLeod Lake Indian Band Matrimonial Real Property Act* is Hereby Enacted as a Law of the McLeod Lake Indian Band.

PART 1 APPLICATION

1. This Act may be cited as the *McLeod Lake Indian Band Matrimonial Real Property Act*.
2. This Act applies only to Interests in, or claimed pursuant to this Act in Band Land as defined in the *McLeod Lake Indian Band Land Code*.
3. It is the intention of this Act that, subject to its terms, all rights, entitlements and obligations of Spouses are dealt with equitably on the basis of all their respective circumstances, including rights, entitlements and obligations in respect of Interests in Band Land.
4. This Act 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 with respect to any property other than an Interest in Band Land, or any other entitlements or obligations of Spouses under such other law.
5. For the purposes of this Act, the following definitions shall apply:
 - (a) "Band Land" means any portion of a McLeod Lake Indian Band reserve that is subject to the *McLeod Lake Indian Band Land Code*;
 - (b) "Child" means a child born in or out of wedlock, a legally adopted child or a child adopted in accordance with McLeod Lake Indian Band custom;
 - (c) "Common-Law Marriage" means two individuals not married to each other, who have lived together as Spouses for a period of not less than one year;

- (d) "Council" means the Chief and Councillors of the McLeod Lake Indian Band;
- (e) "Dispute Resolution Panel" means the Dispute Resolution Panel established under the *McLeod Lake Indian Band Land Code*;
- (f) "Interspousal Contract" means:
 - (i) a marriage contract entered into between Spouses who are married to each other, or intend to marry, made in writing, signed by the Spouses and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Interests in Band Land; or
 - (ii) a Separation Agreement entered into between Spouses who are married to each other and are living separate and apart, made in writing, signed by the Spouses and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Interests in Band Land;
- (g) "Interest" includes any legal or equitable interest held in possession by either Spouse, or both Spouses, in Band Land;
- (h) "Land Management Committee" means the Land Management Committee established under the *McLeod Lake Indian Band Land Code*;
- (i) "Lands Manager" means the Lands Manager of the McLeod Lake Indian Band;
- (j) "Matrimonial Home" means an Interest that is, or if the Spouses have separated, was at the time of separation, occupied by one or both Spouses as the family home or that is mutually intended by the Spouses to be occupied by one or both of them as the family home;
- (k) "Member" means a person whose name appears on the McLeod Lake Indian Band Membership List;
- (l) "Spouse" means a person who:
 - (i) is married to another person, whether by traditional, religious or civil ceremony, and includes a Spouse by Common-Law Marriage; or

- (ii) has entered into a marriage that is voidable or void, in good faith on the part of a person relying on this section to assert a right under this Act.
6. This Act applies to an Interest where neither Spouse is a Member.
 7. A Spouse does not have an election under this Act, on the death of the other Spouse, to claim, take or pursue an Interest held by the other Spouse, and the Spouse's Interest shall be determined by the last will and testament or administration of the estate of the other Spouse.

PART 2
INTERSPOUSAL CONTRACTS

8. It is the purpose and intention of this Act to respect the agreement of Spouses as to the use, possession, occupancy, disposition or partition of an Interest in Band Land, including an Interest that is a Matrimonial Home.
9. Subject to this Part, a provision in an Interspousal Contract that reflects the agreement of the parties with respect to an Interest, including an Interest that is a Matrimonial Home, is valid, binding and enforceable.
10. Notwithstanding section 9, a provision in an Interspousal Contract that would give, award, acknowledge or create an Interest greater than a life estate to occupy or possess an Interest in favour of a Spouse who is not a Member, is void.
11. A life estate to possess or occupy an Interest shall be measured by the life of the person intended to enjoy it.
12. Subject to this Act, a court of competent jurisdiction may, on application under Part 4, set aside a provision of an Interspousal Contract with respect to an Interest:
 - (a) if a Spouse failed to disclose to the other Spouse all of that Spouse's Interests in Band Land, or any material information in respect of those Interests;
 - (b) if a Spouse did not understand the nature or consequences of the provision; or
 - (c) otherwise in accordance with the law of contract.
13. This Part applies whether the Spouses entered into the Interspousal Contract on, before or after the date that this Act comes into force and effect.

**PART 3
MEDIATION**

14. It is the intention of this Part that Spouses who, on the breakdown of their marriage do not have and are unable to conclude an Interspousal Contract with respect to Interests in Band Land, shall submit to mediation in respect of such Interests.
15. For the purposes of this Part, the Land Management Committee shall recommend to Council:
 - (a) rules and procedures applicable to the conduct of mediation;
 - (b) any forms, certificates, and other documents or instruments deemed necessary or advisable;
 - (c) fees, costs and consequential relief in respect of the provision of mediation services; and
 - (d) a roster of qualified mediators available to assist Spouses in resolving disputes regarding Interests in Band Land.
16. Spouses who do not have or are unable to conclude an Interspousal Contract may jointly initiate mediation with respect to Interests in Band Land, in which case it is intended that the Spouses utilize the services of a mediator whose name appears on the roster of qualified mediators referred to in section 15(d).
17. A member of the Dispute Resolution Panel shall, on request of the Spouses, meet with the Spouses to explain the mediation process and shall include a recommendation that the Spouses obtain independent legal advice.
18. A Spouse who does not have and is unable to conclude an Interspousal Contract with the other Spouse may request mediation by filing a Notice of Request for Mediation, in the designated form and with proof of service on the other Spouse, with the Lands Manager.
19. The Lands Manager shall on request assist a Spouse in completing a Notice of Request for Mediation.
20. A Spouse requesting mediation shall ensure that a copy of the Notice of Request for Mediation is served on the other Spouse.
21. Service under section 20 may be effected by:
 - (a) personal service;

- (b) delivery to a solicitor representing the other Spouse in the matter of the breakdown of the marriage;
 - (c) a method provided for in an Interspousal Contract; or
 - (d) registered mail to the address where the other Spouse is known or believed to be residing, in which case service shall be deemed to be effected seven days after the day the Notice is mailed.
22. Forthwith upon receipt of a Notice of Request for Mediation under section 18 the Lands Manager shall deliver the Notice to the Land Management Committee.
23. Within thirty days of receipt of a Notice of Request for Mediation under section 18 the Lands Manager shall:
- (a) arrange for a qualified mediator prescribed in section 15(d) to be available to the Spouses; and
 - (b) set a date for the Appointment for Mediation.
24. The Lands Manager may extend the period of time prescribed in section 23:
- (a) at the joint request of the Spouses; or
 - (b) where the Lands Manager is unable to secure the services of a qualified mediator within the prescribed period of time.
25. Notice of an Appointment for Mediation shall be served upon both Spouses by the Lands Manager no less than 10 days before the date set for the Appointment for Mediation.
26. A Spouse who receives a Notice of Appointment for Mediation shall attend the Appointment for Mediation.
27. Unless otherwise agreed, each Spouse shall be responsible for an equal share of the costs of mediation.
28. The mediator shall proceed expeditiously with the mediation and shall use best efforts to assist the Spouses to resolve all issues with respect to Interests in Band Land.
29. Where the mediation is successful, the agreement of the Spouses with respect to Interests in Band Land shall be reduced to writing in a Separation Agreement, and that Agreement shall expressly provide that each Spouse waives all rights to challenge its provisions under section 12.

30. A Separation Agreement concluded under section 29 shall include provision for all interests held by either Spouse, or both Spouses, and shall be a sufficient Interspousal Contract for purposes of this Act if it deals only with those Interests.
31. Where the mediation is successful, the mediator shall report that fact to the Lands Manager and the Lands Manager shall notify the Lands Management Committee.
32. Where the mediation is unsuccessful, the mediator shall deliver to each of the Spouses and to the Lands Manager a confidential report upon the mediation and the points remaining in dispute between the Spouses with respect to Interests in Band Land.
33. Upon conclusion of an unsuccessful mediation, the Lands Manager shall provide a certificate to the Spouses and to the Land Management Committee, which may be:
 - (a) a certificate of compliance with this Part; or
 - (b) where the Lands Manager reasonably concludes that the other Spouse cannot be located, is avoiding or ignoring service of documents or has otherwise refused to participate in the mediation, a certificate of waiver in favour of the Spouse requesting the mediation.
34. For greater certainty, nothing in this Part is intended to limit the right of a Spouse to seek other or further alternate dispute resolution on the breakdown of a marriage in relation to any matter other than an Interest in Band Land, or to restrict the Spouses from otherwise reaching agreement with respect to an Interest in Band Land, provided that such agreement results in a Separation Agreement that meets the requirements of this Act.

**PART 4
ACCESS TO A COURT OF COMPETENT JURISDICTION**

GENERAL

35. For the purposes of this Part, “court of competent jurisdiction” and “court” mean the British Columbia Supreme Court.
36. For greater certainty, no court other than a court of competent jurisdiction shall exercise jurisdiction under this Act in respect of an Interest in Band Land.
37. In the event of the breakdown of a marriage, a Spouse may apply to a court to determine a dispute in relation to an Interest in Band Land provided that the Spouse has first complied with Part Three or has been specifically relieved of such compliance by a provision of this Part.

38. No court shall exercise jurisdiction under this Part without first enquiring whether or not the Spouses have pursued or participated in mediation under Part Three and, if there has been no mediation, the court may:
- (a) direct that there be mediation; or
 - (b) hear and decide an application under this Part.
39. Subject to this Act, a court may determine Interests in Band Land held by either Spouse, or both Spouses, in a manner consistent with the provisions of the British Columbia *Family Relations Act* relating to the ownership, possession or occupancy of real property, the division of interests in real property, and net family property representing the value of interests in real property.
40. Notwithstanding section 39, the fact that an Interest does not include future or contingent Interests in Band Land shall not be taken to confer jurisdiction upon a court with respect to those Interests.
41. Notwithstanding section 66, a court may make any appropriate and equitable order on the ground of unconscionability where a Spouse has intentionally, recklessly or fraudulently depleted net family property that is an Interest in Band Land and that would otherwise be subject to the presumption set out in that section.
42. Subject to the *McLeod Lake Indian Band Land Code*, a court may make any order in relation to an Interest held by a Spouse, or both Spouses, that the court could make in respect of real property situated in the province of British Columbia, but not on Band Land, including:
- (a) an order that an Interest be transferred to a Spouse absolutely in accordance with this Act;
 - (b) an order that an Interest be subject to a lease by one Spouse to the other Spouse for a term of years, subject to such terms and conditions as the court deems just in all the circumstances; or
 - (c) an order that an Interest held by both Spouses be partitioned or partitioned and sold.
43. No order shall be made under paragraph 42(a) in favour of a Spouse who is not a Member.
44. Where an order is made under section 42(c) for partition of an Interest, Council shall direct the transaction and the Lands Manager may, unless a court has made

an order with respect to costs, make provision for a survey and for the allocation of the costs of the transaction.

45. Where an order is made under section 42(c) for the partition and sale of an Interest, that sale shall be by auction directed by the Council, and Council shall by resolution make provision for a reserve bid representing a fair sale price for the Interest, and unless a court has already made an order with respect to costs, for the allocation of the costs of the transaction.
46. Subject to this Act, a Spouse may apply to a court for determination of a question in relation to the right to possession of an Interest, and the court may:
 - (a) make an order declaring the right to possession of the Interest; or
 - (b) make an order that could be made under section 42 in respect of that Interest.
47. Where the Interest of a Spouse is held through a corporation, the court may order:
 - (a) the Spouse to transfer shares in the corporation to the other Spouse; or
 - (b) the corporation to issue shares in the corporation to the other Spouse.
48. An order shall not be made under this Part:
 - (a) which requires the sale of an operating business or farm on Band Land; or
 - (b) which significantly impairs the operation of such business or farm,unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
49. Where a proceeding has been commenced under this Part, and either Spouse dies before all issues relating to Interests in Band Land have been disposed of by a court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
50. For greater certainty, a Spouse for the purposes of applying for relief from a court includes a former Spouse after the marriage has been dissolved by decree absolute of divorce or by judgment of nullity.
51. Nothing in this Act relieves a party of the requirement to observe the rules and procedures of the court in relation to matrimonial causes.
52. Nothing in this Act limits the application of the laws of British Columbia and Canada in respect of matrimonial causes, except to the extent that such laws deal

expressly or implicitly with Interests in Band Land, and to that extent this Act shall apply.

**PART 6
MATRIMONIAL HOME**

53. Whether or not an Interest is a Matrimonial Home is a question of fact.
54. Where an Interest that includes a Matrimonial Home is normally used for a purpose additional to residential purposes, the Matrimonial Home includes only that part of the Interest that is reasonably necessary for use and enjoyment as the family residence.
55. Subject to the limitations on non-Member Interests set out in this Act and the *McLeod Lake Indian Band Land Code*, both Spouses have an equal right to possession of a Matrimonial Home.
56. Where one Spouse holds an Interest that is a Matrimonial Home, the other Spouse's right of possession is:
- (a) personal against the Spouse who holds the Interest; and
 - (b) unless an Interspousal Contract or court order provides otherwise, ends when the parties cease to be Spouses.
57. No Spouse shall dispose of or encumber an Interest that is a Matrimonial Home unless:
- (a) the other Spouse consents in writing;
 - (b) the other Spouse joins in the instrument of disposal or encumbrance;
 - (c) the other Spouse has released all rights in respect of that Interest by Interspousal Contract;
 - (d) a court has authorized the transaction; or
 - (e) a court has released the Interest from the application of this section.
58. If, in contravention of section 57, a Spouse disposes of or encumbers an Interest that is a Matrimonial Home, the disposal or encumbrance may on application to a court, be set aside.
59. Section 58 does not apply where the person holding the disposition or encumbrance at the time of the application to the court acquired the disposition or

encumbrance for value, in good faith and without notice at the time of acquiring or making an agreement to acquire the disposition or encumbrance, that the subject property was a Matrimonial Home.

60. Where a person proceeds to enforce or realize upon a claim against an encumbrance of an Interest that is a Matrimonial Home, the Spouse who has a right of possession under section 55 has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
61. A court may, on the application of a Spouse or a person claiming an Interest in a Matrimonial Home:
- (a) make a declaration whether or not the Interest is a Matrimonial Home;
 - (b) where a court finds that the Spouse whose consent is required under section 57:
 - (i) cannot be found;
 - (ii) is not available;
 - (iii) is declared incompetent due to mental incapacity;
 - (iv) is otherwise incapable of giving or withholding consent; or
 - (v) is unreasonably withholding consent,authorize a disposition or encumbrance of the Interest, provided that such disposition or encumbrance is otherwise authorized under McLeod Lake Indian Band law, and the court may prescribe such other conditions, including the provision of or payment for other comparable accommodation, as the court may consider appropriate; or
 - (c) make an order under section 57(d) or (e), subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.
62. Regardless of which Spouse holds an Interest that is a Matrimonial Home, a court may on application:
- (a) order the delivering up, safekeeping and preservation of the Interest;
 - (b) direct that one Spouse be given exclusive possession, consistent with this Act, of the Interest or part of that Interest, for such period as the court may

- direct, and release any other Interest that is a Matrimonial Home from the application of this Part;
- (c) authorize a disposition or encumbrance consistent with McLeod Lake Indian Band law of a Spouse's Interest that is a Matrimonial Home, subject to the other Spouse's right of exclusive possession as ordered under section 62(b);
 - (d) where it is shown that a Spouse has disposed of or encumbered an Interest that is a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this Act, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest is not a Matrimonial Home, direct the other Spouse to substitute any other Interest that such other Spouse may hold in Band Land for the Matrimonial Home subject to such conditions as the court considers appropriate in all the circumstances;
 - (e) make any interim or temporary order to give effect to the purposes of this Act or to protect the rights of a Spouse; and
 - (f) make any ancillary order, including an order as to costs, that the court deems necessary to give effect to this Act.
63. A court, in considering whether to direct that one Spouse have exclusive possession of an Interest that is a Matrimonial Home, shall be guided by the principle that subject to the best interests of the child, the custodial parent of a child should have exclusive possession of the family residence for a period sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of 18 years and has the opportunity to complete their education.
64. Where the Spouses share joint custody of a child or children, the principle set out in section 63 shall favour the Spouse with whom the child or children principally reside, provided that if the child or children reside substantially equal periods of time with each Spouse, the principle shall be neutral as between the Spouses.
65. In applying sections 63 and 64, a court may have regard to the fact that one or more of the children are not Members.

**PART 6
GENERAL PROVISIONS**

66. An Interest received by way of gift or inheritance by one Spouse from a third person who is a family member of that Spouse, or by one Spouse together with one or more other members of that Spouse's family, shall be deemed, subject to

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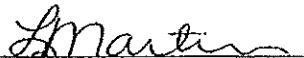
proof to the contrary, to have been transferred with the intention that the Interest should continue to be held within that family exempt from any claim of the other Spouse, and that the Interest, the income from that Interest and the value of that Interest shall be excluded from the receiving Spouse's net family property under sections 39 and 41.

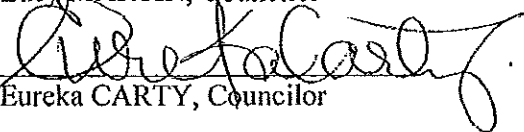
67. Section 66 does not apply to an Interest that is a Matrimonial Home.
68. The possession of an Interest under this Act by any person who is not a Member is not assignable and shall be deemed to terminate when that person ceases to use or occupy that Interest personally.
69. Any person who contravenes an order made by a court of competent jurisdiction pursuant to this Act in relation to an Interest is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or both.
70. A fine payable under section 69 shall be remitted to the McLeod Lake Indian Band by the court, after reasonable court costs have been deducted.
71. This Act shall come into force and effect on the 20th day of May 2004.


Signatures of Council
(McLeod Lake Indian Band Land Code, s. 7.6)

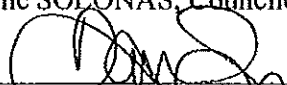

Chief Harley CHINGEE

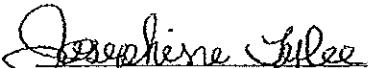

Elizabeth SOLONAS, Councilor


Lucy MARTIN, Councilor


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Josephine TYLEE, Councilor