

AOP Matrimonial Real Property Law | 2014

ALGONQUINS OF PIKWÀKANAGÀN FIRST NATION MATRIMONIAL REAL PROPERTY LAW

PREAMBLE

WHEREAS the Algonquins of Pikwàkanagàn First Nation (hereinafter "Pikwàkanagàn") has taken control of its reserve lands with respect to dealing with Matrimonial Law pursuant to Section 35 of the *Constitution Act, 1982* by accepting the Anishinabek Nation Matrimonial Real Property Law: Protecting our Families, Children and Communities upon Marriage Breakdown;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation have agreed to enact rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of land in Pikwàkanagàn, and the division of interests in the said land or property;

AND WHEREAS, pursuant to the Anishinabek Nation Matrimonial Real Property Law, the Algonquins of Pikwàkanagàn First Nation maintain the jurisdiction to develop their own laws in conjunction with or in replacement of the Anishinabek Nation Matrimonial Real Property Law in relation to the division and distribution of Matrimonial Real Property for its Members and other persons that reside within Pikwàkanagàn;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation intend to provide rights and remedies, without discrimination on the basis of sex, with respect to spouses who have or claim interests in the matrimonial home situated in Pikwàkanagàn upon the breakdown of their marriage;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation are guardians of the land to protect for future generations. Children have the right to maintain and continue their customs, traditions and practices. Members of the First Nation may have specific entitlements, but ultimately the benefits or the lands belong to the collective membership;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation intend to apply the following principles and steps with respect to the use, occupancy or possession of matrimonial real property and the division of interests thereof in the event of a marriage or common law relationship breakdown;

AND WHEREAS it is also the desire of the Algonquins of Pikwàkanagàn First Nation to ensure the land in Pikwàkanagàn remains for the use and benefit of its members for all time;

AND WHEREAS, a person who is not included on the Algonquins of Pikwàkanagàn Membership list cannot own an interest in land in Pikwàkanagàn. The Algonquins of Pikwàkanagàn First Nation Matrimonial Law supersedes *Family Homes on reserves and Matrimonial Interests and Rights Act*, provincial matrimonial laws and any agreements made between matrimonial partners and portions of wills that relate to Matrimonial Real Property in Pikwàkanagàn;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation allow non-member spouses to reside in Pikwàkanagàn and by allowing such, the non-member acquires no rights to the land and only potential compensation to a share of the equity in the matrimonial home earned during the relationship home and pursuant to this Law;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation wish to make provision for the continued right of member child(ren) of the spouses ending their relationship and the rights of the child to reside in the Matrimonial home;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation intend to respect the following principles with respect to the use, occupancy of matrimonial real property on the Algonquins of Pikwàkanagàn First Nation land, and the division of interests in that home, subject to First Nation Law, on the breakdown of a marriage where their property includes an interest in land in Pikwàkanagàn; and

- i) Firstly, the right of the parties to a marriage or common-law relationship to make their own agreement as to the disposition of interests in a matrimonial home on the First Nation in the event that their marriage or relationship breaks, or has broken down;
- ii) Secondly, the value of mediation where the parties have not or are unable to reach their own agreement as described above;

AND WHEREAS, non-member spouses and non-member children, given their inability to own, occupy or possess a greater interest in First Nation land, they should receive other compensation from the member spouse for this loss of equity in the home, or any improvements they made to the home, since they started to reside in the home as spouses, but not for the land;

AND WHEREAS, the Algonquins of Pikwàkanagàn First Nation Council or its designate has the authority to implement the agreement reached between the spouses or the Dispute Resolution Process about the matrimonial home as long as agreements and decisions are not inconsistent with the Algonquins of Pikwàkanagàn First Nation Laws;

And Whereas the *Family Homes on Reserves and Matrimonial Interests or Rights Act* recognizes and affirms the right of the Algonquins of Pikwàkanagàn to design and implement their own laws, rules and procedures to, *inter alia*, deal with the rights and interests of spouses upon the breakup of their relationship to the use, occupation, possession of family homes on Pikwàkanagàn, including rights upon death of a spouse, exclusive possession of the family home, and the division of the value of any interests or rights to buildings and land in Pikwàkanagàn, and that the Algonquins of Pikwàkanagàn wish to exercise their rights through the within law and to thereby prevent the application of the Provisional Federal Rules;

THEREFORE BE IT RESOLVED, that this Law, submitted to the Algonquins of Pikwàkanagàn First Nation members by the Chief and Council, is approved and enacted, and shall be effective as of the date of the Community vote on the law and approved by the Minister of Aboriginal Affairs and Northern Development.

PURPOSE

To deal with Matrimonial Real Property (only the matrimonial home, and not the land) situated in Pikwàkanagàn.

This law applies to interests in or claims dealing with matrimonial homes located in Pikwàkanagàn as defined in the *Indian Act*.

Subject to its terms, the 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 any property, other than interest in land and the matrimonial home in Pikwàkanagàn, or other entitlements or obligations of spouses.

Subject to this law, the Tribunal may deal with interests in land or house in Pikwàkanagàn 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 Pikwàkanagàn.

In this Law, reference to the masculine includes the feminine, and references to the singular include the plural.

DEFINITIONS

"Anishinabek Nation Tribunal & Commission" means the Tribunal and Commission established by the Union of Ontario Indians under *Anishinabek Nation Matrimonial Real Property Law*, and "Tribunal" and "Commission" have the same meaning.

"Applicant" means a person who has submitted an application to settle a dispute between spouses concerning the matrimonial home situated within Pikwàkanagàn.

AOP Matrimonial Real Property Law | 2014

"Council Resolution" means a resolution of the Algonquins of Pikwàkanagàn First Nation Band Council.

"Canada" means Her Majesty the Queen in Right of Canada.

"Certificate of Possession" means a certificate that is issued which demonstrates that a Member is lawfully in possession of land within Pikwàkanagàn.

"Child" includes a child born in or out of wedlock and also a legally adopted child.

"Common-Law Partner" means the relationship between two (2) persons who are cohabiting together in a conjugal relationship for a continuous period of three (3) years and includes same-sex relationships, provided neither person also has another legal spouse and "Common-Law Relationship" shall have a corresponding meaning.

"Council" means the Chief and Council of the Algonquins of Pikwàkanagàn First Nation.

"Court" means the Ontario Superior Court of Justice.

"Dependant" 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.

"Dispute Resolution" means the dispute resolution services as defined in this Law.

"Domestic Contract" means a cohabitation agreement, a marriage contract, a prenuptial contract, a separation agreement or any other contract regarding the rights and obligations of the parties during marriage or cohabitation or upon separation;

"First Nation Law" means the body of all effective laws and by-laws enacted by the Algonquins of Pikwàkanagàn First Nation, and shall include any Land Code enacted by the First Nation should the Algonquins of Pikwàkanagàn First Nation choose to move our lands under the *First Nations Lands Management Act*.

"Indian Act" means the *Indian Act*, R.S.C. 1985, as amended from time to time.

"Interest in Land in Pikwàkanagàn" includes any legal or equitable interest in the ownership, occupation or possession by either spouse, or both spouses, in land in Pikwàkanagàn, including any buildings and fixtures located on the land.

"Improvements to the Home" means any improvements to the matrimonial home that were made while the couple was in a relationship.

"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.

"Matrimonial Home" means the house that was ordinarily occupied by as their family residence and unless otherwise indicated, the land upon which it is situated.

"Member" means a person whose name appears in the Membership Register of the Algonquins of Pikwàkanagàn as defined in the Algonquins of Pikwàkanagàn Membership Code.

ORIGINAL

AOP Matrimonial Real Property Law | 2014

"Membership Register" means the List containing the name of every Member of the Algonquins of Pikwàkanagàn First Nation.

"Non-member" means a person whose name does not appear in the Membership.

"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.

"Pikwàkanagàn" means the land reserved for the use and benefit of the Algonquins of Pikwàkanagàn First Nation (otherwise known as Indian Reserve No. 39.)

"Resident" means a person who has been granted permission to reside in Pikwàkanagàn.

"Residency Law" means "*A Law Governing the Residence of Members and Other Persons within Pikwàkanagàn*" which is the law to grant permission for persons to reside in Pikwàkanagàn.

"Separation Agreement" means an agreement entered into between spouses or common-law partners who are living separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage/relationship or on separation, with respect to the possession or division of interests in land in Pikwàkanagàn, subject to First Nation Law where their property includes an interest in land in Pikwàkanagàn.

"Spouse" means a person who is married to, or who, outside of marriage, co-habits with a member in a conjugal relationship which lasts longer than three (3) years outside of marriage, and provides proof of such and does not have a legal spouse.

"Subsidy" means a grant given to a member of the Algonquins of Pikwàkanagàn First Nation to assist in the construction of a home. This amount is not to be included in any settlement on the value of a home.

"Voters" means a person whose name appears in the Membership Register and has attained the age of eighteen years.

SECTION 1.

APPLICATION OF THE LAW

- 1.1 This Law may be cited as the *Algonquins of Pikwàkanagàn First Nation Matrimonial Real Property Law*.
- 1.2 This law applies only to interest in, or interests claimed pursuant to this law, in land within Pikwàkanagàn as that term is defined in the *Indian Act*.
- 1.3 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 with respect to any property other than interests in land or homes in Pikwàkanagàn, or other entitlement or obligations of spouses.
- 1.4 For greater certainty, a non-member spouse does not have an election, on the death of the other member spouse, to claim, take or pursue an interest in land in Pikwàkanagàn held by the other spouse under this law, and his or her interest will be determined by the will or administration of the estate of the other spouse, subject to the *Indian Act*.
- 1.5 This Law will come into effect when approved by Referendum of the Members of the Algonquins of Pikwàkanagàn First Nation and the Minister of Aboriginal Affairs and Northern Development.

SECTION 2.

NON-APPLICABLE MATTERS

- 2.1 This Law shall not apply to the following matters that may be at issue in a breakdown of marriage
- a) Real Property that is not situated within Pikwàkanagàn;
 - b) Personal Property;
 - c) Granting and issuance of a divorce;
 - d) Child custody and access;
 - e) Spousal support; or,
 - f) Any assets or liabilities of the spouses, other than the matrimonial home.

SECTION 3.

DOMESTIC CONTRACTS

- 3.1 It is the purpose and intention of this law to respect the agreement of the parties, subject to this and other First Nation Laws, where their property includes an interest in the use, possession, occupancy, disposition or partition of land in Pikwàkanagàn, including an interest that is a matrimonial home.
- 3.2 Subject to this Section, a provision in a domestic contract that is valid and reflects the agreement of the parties with respect to an interest in land in Pikwàkanagàn, including an interest that is a matrimonial home, is valid, binding and enforceable by order of the Court.
- 3.3 Notwithstanding Section 3.2,
- (a) a provision in a domestic contract that would give, award, acknowledge or create an interest in land in Pikwàkanagàn greater than a life estate to occupy or possess the matrimonial home in Pikwàkanagàn in favour of a spouse who is not a member, is void,
 - (b) In applying this section, a valid life estate to possess or occupy an interest in land in Pikwàkanagàn may be measured only by the life of the spouse who was party to the domestic contract. Moreover, notwithstanding this section, a non-member must still apply and be granted permission to reside in Pikwàkanagàn in accordance with the *Algonquins of Pikwàkanagàn Residency Law*.
- 3.4 Subject to this law, the Anishinabek Nation Tribunal and Commission or the Court, on application under Section 6.24 and 6.25, may set aside a provision of a domestic contract with respect to an interest in land in Pikwàkanagàn,
- (a) if a party failed to disclose to the other all of his or her interests in land in Pikwàkanagàn, or any material information in respect of those interests at the time of entering into the domestic contract;
 - (b) If a party did not understand the nature or consequences of the provision at the time of entering into the domestic contract; or,
 - (c) Otherwise in accordance with the law of contract.
- 3.5 This Section applies whether the domestic contract was entered into by the parties on, before or after the date that this law comes into force and effect.

SECTION 4.

MEDIATION

- 4.1 Spouses who, on the breakdown of their marriage, do not have and are unable to come to an agreement with respect to interests in land in Pikwàkanagàn, may submit to mediation of their respective rights under this law in respect of interests in land in Pikwàkanagàn to the Tribunal.

AOP Matrimonial Real Property Law 2014

- 4.2. The Council shall create and maintain a roster of qualified mediators available to spouses to assist them in resolving disputes about interests in land or house in Pikwàkanagàn, and a current copy of that roster shall be posted at the Administration Office in Pikwàkanagàn.
- 4.3. A 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.
- 4.4. It is the responsibility of the spouse requesting mediation to ensure that the notice referred to in section 4.3 is served on the other spouse before it is delivered to the Lands Manager. For greater certainty, service may be affected by personal service, by delivery to a solicitor representing the other spouse in the matter of the breakdown of the relationship, as provided in a domestic contract, or by registered mail to the address where the other spouse is known or believed to be residing. Service by registered mail shall be deemed to be effected four days after the day the notice is mailed, or by advertisement in local newspaper of last location of residence.
- 4.5. The spouse who receives a request for mediation may decline the request by returning the request to the Lands Manager within 10 days of receipt with a written statement declining mediation. If a spouse declines mediation, no mediation under this part of the law shall be held. Should the spouses jointly choose to try mediation later, prior to a final determination of the rights of the parties under this law by a Court, then the parties may restart the mediation process.
- 4.6. Eleven (11) days after the request for mediation is served upon the spouses, the Lands Manager shall arrange for a qualified mediator to be available to the parties within 40 days after the notice referred to in section 4.4 is filed. That period may be extended by the Lands Manager,
- (a) At the joint request of the parties; or
 - (b) Where the Lands Manager is unable to secure the services of a qualified mediator to be available to the parties within the 40 day period.
- 4.7. Notice of an appointment for mediation shall be delivered to both spouses by the Lands Manager no later than 10 days before the date of the appointment.
- 4.8. Each spouse is obliged to pay his or her equal share of the costs of mediation before mediation takes place.
- 4.9. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the parties in resolving any and all issues with respect to interests in land in Pikwàkanagàn.
- 4.10. Where the mediation is successful, the agreement of the parties with respect to interest in land or house in Pikwàkanagàn shall be reduced to writing in a separation agreement, and that agreement shall expressly provide that each party waives all rights to challenge its provisions pursuant to this Law.
- 4.12. A separation agreement for the purposes of section 4.10 shall include provision for all interests in land in Pikwàkanagàn held by either spouse, or both spouses, and shall be a sufficient domestic contract for purposes of this law if it deals only with those interests.
- 4.13. Where mediation is successful, the mediator shall report this fact to the Council, which in turn shall notify the Lands Manager of the successful mediation.
- 4.14. Where the mediation is unsuccessful, the mediator shall deliver a report that only address:
- a) Whether both spouses were willing to and did participate in mediation and shall confirm that the mediation did not result in a negotiated agreement between the spouses; or,
 - b) Whether the Mediator decided that the spouses were not suitable for mediation.

- 4.15. At the conclusion of an unsuccessful mediation under this Section, or where requested mediation does not take place, the Mediator shall provide a report to the parties and to Lands Manager, which may be:
- (a) a direction to comply with this Section; or
 - (b) a waiver in favour of the spouse requesting the mediation in circumstances where the Council reasonably concludes that the other spouse cannot be located, is avoiding or ignoring service of documents or otherwise refused to participate in or pay for the mediation.

4.16 For the purposes of this Part, the Council is authorized to prescribe procedures and forms as necessary.

SECTION 5.

AUTHORITY TO HEAR

- 5.1. The Ontario Superior Court of Justice, or such other court of competent jurisdiction, may, upon application, determine the rights and interests of the parties as set out under this law. Orders of the Court made pursuant to this law shall be enforceable in Pikwàkanagàn.
- 5.2 (a) If both spouses formally agree in advance, matters arising under this law may be submitted to the Anishnabek Nation Tribunal & Commission for binding resolution under its procedures and rules. However, prior to submitting any matter to the Tribunal, the spouses must have made an attempt at mediation under Section 4 herein.
- (b) If the spouses agree to submit their matter to the Tribunal, every Order of the Tribunal shall, for the purposes of this law, be considered to be a consensual resolution of the parties rights and interests under this Law as if it was a Domestic Contract.

SECTION 6.

GENERAL RULES

- 6.1 In determining a matter, the Tribunal or the Court shall consider the best interests of the member children and the existing membership of the Algonquins of Pikwàkanagàn First Nation. In making this decision, the following factors shall be taken into consideration:
- a) who has custody of the member children;
 - b) who owned the land before the relationship;
 - c) if both spouses are members; and,
 - d) and any other factor that the Tribunal or the Court believes is relevant in the disposition of the property.
- 6.2 Taking into consideration the circumstances and factors noted above, the Tribunal or the Court has authority to adjudicate upon the spouses' interests in the Matrimonial Home and where appropriate to:
- a) Where both spouses are members of the Algonquins of Pikwàkanagàn First Nation,
 - i) Grant the matrimonial home, including the land to member spouse who has custody of the children and compensation for 50% of matrimonial home equity to the other spouse;
 - ii) Grant the home to the member who owned the land before the relationship and compensation for 50% of matrimonial home equity to the other spouse;
 - iii) Grant the home to the member that can afford to make mortgage payments on the home and compensation for 50% of the matrimonial home equity to the other spouse;
 - b) Where only one spouse is a member of the Algonquins of Pikwàkanagàn First Nation,
 - i) Grant permission to the non-member spouse to reside in the home with the member children until the child(ren) finish the school year, or 6 months, whichever is the longer, if the non-member spouse has custody of the minor member children, however, the non-member spouse must still:
 - i. Comply with the Residency Law;
 - ii. Assume payment and remain current with any mortgage, loan, lease or tax payments associated with occupancy of the matrimonial home; and
 - iii. Comply with any other conditions imposed by the Tribunal, and,

ORIGINAL AOP Matrimonial Real Property Law 2014

- ii) Order that member spouse compensate the other spouse for 50% of the matrimonial home equity in the home; or,
- c) any other such disposition that the Court or Tribunal deems fair and appropriate in the circumstances.
- 6.3 For the purposes clause 6.2,
- i) matrimonial home equity shall only include the increase in equity that occurs during the period of time the spouses are married or in their common-law relationship as defined in this law;
 - ii) the fair market value of the matrimonial home shall reflect the fact that the home is located on reserve and can only be transferred to another member of the Algonquins of Pikwàkanagàn First Nation; and,
 - iii) matrimonial home equity shall not include the amount of any subsidy provided for the building of the home by the Algonquins of Pikwàkanagàn First Nation.
- 6.4 Notwithstanding Section 7.3, the rules applicable under this law to interests in land in Pikwàkanagàn received by way of gift or inheritance apply, except with respect to an interest in Algonquins of Pikwàkanagàn First Nation land that is a matrimonial home.
- 6.5 Notwithstanding Section 7.2, the Court or Tribunal may make any fair and appropriate order on the ground of unconscionability where a spouse has intentionally, recklessly or fraudulently depleted his or her property or interest in land in Pikwàkanagàn.
- 6.6 Subject to this law, the Court or Tribunal may make any order in relation to interests in land in Pikwàkanagàn held by a spouse, or by both spouses, including in appropriate circumstances:
- (a) An order that an interest in land in Pikwàkanagàn be transferred to a spouse absolutely, where permitted under this law; or,
 - (b) An order that an interest in land in Pikwàkanagàn held by both spouses be partitioned or partitioned and sold, where permitted under this law.
- 6.7 Where an order is made under Section 6.6(b), the Lands Manager may make provision for a survey and the costs of the transaction unless the Court or Tribunal has already made an order to that effect. The cost of a survey would be the responsibility of the spouses.
- 6.8 Subject to this law, a spouse may apply to the Court or Tribunal for determination of a question in relation to the spouse's right to possession of an interest in land in Pikwàkanagàn, and the Court or Tribunal may make:
- (a) An order declaring the right of possession to the interest in land in Pikwàkanagàn, and/or,
 - (b) Any order that could be made under Section 6 in respect of that interest in land in Pikwàkanagàn.
- 6.9 Where a proceeding has been commenced under this Section, and either spouse dies before all issues relating to interests in land in Pikwàkanagàn have been disposed of by the Court or Tribunal, the surviving spouse may continue the proceeding against the estate of the deceased spouse.
- 6.10 For greater certainty, a "spouse" for the purposes of applying for relief from the Court or Tribunal includes a former spouse after the marriage has been dissolved by decree absolute of divorce or by judgment of nullity, or after a common law relationship has ended, however, applications under this law must be filed with the Court within six months of the decree absolute of divorce or by judgment of nullity, or a child custody order has been issued, or a separation takes place.
- 6.11 If a spouse disposes of or encumbers an interest in land in Pikwàkanagàn that is a matrimonial home in contravention of this Law or any order of the Court or Tribunal, the transaction may be set aside on an application to the Court, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a matrimonial home.

- 6.12 When a person proceeds to realize upon an encumbrance or execution against an interest in land in Pikwàkanagàn that is a matrimonial home, the spouse who has a right of possession under Sections 6.2 and 6.8, 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.
- 6.13 Nothing in this law relieves a party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.
- 6.14 Nothing in this law limits the application of valid laws of Ontario and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with interests in land or homes in Pikwàkanagàn and to that extent this law applies.
- 6.15 It is the intention of this law that all rights, entitlements and obligations of spouses be dealt with equitably on the basis of totality of their circumstances, including rights, entitlements and obligations in respect of interest in land situated in Pikwàkanagàn, but subject to the special provisions set out in this law.

Section 7

MATRIMONIAL HOME

- 7.1 Whether or not an interest in land situated in Pikwàkanagàn is a matrimonial home is a question of fact, and, for greater certainty, the provisions of the *Family Law Act* (Ontario), or any other provincial law dealing with the designation of a matrimonial home do not apply in respect of interests in land in Pikwàkanagàn.
- 7.2 Both member spouses have an equal right to possession of a matrimonial home.
- 7.3 When only one spouse holds an interest in land in Pikwàkanagàn that is a matrimonial home, the other spouse's right of possession is:
(a) personal against the spouse who holds the interest; and
(b) ends when they cease to be spouses, unless a domestic contract provides otherwise.
- 7.4 No spouse shall dispose of or encumber an interest in land in Pikwàkanagàn that is a matrimonial home unless:
(a) the other spouse consents in writing to participate the transaction; or
(b) the other spouse has released all rights in respect of that interest by domestic contract; or,
(c) pursuant to an order the Court or Tribunal.
- 7.5 Regardless of which spouse holds an interest in land in Pikwàkanagàn that is a matrimonial home, the Court or Tribunal may on application:
(a) order the delivering up, safekeeping and preservation of the interest in land in Pikwàkanagàn that is a matrimonial home;
(b) direct that one spouse be given exclusive possession of the interest in land in Pikwàkanagàn that is a matrimonial home, or part of it for such period as the Tribunal may direct consistent with this law, and release any other interest land in Pikwàkanagàn that is a matrimonial home from the application of this part;
(c) authorize a disposition or encumbrance consistent with First Nation law and the *Indian Act* of a spouse's interest in land in Pikwàkanagàn that is a matrimonial home, subject to the other spouse's right of exclusive possession as ordered;
(d) where it appears that a spouse has disposed of or encumbered an interest in land in Pikwàkanagàn that is a matrimonial home in a fraudulent manner calculated to defeat the rights of the other spouse under this law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the interest in land in Pikwàkanagàn is not a matrimonial home direct the other spouse to substitute other interests he or she holds in land in Pikwàkanagàn for the matrimonial home subject to such conditions as the court considers appropriate;
(e) make any interim or temporary order to give effect to the purposes of this law or to protect the rights of a spouse and children; or
(f) make any ancillary order which the Court or Tribunal deems necessary to give effect to this law.

- 7.6 A Court or Tribunal, in considering whether to direct that one spouse have exclusive possession of an interest in land in Pikwàkanagàn that is a matrimonial home shall be guided by the principle that the custodial parent of a child should have exclusive possession of the family residence for a period of sufficient time to ensure that the member child(ren) finishes the school year or 6 months, whichever is the longer, to provide sufficient time for the non-member spouse to make alternate arrangements.
- 7.7 Where both parents share joint custody of a member child or member children, the principle set out in Section 7.6. shall be adapted to favour the spouse with whom the member child or member children principally reside, and if the member child or member children reside substantially equal periods of time with both spouses, then the principle shall be neutral as between them.

SECTION 8.

GENERAL PROVISIONS

- 8.1 Notwithstanding any provision in this Law, and for greater certainty:
- a) non-member spouses shall neither have nor be entitled to any legal or equitable right or interest in real property in Pikwàkanagàn that is not the matrimonial home; and,
 - b) non-member spouses shall not have any legal or equitable right to an interest in the matrimonial home in Pikwàkanagàn that is greater than a life estate granted pursuant to this Law.
- 8.2. An interest in land in Pikwàkanagàn received by way of a gift or inheritance by one spouse only from a third person who is a family member, or by one spouse only together with one or more members of that family, shall be deemed, subject to 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 subject to the intention that the property, the income from the property and the value of the interest are to be excluded from the transferee spouse's net family property for the purpose of any law, including the Ontario *Family Law Act*. Moreover, any such property shall not be subject to division, partition, sale or transfer according to the provisions of this Law.
- 8.3. The right to possession of a matrimonial home in Pikwàkanagàn under this law by a 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.

SECTION 9.

ESTATE ISSUES – DEATH OF A SPOUSE

- 9.1 Where a couple is separated but have not resolved Matrimonial Real Property issues at the time of the death of one Spouse, and where the surviving spouse is a member, nothing in this law will prevent the surviving spouse from inheriting the property and residing there.
- 9.2 Where the title to the Matrimonial Real Property is registered in the name of the deceased spouse and co-owner(s), none of which includes the surviving spouse, then the surviving spouse may apply to the Court or Tribunal to have a determination of the surviving spouses' interest in the Matrimonial Real Property.
- 9.3 The Court or Tribunal may order that the surviving spouse be registered as a co-owner of the Matrimonial Real Property, but only if the spouse is also a member of the First Nation, or that a compensation order be made in favour of the surviving spouse against the co-owner(s). In determining the appropriate remedy, the Court or Tribunal shall consider,
- a) the equity of the matrimonial home;
 - b) how long the spouse lived in the home;
 - c) the financial contribution that the surviving spouse made to the improvements or maintenance of the family home;
 - d) the collective interests of the First Nation;
 - e) the medical condition of the survivor;
 - f) the period during which the survivor has habitually resided in Pikwàkanagàn.

AOP Matrimonial Real Property Law | 2014

- g) the fact that the family home is the only property of significant value in the estate;
- h) the interest of any elderly person or person with disability who habitually resides in the family home and for whom the survivor is the caregiver; and,
- i) the position and submissions of the co-owners,

- 9.4 The surviving spouse shall not be entitled to apply to the Court or Tribunal for relief where the co-owner(s) are either minor children or mentally incompetent, other than for 50% of the matrimonial home equity as would have been calculated under clauses 6.2 and 6.3 above, unless there are agreements between the co-owners to the contrary.
- 9.5 Where a will exists, best efforts will be made to respect the will, provided it does not try to pass on possession or ownership of Pikwàkanagàn property to a non-member. After the death of the spouse, the will can be reviewed by a Court to ensure it is being fair and does not create a hardship to surviving minor children.
- 9.6 Where the surviving spouse is a non-member, s/he will be allowed to continue to reside in Pikwàkanagàn in that home until their minor children reach the age of majority, however, this right to reside does not relieve that spouse from the normal costs of operation and maintenance in the home, including, without limitation, lease costs, mortgage costs, fees, maintenance costs, residency requirements, or taxes.
- 9.7 If there are no minor children, the *Indian Act* will apply to the estate without modification and will determine the surviving non-member spouse rights and interests.
- 9.8 Where the Court makes an order that allows a non-member person to continue to reside in the matrimonial home with minor children until the children finish the school year, or 6 months, whichever is the longer, the non-member spouse must still meet and comply with the Residency Law.

SECTION 10.

COMPLIANCE (ENFORCEMENT)

- 10.1 Any person who contravenes this law, or an order made by a Court or Tribunal pursuant to this law is guilty of an offence and liable, on summary conviction, to a fine of not more than \$5,000.00 or to imprisonment for a term of not more than three months, or to both, however, this is not intended to, and does not, limit the Court from imposing any and all consequences that would otherwise result from a breach of a Court order.

SECTION 11.

ENACTMENT AND AMENDMENT

- 11.1 Upon the enactment of this Law, every other Law, policy or law dealing with Matrimonial home property of the Algonquins of Pikwàkanagàn First Nation is hereby repealed.
- 11.2 This Law shall come into effect when it is accepted by Referendum of the Members of the Algonquins of Pikwàkanagàn First Nation in accordance with the Algonquins of Pikwàkanagàn Rules of Notice and Procedures.
- 11.3 Any member proposed amendments to this Code must be presented to the Standing Committee of Council on Lands, Estates & Membership who will make a recommendation to Council to make a change or not to make a change to the Code. Upon receipt of a recommended change, Council shall mail the proposed changes to all Members of the Algonquins of Pikwàkanagàn and give them at least thirty (30) days to reply to the proposed changes.
- 11.4 Any member who wants to challenge those changes must do so in writing, to the Council within the thirty (30) day period.

ORIGINAL

AOP Matrimonial Real Property Law | 2014

- 11.5 If a challenge is received, then to take effect, a meeting of the voters will be held and a vote must be taken where a majority of those present who vote by show of hands agree to the proposed changes. Notice of this meeting must:
- a) be posted in the Administration Office and at other prominent places in Pikwàkanagàn; and
 - b) be mailed out to all members over 18 years of age to their last known address and at least two weeks prior to the meeting.
- 11.6 If no challenge is received within the thirty (30) day period, Council will consider the proposed changes, and may approve any changes by Council Resolution, which shall then be considered amendments to this Law.
- 11.7 Notwithstanding the above amendment process, upon submission from the Lands Manager that any proposed amendments are repetitious, frivolous, or vexatious, Council may, in its discretion, delay processing and presenting to the Community a proposed amendment for up to a year.
- 11.8 This law may be subject to minor amendments, such as typographical errors, renumbering to harmonize with other laws, improvements in the language to clarify the intention or changes in our law to reconcile inconsistencies with other laws by a unanimous decision of Council at a duly convened meeting called for that purpose.
- 11.9 Where any proposed amendment is a major change, or amounts to, a repeal of this law, the decision to change or repeal the law,
- a) must be approved by a majority of eligible voters who were 18 years of age or older at the time of the vote;
 - b) where reasonable efforts has been made to give all community members notice of the proposed repeal of the law, as well as the date and time of the vote; and,
 - c) where at least 25% of the total membership of the First Nation participated by casting a vote.
- A Referendum Vote will only be held when a major change of significant impact the law or repeal the law upon recommendation from the Standing Committee of Lands, Estates & Membership to Council. Council will call the Referendum Vote.
- 11.10 A copy of any and all amendments to this law must be provided forthwith to the Minister of Aboriginal Affairs and Northern Development Canada, or such person as the Minister may direct, and to the Attorney General of Ontario.

This **Law # 2014-01 Governing the Matrimonial Real Property within Pikwàkanagàn First Nation** is hereby enacted by Referendum by the Members of the Algonquins of Pikwàkanagàn First Nation this 8th day of April 2014.

Kirby Mitchell
Chief

Dan Kokots
Councillor

Donald Bernard
Councillor

Ann Perry
Councillor

C. Manoff
Councillor

J. J. J.
Councillor

Sherry J. J.
Councillor

Janice Theresa Jean Leroux

Janice Theresa Jean Leroux
a Commissioner, etc., County of Renfrew
for the Algonquins of Pikwàkanagàn