

**A LAW CONCERNING MATRIMONIAL**  
**REAL PROPERTY**<sup>1</sup>

**ADOPTED BY THE SIX NATIONS OF THE GRAND RIVER**  
**ELECTED COUNCIL**

**JANUARY 18, 2011**<sup>2</sup>

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<sup>1</sup> As Amended August 19, 2012, 2012

<sup>2</sup> Comes into force 6 months after being enacted.

# **SIX NATIONS MATRIMONIAL REAL PROPERTY LAW**

## **PART 1**

### **1. Principles**

Our Six Nations law will be based on the following Principles:

It will protect Six Nations Lands as Lands reserved for Members of Six Nations;

It will be based on fairness. It will provide rights and remedies, without discrimination on the basis of sex, with respect to Spouses who have Matrimonial Real Property disputes upon the breakdown of their marriage or common law relationship;

Respect for the land itself will be a guiding principle;

It will keep the primary interests of children as a priority in the way the law is applied;

It is based on the recognition of Six Nations jurisdiction on its lands and the recognition that through this law Six Nations is exercising its inherent right of self-governance and self-determination;

It is based on a recognition that Six Nations is best placed to protect the human rights of its Members and balance individual and collective rights;

It will have a goal of the protection of Six Nations Treaty Rights and the protection, recognition and respect for Six Nations history, culture and traditions, including Longhouse marriage, divorce and dispute resolution practices based on Six Nations traditions;

In assisting to resolve property disputes it will seek community-based solutions.

## PART 2

### 2. Title of the Law

This Law is called the

### **SIX NATIONS OF THE GRAND RIVER MATRIMONIAL REAL PROPERTY LAW**

## PART 3

### 3. General Provisions and Definitions

**Child** – means a child who is the biological offspring of both Spouses, or one of the Spouses but raised by both Spouses and is a person under the age of 18, or over 18 and still in school, and includes a child born out of wedlock, during the marriage, or a legally adopted child according to provincial or Six Nations customs.

**Dependent** - means a dependent mentally or physically infirm adult or anyone who relies on the care of, or is under the care of, a member because of that condition, and may include relatives under their care.

**Enforcement body**- means a duly authorized Six Nations enforcement body.

**Family** - includes blood relatives within the extended family and includes adopted children and step-children.

**Marriage or prenuptial agreement** - is a written agreement freely entered into between Spouses, signed and witnessed, in which they agree on the division of their property, personal, real and Matrimonial Real Property.

**Matrimonial Real Property** - means the family home on reserve that the Spouses lived in at the time of separation and includes attached buildings. It does not include movable property such as furniture, cars, bank accounts etc. It does not include property received as a gift or inheritance to one of the spouses, prior to or on the date of marriage or commencement of cohabitation by common law spouses from their family (family land), subject to Section 5.4.

**Mediation** – means the voluntary settlement of a dispute with the help of a third party.

**Member** - means a person whose name appears on the Six Nations membership list.

**Order** - means an Order issued by the duly authorized joint Six Nations – Iroquois Dispute Resolution body – The Joint Iroquois Six Nations Tribunal.

**Spouse** - means two persons who, are married to each other, through a traditional native ceremony or provincially sanctioned religious or civil ceremony or have lived together continuously as Spouses in a common law relationship for a minimum period of five years. This includes same sex relationships.

**Tribunal** - The body to settle disputes and make final decisions on Matrimonial Real Property will be a traveling Iroquois Tribunal composed of 3 judges each from Akwesasne, Kahnawake and Six Nations of the Grand River as described in Part 9.

## **PART 4**

### **4. Six Nations Law is Paramount**

4.1 This Six Nations law is enacted under Six Nations of the Grand River First Nation's inherent right to self government and self-determination, and is an expression of the jurisdiction and authority of Six Nations of the Grand River First Nation. This Law is paramount and overrules and supersedes conflicting federal and provincial laws dealing with the same subject matter. Through this law Six Nations of the Grand River is occupying the field of Matrimonial Real Property law jurisdiction.

## **PART 5**

### **5. Application of the Law<sup>3</sup>**

5.1 This law applies to all married or common law Spouses who reside on the Six Nations reserve. It applies in situations of marriage breakdown where one or both Spouses own or share a Matrimonial Real Property. A Spouse initiates the protections in this law by providing

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<sup>3</sup> Procedural details will be provided in Companion Regulations entitled *Six Nations of the Grand River - Iroquois Matrimonial Real Property Tribunal Process*

written notice to the Iroquois Tribunal that their marriage or common law relationship has broken down, with no reasonable chance of reconciliation, and that both former Spouses intend to live apart. During the cooling off period there may be a exemption to the time period in the case where domestic violence is evident.

5.2 Within 3 months after notice has been given by a Six Nations Spouse, interim occupation orders can be decided however permanent occupation decisions will not be made within that timeframe, to allow for a cooling off period and a possible change of mind about reconciliation. Interim occupation orders will apply for a maximum of 3 months however if both Spouses agree there is no reasonable chance for reconciliation then one or both of them can apply for a permanent occupation order immediately. In the case where domestic abuse is evident, the victim can waive the cooling off period and seek an immediate order for interim occupation.

5.3 This law will not deal with movable property, spousal support, child support or child custody except as described in this part,. It will not deal with situations or circumstances which occurred before the date this law comes into force as described in Part 19.

5.4 Subject to Section 5.5 this law will not apply to matrimonial real property that was a gift or handed down (inheritance) to one Spouse from their family (family land), however the value of the Matrimonial Real Property can be taken into consideration in determining compensation as set out in Part 13 . If after separating, both former Spouses can come to a written agreement on how to divide Matrimonial Real Property, then that agreement will be enforced.

5.5 Notwithstanding Section 5.4, and Section 15.7, Non-native Spouses and non-member Spouses will not gain the right to acquire, reside, inherit, own or transfer reserve lands under this law.

5.6 This law will apply to existing reserve lands as well as any lands that are acquired by way of land rights settlements, treaties or self-government agreements.

## **PART 6**

### **6. *Pre -Marriage Counseling and Education***

6.1 Six Nations would like to see married couples stay together. With this in view non-mandatory pre-marriage counseling services may be made available to couples contemplating marriage. This can take the form of western style contemporary counseling or counseling based on traditional native practices. The intent is to educate couples about the sanctity and seriousness of marriage and its responsibilities and obligations, especially when children are contemplated or result from a relationship. Working this into the curriculum of Six Nations schools starting with early Grades [7 - 8] is a goal within the community.

## **PART 7**

### **7. Prenuptial, Marriage or Cohabitation Agreements**

7.1 The application of this law will be unnecessary if couples enter into Prenuptial, Marriage or Cohabitation Agreements. It is the purpose and intention of this law to respect and enforce a Prenuptial, Marriage or Cohabitation Agreement between the parties pertaining to their Matrimonial Real Property. This law will treat a Prenuptial , Marriage or Cohabitation Agreement that reflects the agreement of the ex-Spouses with respect to the division of property of the Matrimonial Real Property, as valid, binding and enforceable, provided that said agreement does not conflict with Section 5.5.

## **PART 8**

### **8. Mediation**

8.1 Mediation refers to the settlement of a Real Property dispute with the help of a skilled and experienced third party. The Six Nations law will provide for mandatory Real Property Mediation. If couples cannot come to agreement on how do deal with Real Property, help in the form of third party mediation, will be provided. Under the Six Nations law Spouses must undergo at least one session or attempt at Real Property mediation unless they both agree

there is no reasonable chance for reconciliation. There may be an exemption in the case where domestic violence is evident. Third party mediators will be selected from the community and, if necessary trained in mediation skills.

8.2 The purpose of the mediation is to mediate the division of Matrimonial Real Property and compensation issues. The mediator will be appointed by an Iroquois Tribunal Judge from a roster of trained mediators identified from within the community. Rules and procedures for mediation will be developed by the Office of the Iroquois Tribunal. Once engaged, the mediator will confer with the parties, and with the children, if the mediator considers it appropriate to do so, and will give their best effort to obtain an agreement between the parties. Success or failure to come to agreement will be reported to the Six Nations – Iroquois Dispute Resolution Tribunal. A mediated agreement will be registered and enforced.

## **PART 9**

### **9. Six Nations – Iroquois Dispute Resolution Tribunal**

9.1 The body to settle disputes and make final decisions on Matrimonial Real Property will be an Iroquois Tribunal. It is planned that the Tribunal will be composed of members from 3 Iroquois Communities in Ontario and Quebec, including Six Nations of the Grand River, Mohawk Council of Akwesasne and Mohawks of Kahnawà:ke. Each community will appoint 3 tribunal judges to form a roster of 9 tribunal judges, only 3 of which will sit at any one time, on any one case. However, until such time as all 3 Communities have their Matrimonial Real Property law in place, Six Nations shall operate the tribunal alone, with 3 Tribunal judges appointed from the Community. Sections 9.2 and 9.3 will be put on hold until such time as all 3 communities have appointed their respective judges.

9.2 The Six Nations - Iroquois Dispute Resolution Tribunal will be a traveling court which will make final decisions on disputes in Iroquois communities using local Matrimonial Real Property laws.

9.3 Expenses will be shared between communities and laws will be developed in all

Iroquois communities which will be similar and have core elements. Tribunal members will be selected and trained by each community and form a roster of tribunal members from which a minimum of 3 (1 from each community) will decide disputes in other Iroquois communities. At least one Tribunal judge should be from the Case/Client community. As much as possible dispute resolution will be based on traditional approaches, such as those used in Justice Sentencing Circles.

9.4 The Tribunal shall use the rules and procedures set out in a companion document called the “*Six Nations of the Grand River – Iroquois Matrimonial Real Property Tribunal Process*”(Attached – Appendix A).

## **PART 10**

### **10. Prohibition of the Sale of the Matrimonial Real Property**

10.1 Once the Six Nations Iroquois Dispute Resolution Tribunal is notified in writing by one of the Spouses that they have separated the tribunal can issue an Order prohibiting a sale of the Matrimonial Real Property. Six Nations Housing and Lands Departments will immediately be notified and transactions will be frozen dealing with the Matrimonial Real Property in dispute.

10.2 If one of Spouses tries to sell the Matrimonial Real Property or tries to reduce or devalue the Matrimonial Real Property through damage or defacing the property, the Tribunal Judge can issue an order for compensation or forgive the requirement that the Spouse awarded possession of the Matrimonial Real Property, compensate the Spouse not awarded, up to 50% of its value.

## **PART 11**

### **11. Interim Occupation of the Matrimonial Real Property**

11.1 This law provides for a 3 month cooling-off period, during which time Spouses may decide to reconcile and get back together. Unless that period has been waived by both parties, and upon being notified of a separation or marriage breakdown a Six Nations Iroquois Dispute Resolution Tribunal judge can issue an Order for Interim Occupation of the

Matrimonial Real Property. The tribunal member will weigh several factors in arriving at this decision including the best interest of any children, which Spouse will care for any children, which Spouse's name is on the Certificate of Possession (CP), whether there is spousal abuse, employment status and the ability or capacity of a Spouse to obtain alternative housing, and which Spouse has a housing loan.

## **PART 12**

### **12. Exclusive or Permanent Possession of the Matrimonial Real Property**

12.1 Within 3 months after an interim order for Interim Occupation has been issued, the Spouse with Interim Occupation may apply for Permanent Possession. Notice will be provided to the other Spouse and they shall be provided with the opportunity to contest the Order. In considering an Order for Permanent Possession a Six Nations Iroquois Dispute Resolution tribunal judge will have to weigh the same factors as those considered in deciding Interim Occupation in deciding who will obtain Exclusive or Permanent Possession of the Matrimonial Real Property, including as a paramount consideration, the rights and best interests of any children and which Spouse is caring for any children. It will also take into account which Spouse's name is on the Certificate of Possession; whether there is spousal abuse; employment and the ability or capacity of a Spouse to obtain alternative housing; and which Spouse has a housing loan.

12.2 Where the property in question is in the name of the Spouse not awarded the Matrimonial Real Property, the tribunal judge can order a transfer of possession to the name of the awarded Spouse.

## **PART 13**

### **13. Compensation - Division of Value of Matrimonial Real Property**

13.1 Once the decision is made of permanent possession of the Matrimonial Real Property an order for compensation can be obtained. Compensation orders provide compensation to the Spouse who is not awarded Permanent Possession and does not continue to reside in the Matrimonial Real Property. The compensation order will be based on the value of

Matrimonial Real Property and provide a 50% share of the value of the Matrimonial Real Property, minus any Offsets. The Spouse's housing loan debt for the Matrimonial Real Property will be taken into account when considering compensation amounts. The Tribunal will need to consider whether the property is held as joint tenants or solely owned by one spouse.

13.2 Six Nations will develop a fair market value system to determine the fair market value of homes at Six Nations taking into consideration factors such as average sale transaction amounts, insurance values, etc.

13.3 The Tribunal shall take into account a recognition that child care, household management and financial provision are the joint responsibilities of the Spouses and that inherent in the marital relationship there is an expected equal contribution, whether financial or otherwise, by the Spouses to the assumption of these responsibilities, entitling each Spouse to an equal claim on the Matrimonial Real Property. Any Housing loan debts assumed by either spouse will also be taken into account.

13.4 There will be provisions for Offsets against the compensation owed by the Spouse awarded the Matrimonial Real Property, if for example, once Spouse can prove they contributed more significantly financially to the building, care or maintenance or the actual improvement of the Matrimonial Real Property. In considering Offsets the Tribunal can take into account how each Spouse has contributed to improvements to the Matrimonial Real Property, thus increasing its value; the condition, means, needs and other financial circumstances of each Spouse and of any child of the marriage, including the length of time the Spouses were married; and, the functions performed by each Spouse during the marriage.

13.5 Lengthy payment schedules may also be possible because the Spouse left without a house may require financial resources to find alternative living arrangements. Leasing the Matrimonial Real Property to a Spouse is also a possibility in resolving the dispute.

13.6 In the case where the spouse awarded the matrimonial home does not and will not, in the foreseeable future have the funds to pay out the other spouse, the matrimonial home will

be put on the local market for sale. Only members of Six Nations will be eligible to purchase the property and a right of first chance to purchase will go to the said family.

**13.7** Where one of the Spouses tries to reduce the value of Matrimonial Real Property by intentional or reckless damage or destruction of property, the Tribunal can order any compensation owed to that Spouse to be forfeited to the other Spouse. If the Spouse attempting to devalue the Matrimonial Real Property owes compensation to the other Spouse, an award against them could be doubled, or where they were eligible to receive compensation, this amount, or a portion thereof could be forgiven, at the discretion of the Iroquois Tribunal.

## **PART 14**

### **14. Housing Loan Debts**

14.1 In cases where outstanding loans or debts exist against the value of the Matrimonial Real Property debt will be treated as a shared debt if it was acquired during the marriage. Where a decision is made by the Tribunal to award the Matrimonial Real Property to one Spouse, that person would have to sign the loan papers to take on the debt to enable them to be registered to the property. The Spouse who acquires sole possession of the property will be responsible for payment of the housing debt, unless an alternative written agreement is reached by the former Spouses.

14.2 The Spouse acquiring sole possession of the property and home, can apply for a loan to pay out, or assist in paying out, the financial interest of the Spouse losing the home, up to the maximum loan amount they are eligible for after taking into consideration any previous loan amount(s) obtained. The Spouse losing his/her home, may be eligible to apply for another loan up to the maximum loan amount as if he/she did not have a previous loan, provided it is consistent with Six Nations Housing Loans Policies.

14.3 When one partner has sole possession of the Matrimonial Real Property, prior to or during the time they were together, the home that was acquired or built remains in sole possession after the breakup. The current housing policy will be applied. For example, the

Spouse retaining the home cannot get a loan to pay out the interest of the ex-Spouse, because Six Nations Housing policy states loans are only given to acquire or repair a home.

## **PART 15**

### **15. Estates Issues - Death of a Spouse**

15.1 Where a couple is separated but have not resolved their Matrimonial Real Property issues at the time of the death of one Spouse, and where the surviving Spouse is a member, the surviving Spouse will have the right to inherit the property and reside there.

15.2 Where title to the Matrimonial Real Property is registered in the name of the deceased Spouse and a co-owner or co-owners, none of which includes the surviving Spouse, then the surviving Spouse may apply to the Tribunal to have a determination of the surviving Spouses' interest in the Matrimonial Real Property.

15.3 The Tribunal may order that the surviving Spouse be registered as a co-owner of the Matrimonial Real Property or that a compensation order be made in favour of the surviving Spouse against the co-owner or co-owners. In determining the appropriate remedy the Tribunal shall consider the value of the family home, how long the spouses lived in the home and the financial contributions that the surviving Spouse made to the improvements or maintenance of the family home.

15.4 The surviving Spouse shall not be entitled to apply to the Tribunal for relief where the co-owner or co-owners are either minor children or mentally incompetent.

15.5 Where a Will exists best efforts will be made to respect the Will, provided it does not try to pass on possession of reserve property to a non-native or a non-member. After the death of the Spouse, the Will can be reviewed by the Tribunal to ensure it is being fair and does not create a hardship to surviving minor children.

15.6 15.6 Where the surviving spouse is a non-native person s/he will be allowed to

continue to reside in the home until their minor children reach the age of majority. Where the couple had no children the surviving non-native spouse would be given 6 months to leave the home, with compensation coming from the estate or the sale of the home. Upon the vacating of the home the house would be put up for sale on the open local market as described in Section 13.6.

15.7 Where the Tribunal makes an order that allows a non-native person to continue to reside in the matrimonial home with his/her minor children until they reach the age of majority, for the purposes of this Act, this Act takes precedence over the Six Nations residency By-law.

15.8 In as much as the Six Nations Residency By-law is only a By-law made pursuant to the law of a foreign government, namely the Indian Act, it is anticipated that Six Nations of the Grand River Elected Council will, similar to this law, adopt a Residency Law based on their inherent authority and jurisdiction, which will make both laws compatible.

## **PART 16**

### **16. Compliance (Enforcement)**

16.1 Six Nations community service departments including Lands, Housing, Membership Registration.. will be provided with copies of all orders to ensure they are complied with. Members found by the Tribunal to be not in compliance may be denied community services provided through Six Nations Council such as water, gas, sewage and rental of community facilities, etc. not including services essential to life.

16.2 A Six Nations Iroquois Compliance body will be used to enforce the law. A Compliance Administration will be put in place to manage the compliance process. The Tribunal can also order that wages will be garnisheed or community services be with-held until fines are paid.

16.3 The Six Nations Police Services may be used if necessary to enforce or assist in the enforcement of this law. In this case this law will shield, indemnify and protect officers from civil or criminal prosecution if they were engaged in the execution of their duties under this

law.

16.4 The Six Nations Compliance body will keep a secure and confidential database of cases they have decided, to be shared among member communities, which will itemize awards and compensation orders for tracking and follow up purposes. It will also share and monitor decisions of other Iroquois Tribunal communities.

## **PART 17**

### **17. Penalties**

17.1 Members who violate any order of the Six Nations Iroquois Tribunal will be liable to pay a fine from \$1000 to a maximum of \$10,000 or may be required to perform community service. Community Services may also be withheld from any Member who fails to comply with this law.

## **PART 18**

### **18. Amending This Law**

18.1 This law may be amended by the same process used to enact it, including providing adequate notice (60 days) is given; an opportunity for community input is provided including community meetings, focus groups, surveys and the publication of results via local media, radio and internet. This process will be codified during the 6 month coming into force time frame for this law.

## **PART 19**

### **19. Coming Into Force**

19.1 This Law will come into force 6 months from the date of its adoption by the Six Nations Council. This will permit time to clarify and correct wording, draft the rules, processes and procedures of how the law will be implemented. This timeframe can be adjusted to provide adequate time for full implementation.

19.2 The Six Nations of the Grand River - Iroquois Matrimonial Real Property Tribunal Process forms Companion implementation regulations to this law and provides processes and procedures to be used by the Tribunal in administering this law. The Tribunal may adopt and amend their procedures as required from time to time.

APPENDIX A

**Six Nations of the Grand River - Iroquois**  
**Matrimonial Real Property Tribunal Process**

**Companion Regulations to the  
Six Nations of the Grand River  
Matrimonial Real Property Law**

# **Six Nations of the Grand River - Iroquois Matrimonial Real Property Tribunal Process**

*\*The Six Nations of the Grand River – Iroquois Matrimonial Real Property Tribunal Process is planned to operate as a traveling tribunal with the participation of 3 Iroquois communities of Akwesasne, Kahnawake and Six Nations of the Grand River. However as of the date of the coming into force of the Six Nations of the Grand Law only Six Nations has enacted their law. Therefore until such time as the other 2 communities enact their respective law, these Regulations, which form part of the Six Nations of the Grand River Matrimonial Real Property Law, this law shall be read in the singular and refer only to Six Nations when referring to the 3 Iroquois communities and processes herein.*

## **Introduction:**

This document is connected to and forms part of the Six Nations Matrimonial Real Property Law.

### **1. Jurisdiction**

1. The Iroquois Tribunal is established and maintained under the jurisdiction of the respective Iroquois Governments with authority to hear and resolve any conflicts brought before it relating to all Matrimonial Real Property matters within Six Nations of the Grand River Territory and two other Iroquois Communities including; Kahnawake and Akwesasne.
2. The Iroquois Tribunal will be based on remedies and processes that are fair, just and equitable and in accordance with the Matrimonial Real Property laws of Six Nations of the Grand River and other member communities of the Iroquois Caucus, **who have an Matrimonial Real Property Law.**

### **2. Conflict of Laws**

1. The processes and procedures in this document supersede any processes and procedures in other documents dealing with the same matters in conflict with them in any of the Iroquois communities.

### **3. Minimum Tribunal Member Qualifications**

1. The Tribunal shall be made up of three (3) persons who satisfy the qualifications referred to below:

- a) "Of good character and reputation" which shall mean those characteristics that would be regarded by a reasonable person as falling within such description and:
  - b) good character and reputation shall be assumed if no contrary facts are shown;
  - c) "Independent and impartial" which shall mean that the Iroquois Tribunal member shall:
  - d) Not be related to anyone whose case is the subject of a review, decision or an Iroquois which is before the tribunal;
  - e) Not be related through blood or marriage to anyone in (1) above;
  - f) Not have had material personal or financial dealings with a person mentioned in (1) above.
  - g) Has not been convicted of an indictable offense in their lifetime unless such person was pardoned for the offense. The tribunal can review this on a case by case basis based on circumstances of the individual.
2. An Iroquois Tribunal member is appointed by written resolution of their respective Iroquois Government and such appointment shall become effective on the day and date that the Iroquois Tribunal member accepts in writing such offer of appointment.

#### **4. Oath of Office**

1. An Iroquois Tribunal member shall take an oath of office to duly, faithfully and truly to the best of his or her ability, skill and knowledge, carry out the duties and obligations and exercise the powers and trusts of an Iroquois Tribunal member and uphold this Process.

#### **5. Term of Appointment**

1. An Iroquois Tribunal member once appointed shall sit as an Iroquois Tribunal member for an indefinite period however their respective Council can review their appointment after five (5) years.

2. The first appointments of all three (3) members to the Iroquois Tribunal shall be made by their respective First Nations Government within sixty (60) days of the Effective Date of the Matrimonial Real Property law;
3. An Iroquois Tribunal member ceases to be an Iroquois Tribunal member in any of the following circumstances:
  - a. The term of the Iroquois Tribunal member is cancelled with just cause by his/her respective Council or such term is not otherwise extended under the Matrimonial Real Property Law;
  - b. The Iroquois Tribunal member dies or resigns;
  - c. The Iroquois Tribunal member refuses or neglects to carry out the duties of an Iroquois Tribunal member as determined in a written resolution of all of the remaining Iroquois Tribunal members;
  - d. On a successful application by a member for the removal of an Iroquois Tribunal member for failing to be qualified or maintain the qualifications of an Iroquois Tribunal member as determined by the remaining members of the Iroquois Tribunal;
  - e. The Matrimonial Real Property Law within their respective community is repealed.
4. In the event all of the positions to the Iroquois Tribunal become vacant at the same time, then their respective Iroquois Government shall fill the vacancies within sixty (60) days of the last vacancy

## 6. Registrar

1. In order to achieve an economical, expedient and efficient process, the Iroquois Tribunal shall hire a qualified person to be the Registrar for the Iroquois Tribunal who shall be an officer of the Iroquois Tribunal. No member of the Tribunal can hold this position.
  - a) Each respective Iroquois Community will hire an Assistant Registrar for their community to assist the Head Registrar in the performance of his/her duties.
2. The Registrar has the following duties:
  - a) “Selects the Iroquois Tribunal **members** who will constitute the Iroquois Tribunal Panel to hear a particular Proceeding. Selects from the Iroquois Tribunal Panel the Chairperson for each Proceeding;

- b) Serves as the address for service to the Iroquois Tribunal.
- c) Coordinates the date, time and location of each Hearing;
- d) Receives and circulates correspondence directed to the Iroquois Tribunal;
- e) Creates and signs correspondence of the Iroquois Tribunal in consultation with the Iroquois Tribunal;
- f) Holds and applies Costs in accordance with an Order of the Tribunal;
- g) Creates or otherwise coordinates the creation of a statement of account for each of the Iroquois Tribunal members directed to their respective Government;
- h) Complies with directions given by the Iroquois Tribunal.

## **7. Powers of the Iroquois Tribunal**

1. Notwithstanding the specific powers of the Iroquois Tribunal under the Matrimonial Real Property Law, the Iroquois Tribunal has the power to hear and resolve any conflict relating to an issue governed by this Process or address violations of this Process based on remedies and processes that are fair, just and equitable and in accordance with this Process.

## **8. Exercise of Power**

1. The Iroquois Tribunal in the course of exercising its power under the Matrimonial Real Property Law shall:
  - a. Observe all principles of natural justice<sup>4</sup>, procedural fairness or other procedure that it is required by this Process to observe;

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<sup>4</sup> Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:

- A Right to Advanced Warning. Contractual obligations depriving individuals of their Rights cannot be imposed retrospectively.
- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges).
- A person making a decision should declare any personal interest they may have in the proceedings.
- A person who makes a decision should be unbiased and act in good faith. He or she therefore cannot be one of the parties in the case, or have an interest in the outcome. Proceedings should be conducted so they are fair to all the parties
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party.
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations.
- Justice should be seen to be done. For example, If the community is satisfied that justice has been done, they will continue to place their faith in their justice process.

- b. Adopt rules and procedures that are fair, economical, expedient and efficient taking into account the often limited means of the parties to a Proceeding to pay for the operation of the Iroquois Tribunal; Such rules will be published and made available to community members upon request;
- c. Weigh the right or obligation being enforced and the materiality of the violation as against the remedy being used and the cost of implementing such remedy;
- d. Use Costs as a means to limit cases that are frivolous or vexatious with such Costs being shifted to the Applicant who initiates such cases;
- e. Uphold this Process and not act contrary to this Process.

## **9. Decisions of the Iroquois Tribunal Panel**

- 1. A Proceeding is determined by a panel of three (3) of the sitting Iroquois Tribunal members designated under the respective Iroquois Community Matrimonial Real Property Law, and the majority of the tribunal members will not be from the community of the person originating the proceeding, and
- 2. Decisions of the Iroquois Tribunal will be made by a majority of the members of the Iroquois Tribunal Panel assigned to determine a Proceeding, and
- 3. A Tribunal Panel for each Proceeding shall be deemed to be a decision of the Iroquois Tribunal. The decision of the Iroquois Tribunal Panel shall be in writing and made available upon request.
- 4. The respective Iroquois Government will take all reasonable steps to assist, where necessary, in the implementation of a decision of the Iroquois Tribunal to the extent such decision includes an obligation on the part of their respective Government and within the direct control or influence of their Government, including Six Nations of the Grand River.
- 5. After the Iroquois Tribunal Panel renders a decision, then an Applicant cannot make another Application for a Proceeding to the Iroquois Tribunal covering the same matter with the same parties. Nor can the Applicant make another Application for a Proceeding to another jurisdiction.
- 6. The Iroquois Tribunal Panel will make a decision in a timely manner.
- 7. The Registrar shall hire a Clerk of the Tribunal. The Clerk of the Iroquois Tribunal Panel has the following duties:

- a) Manages the documentation and correspondence associated with a case;
  - b) Maintains a record of all documentation and correspondence filed, all contact and communication to and from the parties to a Proceeding and to and from witnesses and all Proceedings that have taken place regarding a Proceeding;
  - c) Refers procedural matters and requests for adjournments to the Iroquois Tribunal Panel;
  - d) Makes all arrangements necessary to conduct the Hearing in an orderly, efficient and dignified manner;
  - e) Keeps a record of every material event that transpires during a Hearing and keeps and is responsible for all exhibits filed during a Hearing and mark them, record them and indicate by whom they were filed;
  - f) Ensures the decision of the Iroquois Tribunal Panel is rendered in writing in a timely manner;
  - g) Prepares the decision of the Iroquois Tribunal Panel in consultation with the Iroquois Tribunal Panel members who participated in the Hearing.
  - h) Provides a copy of each decision of the Iroquois Tribunal Panel to the following persons:
    - I. The Registrar;
    - II. Assistant Registrars in each community;
    - III. All other parties affected by such decision.
8. All decisions made by the Iroquois Tribunal under the Six Nations Matrimonial Real Property shall be kept by the Office of the Registrar in an Iroquois Tribunal Record of Decisions Book and will be maintained by the Clerk of the Registrar.
9. In the event a member of the Iroquois Tribunal Panel is in a position of conflict:
- a) If the conflict is raised prior to a Hearing or a Proceeding of the Iroquois Tribunal Panel, the member in conflict shall not sit on the particular case and in such event, the Registrar shall appoint a replacement from the full members of the Iroquois Tribunal and if there are no other members of the Iroquois Tribunal then the remaining Iroquois Tribunal Panel member(s) designated for the Proceeding shall constitute the Iroquois Tribunal Panel for purposes of the subject Hearing or determination; and
  - b) If during a Hearing a conflict becomes evident then the Iroquois Tribunal Panel member shall not sit on the particular case and the remaining members of the Iroquois Tribunal Panel possess the power of the Iroquois Tribunal Panel for purposes of the subject Hearing.

## **10. Application to Start a Proceeding**

1. A written and signed application to the Office of the Registrar together with proof of service by the Office of the Registrar on the named Respondent(s) constitutes an official application to start a proceeding.
2. A Proceeding shall be heard on Six Nations of the Grand River Territory wherever possible.

## **11. Cases Involving Traditions**

1. Proceedings to the Iroquois Tribunal regarding the culture, tradition, heritage and language of Six Nations of the Grand River may require input from Elders of Six Nations of the Grand River. Any person who is an Elder of Six Nations of the Grand River has the right to give relevant input at the request of either spouse.

## **12. Hearings**

1. The Iroquois Tribunal Panel shall treat each party to a Proceeding equally and fairly and give each party an opportunity to present their case and to respond to the case of each of the other parties.
2. All persons and parties in attendance at a Hearing shall display a demeanor and conduct that is respectful to the Iroquois Tribunal Panel and the Proceedings generally, and if non-compliant, the Iroquois Tribunal can require that such person leave the Hearing room and failing the same the Iroquois Tribunal Panel can issue an Order for Compliance or removal.
3. The process and procedure to be followed in a Hearing, shall be determined by the Iroquois Tribunal Panel in its absolute discretion provided such process and procedure is consistent with the provisions in the Matrimonial Real Property Law.
4. The Iroquois Tribunal shall make best efforts to schedule and group cases together so as to minimize travel expenses and maximize efficiency of the operation of the Iroquois Tribunal.
5. The party(s) launching a Proceeding has/have the onus of proof.
6. A Proceeding is decided on the standard of fairness and principles of natural justice.
7. The Iroquois Tribunal Panel is bound by the rules of evidence that they put in place and no other jurisdiction with judicial Proceedings. The Tribunal has the power to determine

the admissibility, relevance and weight of any evidence and the Iroquois Tribunal Panel may determine the manner in which sworn evidence is to be admitted.

8. A party may submit a Notice of Proceeding or a Notice of Dispute orally with the permission of the Registrar in circumstances where the person does not have the required reading and writing skills.
9. The Iroquois Tribunal Panel on the Proceeding of a party or on its own initiative can Order that copies of material documents from any of the parties to a Proceeding be delivered to the Iroquois Tribunal Panel and in such case the party(s) named in the Order shall forthwith deliver the same up to the Iroquois Tribunal Panel.
10. In the event a party fails to comply with an Order and fails to provide a satisfactory explanation as to non-compliance, the Iroquois Tribunal Panel has the power to make a negative inference and/or issue a Non-compliance Order with respect to the non-compliant party.
11. Any person can make a Proceeding alleging that a person is obstructing or has obstructed the Iroquois Tribunal in carrying out its functions under This Process or has obstructed a witness or potential witness in a Proceeding, and on receiving such Proceeding the Iroquois Tribunal shall conduct a Hearing to determine the merits of such a Proceeding and if such Proceeding has merit, then the Iroquois Tribunal can issue a Non-compliance Order with respect to such person and in appropriate circumstances refer the matter to the proper authorities for prosecution.
12. In the event a witness testifies in a Hearing and such witness is an employee, contractor with Six Nations of the Grand River Government such witness shall not be terminated or otherwise disciplined by the Government for testifying.
13. The Iroquois Tribunal shall give the parties sufficient notice of time, date and place of Hearings and any other events material to a Proceeding.
14. The Iroquois Tribunal shall determine the time, date and place of a Hearing in the absolute discretion of the Iroquois Tribunal but with a view to the convenience of the parties and the minimization of costs.
15. If a party fails to appear at a Hearing scheduled by the Iroquois Tribunal, without a reasonable cause, the Iroquois Tribunal may continue the Hearing and may make a decision on the evidence before it.
16. Any party to a Proceeding can have expert reports prepared and such reports cannot be used in evidence unless the party purporting to use the report gives a copy of such expert report to all other parties at least five (5) days before the commencement of the Hearing and unless the Iroquois Tribunal Panel gives leave to use such expert report.

17. A member of the Iroquois Tribunal has the power to administer oaths or take affirmations, that witnesses before the Tribunal will at all times tell the truth.
18. Any party to a Proceeding may be represented by a person of their choice.
19. The Iroquois Tribunal shall determine whether to grant an adjournment in the absolute discretion of the Iroquois Tribunal subject to:
  - a. A request for an adjournment requires a compelling reason why the party requesting the adjournment is not ready to proceed;
  - b. A first adjournment being regarded more favorably than subsequent adjournments from the same party;
  - c. Adjournments are to be sparingly granted based on time sensitive or other compelling reasons.

**13. Process**

1. The Iroquois Tribunal shall use the following Hearing process:
  - a. Opening and closing prayer;
  - b. Acknowledge people present;
  - c. States rules of procedure to be used;
  - d. Deal with any preliminary objections concerning jurisdiction, irregularities, service and any other preliminary matters of a material nature;
  - e. The Applicant presents his or her case and calls witnesses;
  - f. Each Respondent has the opportunity to cross examine the witness of the Applicant;
  - g. At the conclusion of the case of the Applicant, each Respondent shall present their evidence and call witnesses;
  - h. All other parties have the opportunity to cross examine the witnesses of the Respondent(s);
  - i. Re-examination and rebuttal evidence is at the discretion of the Iroquois Tribunal Panel;

- j. At conclusion of the case each party shall be given the opportunity to provide argument;
  - k. The Hearing can be adjourned from time to time;
  - l. The Hearing is concluded when the Iroquois Tribunal declares the Hearing as concluded.
2. All witnesses at a Hearing are required to give evidence under oath or by way of affirmation, that they will be honest and truthful, and on the refusal to take an oath or affirmation the Iroquois Tribunal Panel can make a negative inference from such refusal and/or issue a Non-compliance Order regarding such witness.
  3. Hearings will be generally open to the public however the Iroquois Tribunal can in its sole discretion hold in-camera meetings as required to protect privacy of individuals, however the Tribunal will seek a balance.

#### **14. Decision and Termination of Iroquois Hearing**

1. An Iroquois Tribunal Hearing is completed or terminated on the happening of any of the following events:
  - a) The rendering of a decision of the Iroquois Tribunal Panel consistent with the Six Nations Matrimonial Real Property Law;
  - b) The parties having settled the matter in dispute before the decision of the Iroquois Tribunal Panel is rendered; and if so the Iroquois Tribunal Panel shall terminate the Iroquois Hearing and record the settlement in the form of a decision;
  - c) If the Applicant withdraws the Notice of Proceeding, unless a Respondent objects to the termination and the Iroquois Tribunal Panel agrees that the party so objecting is reasonably entitled to obtain a final settlement of the matters in dispute;
  - d) The parties mutually agree that the Iroquois Tribunal Panel Hearing should be terminated;
  - e) The Iroquois Tribunal Panel finds that the continuation of the Iroquois Tribunal Panel Hearing has become unnecessary.

#### **15. Appeals**

Decisions of an Iroquois Tribunal Panel can be appealed to an Iroquois Tribunal Appeal

Body, as set out below: Certain members of the Tribunal will be designated as appeal judges to handle appeals of the tribunal.

- a. The Appeal body shall consist of 1 Tribunal Member, who was involved with the original Case;
- b. The Appeal body shall conduct its hearings in the location of the original case;
- c. An appeal must be based on an error in the Matrimonial Real Property law of the respective Iroquois community. It will not simply review the previous case based on its merits.
- d. The Appeal Body can award costs to either party. If the Appeal is considered frivolous or vexatious it can be thrown out and costs awarded to the other party.

#### **16. Costs and Security for Costs**

1. Tribunal members will be compensated for their time by their respective governing Councils, when active, based on rates of compensation determined by their respective Iroquois government. The Iroquois Caucus members will attempt to achieve relative parity in their compensation rates of their member Tribunal judges.
2. The Iroquois Tribunal can establish and award costs or set amounts to be used as security.

#### **17. Non-compliance Proceedings**

1. A party seeking a Non-compliance Order to address the circumstance of an individual not complying with a decision or Order of the Iroquois Tribunal shall do so by way of a Notice of Proceeding requesting such relief.
2. In the event the Iroquois Tribunal Panel finds that an individual who is a Citizen of Six Nations of the Grand River or any other individual failed to comply with a decision of the Iroquois Tribunal Panel, then the Iroquois Tribunal Panel shall make a Non-compliance Order concerning such individual containing any or all of the following:
  - a. Order that an individual comply, pay a monetary amount, or order that they will not be eligible to receive community services until debts are paid off, or Orders complied with;
  - b. And the Six Nations Elected Government shall forthwith respect and assist the Tribunal, to the extent of its abilities, to implement the decision of the Iroquois Tribunal Panel.

- c. Engage the assistance of an Compliance Officer where one has been established or designated in the respective Iroquois community.

## **18. Involvement of Administration**

1. The Senior Administrative Officer of the elected Six Nations Government or the designate of such person shall assist the Iroquois Tribunal in allocating resources and arranging for support services to assist the Iroquois Tribunal to carry out its functions under the Matrimonial Real Property Law if requested to do so by the Iroquois Tribunal or the Registrar.
2. The Senior Administrative Officer or the designate of such person will receive and distribute documentation and provide coordination services for purposes of managing a case if requested to do so by the Iroquois Tribunal or the Registrar.
3. The Senior Administrative Officer shall make available to the Iroquois Tribunal appropriate meeting rooms and facilities to enable cases to be heard at Six Nations of the Grand River Territory.
4. The Senior Administrative Officer shall post a contact number for the Six Nations Iroquois Tribunal in the main administrative office of Six Nations of the Grand River on a bulletin board or other conspicuous location.
5. The Senior Administrative Officer on receipt of a copy of a decision of the Iroquois Tribunal shall forthwith provide the same to the First Nation Government of the Respective Iroquois community where the Applicants reside or initiated the Proceeding.

## **19. Travel Costs**

1. An Iroquois Tribunal member shall be entitled to receive reimbursement of reasonable travel, accommodation and meal expenses, which rates will be the same as the rates as may exist from time to time applicable to the respective Iroquois Government.
2. The Iroquois Tribunal shall be entitled to reimbursement of out of pocket expenses relating to services provided under the Six Nations Matrimonial Real Property Law, which expenses include telephone, photocopying, postage, courier charges, meeting room costs and the like.