

MATRIMONIAL REAL PROPERTY LAW- PIB

The following meeting minutes took place October 8th 2014. This is a first meeting of many. Conversations need to take place in and around community for PIB to amend this Federal Law to work for Penticton Indian Band. Facilitator - Tabitha Eneas (PIB Housing Administrator) and Jeannie Lanine (PIB Lawyer)

Q = Question

A = Answer

D = Discussion/Comment

The following note point form is initials of community members questions/input/opinions:

- Q- House is in member name, mortgage is in member name, can prove everything was paid by member the entire time while married, non member spouse has paid nothing. Why does non band member - deserve anything? If couple splits up before the law comes into effect does it still count? Does the non band member still have any rights to property?
- Q- What rights do non members have? Why aren't OUR (band member) rights protected?
- A- this Matrimonial Real Property Law is a directive by the Federal Government to protect non Status/members and is for Land issues only, has nothing to do with family law, custody or anything else but land.
- A - One issue identified was Family Violence - on reserve, court had no order for protection. Federal Law: Applies on reserve, Courts can make an order (for non member) to stay in the house. Court could order a sale or lease of property.
- Q- Would you have to pay your spouse out?
- A - If court orders it
- A - PIB can dictate how this law is implemented to community, we can amend it to work for PIB ...for example we can change 'common law' to be 5 years instead of 2 years (to protect the community member)
- Q - Can court enforce this law? Can they come out to the reserve?
- A - Chief and Council could say, PIB Matrimonial Law would cover
- Q - Which court can enforce it? Provincial? Federal?
- A - The BC Supreme Court has jurisdiction over lands, BC Provincial Court has jurisdiction for orders of protection.
- D - It don't matter who drafts the new law... the Court has jurisdiction over our lands. This should be made by OUR Chief and Council and OUR people. If a husband takes care of wife and he pays all the bills....The point is the COURT will make the decision not our people or the old ways...
- A - the legislation WILL apply (in December) even if you don't amend the new law to make it your own

- A - IF PIB community provides input to develop their own law the court would have to abide by the amended law. This is the first of many sessions. We need as many Band Members to participate to gather as much information as possible.
- Q - I had 2 Common Law relationships The 1st one paid money into the home the 2nd paid nothing into the home. Could the 1st one get his money back? Or have claim/rights to the home?
- A - He may apply for a compensation order...
- Q - In town they have a PRE NUP (Pre Nuptial Agreement) - Can we make it a mandatory document for PIB? To protect PIB membership?
- A - PIB has drafted our own Pre Nuptial Agreement - for married people, common law, kids....
- D - This meeting shouldn't even be taking place! This is our Okanagan Nation My family is upset. We have OUR own laws! The Government can't tell us we have 1 year because of what happened back East. Nothing to do with us. OUR elective should be writing letters. We own this land. No Jurisdiction, nothing to do with them. We belong to the Okanagan Nation. They the Government tell us we got a year - OUR Electives shouldn't be WE are not Indians! They (Government) have not right!
- A - Our job is to get input from the community...
- D - We should be drafting a letter to OUR Electives to sign! Under Duress!
- D - Tell Council, Do we allow the law to come into effect? Come December it WILL come into effect whether we like it or not, amended or not....
- A - will make a note of all your comments and take it to Chief and Council.... will let them know
- D - I support a Directive Letter (to our Chief and Council) PK is right. It's time we started making our own laws ourselves rather than waiting for them (Govt)
- D - Another issue identified is how to handle Mortgages?
- Q - Is this New? Have there been meetings held before tonight? Why such short notice (to membership)? 2 months and the law comes into effect?
- A - There is a lot of information involved in drafting our own law. Training is still taking place to educate Departments on what this means and how to do it. PIB Housing Administrator is not scheduled to take training until November due to high volume of registrants and limited workshops that happen across country. PIB is not the only Band that is in this situation.
- Q - (Issue Identified) What happens if you pass away? Spouse will be given right to stay in house....if house is a band rental this does not apply...

- Q - Can Band stop spouse from residing? in home?
- A - Band can only enforce if spouse is a danger etc.....the Charter of Rights applies on the Reserve... the Matrimonial Real Property Law is only about the land , not car, divorce, custody etc.... PIB is developing forms such as Pre-Nups, Wills etc that will be easy to fill out to protect band members.....
- Q - (wants to clarify) 'NOT A MEMBER' means NOT a PIB band member (Native) or a white person?
- A - Correct
- D - the new law also doesn't apply to leased landsEXAMPLE: Spouse is common law, 1 gets sick and the other spouse works, the court COULD make an order for the sick spouse to stay in the home.
- D - This all comes back to 1 thing, IT'S THE COURT! We are giving the court's JURISDICTION where they never had before! To decide what goes on in MY LAND! The point is court now has power to make a decision on MY CP (Certificate of Possession)!!!
- Q - Family decisions- what if people don't want them there? *(the spouse) THE COURT DECIDES! we have no decision making power.
- D -The court decides what is in the best interest of the kids.
- D - the court doesn't ALWAYS have best interest in the kids....
- D - What I keep hearing over and over is the courts (having power)... This presentation is to do with IF we don't change the law ourselves to make it work for OUR community we will be at the mercy of Federal Law. We don't have to agree with the law but we do have to make it the best WE can....
- D - We were talking about how the law is being forced on us Jeannie will let Chief and Council know....
- D - that fight will have to happen at the national level
- Q -Maybe we can make a law to govern the new law... or make a law that sees we opt out of the law
- D - this should be a WAKE UP CALL for our people. We have to as a Nation put OUR laws together. Marriage agreement in town enforceable out here if community says NO then it's no out here not enforceable long time ago when a couple broke up the woman got the house - UNLESS the man kept the kids. It was an unwritten law but everyone knows the law. Our family can overrule any written agreement.

- D - Major Issues - How do you want to change? kids, family violence, how long should common law be together before considered common law? (2 years enough?)
- Q - what about on again off again relationships?
- A - good point, what is the intentions of both parties?
- Q/D- HOW do we prove common law? *one way is IF they file taxes together ... otherwise it could turn into a he said she saidfamily against family....
- D - common sense thinking - Chief and Council, get letter, WE are already doing this it's just NOT WRITTEN DOWN.....
- D - We need to write a strong letter (to Chief and Council)
- D - We have been living (unwritten) laws... we are already LIVING this way.....it just hasn't been written down
- D - in 1978 in the Naramata Center there was something written a lot of input....
- Q - Is this Provincial?
- A - No it's Federal only applies to Land.....not family law or divorce, custody etc etc ...
- D - If we going to do our own law we could possibly change FAMILY MAINTENANCE Enforcement Protection (FMEP)
- A - the Matrimonial Law only deals with Lands....
- D - some more things to think about - Social Housing is Rent to Own, do we allow for anything in this law to make decision- revert back to the band or does spouse have a vested interest in home? *(even though they technically don't own it yet during the rent to own time)
- D - that should depend on if the spouses are on Social Assistance or working. It should be decided on a case by case basis. If people can afford to keep the mortgage fine, if not have the home revert back to the band....
- D - If a case by case basis Chief and Council would have to step in or housing committee to omit Favoritism
- D - We (the community) need to have more discussions, we can't answer it tonight, not enough opinions or feedback.....
- D - this is important for protection
- D - This is important for teaching kids our laws

- D - Can we bring this to the Elders Meeting?
- A - We are planning on bringing this to all levels of meetings, Elder, Youth, Family Sessions... etc... to allow for Families/community members to be heard....
- Q - What will the Final Document look like?
- A - we have a draft but at this stage it is very vague... it's very important we as a community get feedback and input to form it to work for PIB
- Q - How long does the Draft have before it comes into effect? December?
- A - The Law comes into effect in December no matter what.... for PIB amended Law there is NO DEADLINE...
- A - The Center of Excellence for the Matrimonial Real Property Law in Toronto is in discussions to get them here to have meetings to clarify the law If you know family members off reserve please get them to contact me for their contact info...
- Q - is our band collaborating with OTHER bands on amending the law?
- A - no not at this time we have to concentrate on our own community - it is very costly to create a law...
- Q - is ONA aware?
- A - Yes
- A - Other bands don't have the resources to develop the law... PIB may in future share
- Q - are you going to send out a letter to band members to summarize?
- A - Yes. There will be information shared through newsletter, on PIB website, meetings, and face to face.
- Q - what does UBCIC (Union of BC Indian Chiefs) say?
- A - UBCIC protested against. Chiefs I assembly has inherent right to develop own laws
- A - we can send out a copy of New Legislation from Justice Site...
- A - We could have a session on just that and apply how it would do to ours...
- D - Rumor is PIB people are trying to push this law....
- A - there is NO hidden agenda - just trying to make it best fit for PIB community membership ... this is not a PIB initiative. This will apply to ALL First Nations across Canada

- D - please fill out the feedback form it is very important to fill out possible real life 'scenario's'... this will help us develop the draft to work for PIB
- 9:45 Meeting Adjourned Next meeting to be announced...