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Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de la femme à savoir

Protecting Women's Rights to the Family Home on Reserve: *Important Changes for both Aboriginal and non- Aboriginal Women*

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METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenters

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Topics to be Covered

1. Family Law - Background
2. Law Affecting Aboriginal Families and Property
3. Negative Impact on Women living on Reserve
4. New Laws Affecting Aboriginal Family Property
5. New Emergency Possession Orders
6. New Exclusive Occupation Orders
7. New Rights to Share the Value of Family Property
8. Challenges and Concerns
9. Additional Resources

Information is accurate as of March 23, 2015



Family Law - Background

Family Law Rights

Background

- In Canada, the provinces and territories have laws for married and common law couples when they break up
- These laws include rules for sharing property that built up during the relationship

Family Law Rights

Background

In Ontario, the *Family Law Act* gives rights to:

- married spouses to share the value of the family home and property
 - see webinar: Property Rights/Obligations of Married and Co-habiting Partners
- allow an abused partner to get a court order to live in the family home and keep the abuser out
 - Exclusive Possession Order
- allow an abused partner to get a Restraining Order which can limit many kinds of contact by the abuser

Family Law Rights

Restraining Orders

- Possible conditions:
 - Abuser cannot be within 500 yards of person or children, including staying away from:
 - home, school, daycare, workplace
 - Abuser cannot contact person in any way, including:
 - phone, voicemail, email, Facebook, notes, through others
 - Abuser may not have a firearm



Laws Affecting Aboriginal Families and Family Property

Laws Affecting Aboriginal Families and Family Property

Family Property Rights on Reserve

- matters dealing with land on First Nation reserves fall under federal government powers
- provincial laws for possession and division of family property do not apply on reserves

Laws Affecting Aboriginal Families and Family Property

Family Property Rights on Reserve

- There was a “gap” in rights for people living on reserve
 - No rules to prevent one partner from selling the family home without consent from the other partner
 - No rules for sharing the value of family property, especially the family home
 - No rules to be able to order one partner can live in the family home after breakup and exclude the other abusive partner



Negative Impact on Women

Negative Impact on Women

The family law “gap” had a negative impact on women because:

- At the end of a relationship, the woman could be forced to leave her home
- housing shortage on reserve often meant women and children would have to leave community on reserve
- A woman’s matrimonial home could be sold without her consent
- A woman did not have a right to get a share of the value of the matrimonial home
- A woman, even with children, could not get a court order to stay in the matrimonial home
- In domestic violence cases, a woman could not get a court order to keep her abuser out of the home

Negative Impact on Women

If a woman is fleeing violence on reserve

- a woman fleeing family violence on reserve
 - may be forced out of her family home
 - may be forced to live in extreme poverty
 - may be at high risk of losing custody of her children, since “best interests of child” is often determined by who has access to the family home, extended family and other resources

New Laws Affecting Aboriginal Family Property

New Family Property Rights on Reserve

- new federal law passed in 2013
 - *Family Homes on Reserves and Matrimonial Interests or Rights Act*
 - came into effect in stages
 - First Nation governments had a year to make new family property rules
- www.aadncaandc.gc.ca/eng/1408981855429/1408981949311
- after **December 16, 2014**, federal law applies to any Band without new rules (unless First Nation makes new rules in future)

New Laws Affecting Aboriginal Family Property

Family Homes on Reserves and Matrimonial Interests or Rights Act

- applies to married spouses and common law partners (in a relationship for 1 year or more)
- affects women living on reserve
 - Aboriginal women
 - non-Aboriginal women with an Aboriginal spouse or partner
- Deals with:
 - emergency protection orders
 - right to stay in matrimonial home until property rights resolved
 - right to division of family property



New Emergency Protection Orders

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

- Federal government rules
 - unless First Nation enacts its own rules for family property

1. Emergency Protection Orders available from Court

- for domestic violence when protection of person or property is needed
- person can apply whether or not currently living in family home
 - home can be owned or rented
- abusive partner and others living in home can be ordered to leave family home

Laws Affecting Aboriginal Families and Family Property

1. Emergency Protection Orders (cont.)

- Definition of “family violence” for an order includes:
 - actions or omissions against a partner, child in care of one of the partners, or anyone living in the family home such as:
 - assault (intended force without consent)
 - sexual assault or threat
 - intentional or reckless behaviour that causes or causes fear of bodily harm or property damage
 - unlawful forced confinement
 - no need for criminal charges or conviction

Laws Affecting Aboriginal Families and Family Property

1. Emergency Protection Orders (cont.)

- for up to 90 days – can be extended by court
- apply without notice to abusive partner (*ex-parte*)
- because immediate protection is necessary
- police or other person may apply for the abused partner
- Court can order police to supervise removal of people and belongings from the family home

Laws Affecting Aboriginal Families and Family Property

1. Emergency Protection Orders (cont.)

- Judge can order anything necessary for the immediate protection of the person or property at risk

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New Exclusive Occupation Orders

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

2. Occupation Rights and **Exclusive Occupation Orders** available from Court

- both spouses/partners have right to occupy family home during relationship
- either spouse/partner may apply to Court for an Exclusive Occupation Order -- whether or not the person is a First Nations member or “Status Indian”
- Court determines length of Order
- for longer-term, non-emergency situations
- can replace an Emergency Protection Order

Laws Affecting Aboriginal Families and Family Property

2. Exclusive Occupation Orders (cont.)

- Court must consider:
 - any family violence, including psychological abuse
 - By partner or other person living in family home
 - best interests of children living in family home
 - First Nation child's interest in maintaining ties with First Nation
 - Interests of elderly or disabled person living in the home
 - collective interest of First Nation in reserve lands
 - length of time person applying for order has lived on the reserve

Laws Affecting Aboriginal Families and Family Property

2. Exclusive Occupation Orders (cont.)

- Court must consider:
 - finances of both partners
 - health conditions of both partners
 - availability of other housing on reserve
 - any agreement between partners regarding family property
- can apply for a temporary Interim Order for exclusive occupation while Court is deciding final order

Laws Affecting Aboriginal Families and Family Property

2. Exclusive Occupation Orders (cont.)

- For **surviving spouse or partner**
 - immediately after death of spouse/partner, survivor without legal rights to family home, may stay for 180 days
 - after death of spouse/partner, survivor may apply for Exclusive Occupation Order to continue living in family home
 - surviving spouse/partner can apply whether or not the person is a First Nations member or “Status Indian”
 - Court will determine length of Order
 - can apply for a temporary Interim Order for exclusive occupation while Court is deciding final order

Laws Affecting Aboriginal Families and Family Property

2. Exclusive Occupation Orders (cont.)

- For surviving spouse or partner
- Some issues the Court must consider:
 - best interests of affected children, including ties to First Nation community
 - the collective interests of the First Nation
 - a will
 - whether the family home is the only family property of significant value
 - length of time the survivor has lived on the reserve
 - health condition of the survivor

Sample Situation

Tracy and Jason are both Mohawk and have been living together for 2 years in his house on Tyendinaga Mohawk Territory. He recently lost his job and has started yelling at Tracy and her 5-year-old daughter a lot. Tracy is afraid his anger is going to get worse and he's going to hit her.

Can Tracy get a Court Order that says Jason has to move out of his own house?



New Rights to Share the Value of Family Property

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

3. New Rights to **Share the Value of Family Property on Reserve**

- both spouses/partners must consent in writing to sale of family home
- each spouse/partner entitled to half the value of the family home
- each spouse/partner entitled to half the value of other property on reserve, such as land, other buildings, sheds
 - taking into account the increase in value during relationship, cost of improvements, debts
 - Court may also consider who paid to care for children

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

3. New Rights to **Share the Value of Family Property on Reserve**

- new rules apply when at least one spouse/partner is First Nations member or “Status Indian”
- **both partners** have same rights to share the value of property, whether or not a First Nations member or “Status Indian”
- does not matter which partner has name on legal documents for property

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

3. New Rights to **Share the Value of Family Property on Reserve**

- can apply to Court up to **3 years** after partners stop living together
 - possible exceptions if you didn't know about your rights, or could not apply for reasons out of your control
- rules may not apply if partners voluntarily sign a written agreement to divide family property
 - be careful before signing an agreement
 - get legal advice

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

3. New Rights to **Share the Value of Family Property for surviving spouse**

- after death of spouse/partner, survivor may apply for court order to get half value of family home and other property
- applies whether or not spouse/partner is First Nations member or “Status Indian”

Laws Affecting Aboriginal Families and Family Property

Changes under the new law

3. New Rights to **Share the Value of Family Property** for surviving spouse

- must apply within 10 months of the death of spouse/partner
 - some exceptions if you didn't know about the death, or about your rights
- Court may consider:
 - needs of children of the deceased
 - an earlier agreement between partners about division of property

Sample Situation

Beverley and Jake are getting a divorce after 8 years of marriage. They live on the Moose Cree First Nation reserve. Jake is a Band member and owns their house and an acre of land around it. Only his name is on the legal Certificate of Possession.

He wants to sell their home, but if he does Beverley will have nowhere to live.

Sample Situation

1. Beverley is not an Aboriginal woman. Does she have any rights to their home on reserve?
2. Can Jake sell their house without her consent?
3. Does Beverley have any legal rights to get a share of the value of their home?
4. Does Beverly have any legal rights to get a share of the acre of land?



Challenges and Concerns

Challenges and Concerns

Law must be informed by living conditions on each reserve:

- issues that contribute to family breakdown and family violence
- access to shelters for women fleeing violence
- available housing for separated partners
- counselling and support services for people in crisis

Challenges and Concerns

- educate communities on reserves about new rules
- ensure women know they have rights
- assist women to enforce rights
- access to lawyers and Courts – worse in remote communities
- ensure informed and available policing on reserves to enforce Court orders

Presenters

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Additional Resources

Additional Resources

List of First Nations with their own community-specific family property rules

www.aadnc-aandc.gc.ca/eng/1408981855429/14089819493111

Aboriginal Legal Services of Toronto

www.web.net/alst/index.htm

Toronto: 416-408-3967 or 416-408-4041

Find a community legal clinic near you

www.legalaid.on.ca/en/contact/contact.asp?type=c

Additional Resources

Some Aboriginal Community Resources

Ontario

Chiefs of Ontario

chiefs-of-ontario.org/

Association of Iroquios and Allied Indians

www.aiai.on.ca/

Anishinabek Nation Union of Ontario Indians

www.anishinabek.ca/

The Grand Council of Treaty #3 Anishinaabe Nation

www.gct3.net/

Nishnawbe Aski Nation

www.nan.on.ca/

Native Women's Resource Centre of Toronto

www.nwrct.ca

Additional Resources

Aboriginal Community Resources

Ontario

Ontario Native Women's Association

www.onwa-tbay.ca/

Andunyaun Women's Shelter

www.andunyaun.org

National Organizations

Assembly of First Nations

www.afn.ca/

Native Women's Association of Canada

<http://www.nwac.ca/>

Canadian Council for Aboriginal Business

www.ccab.com/

Additional Resources

Family Law Education for Women (FLEW)

www.onefamilylaw.ca

FODF (Femmes Ontariennes et Droit de la Famille)

www.undroitdefamille.ca

Booklets for Aboriginal Women

www.onefamilylaw.ca/en/aboriginalwomen

Ontario Women's Justice Network

www.owjn.org

Ministry of Children and Youth Services

Child Protection Standards in Ontario

children.gov.on.ca/htdocs/English/topics/childremsaid/childprotectionstandards.aspx

Additional Resources

Native Child and Family Services of Toronto

www.nativechild.org

Article on Aboriginal Women and Custody issues,
Springtide Resources

springtideresources.org/resource/aboriginal-women-no-rights-land-or-children

What You Should Know About Child Protection
Court

Cases, Ministry of the Attorney General Website

attorneygeneral.jus.gov.on.ca/english/about/pubs/child_protection.asp

Additional Resources (Family)

Assaulted Women's Helpline

www.awhl.org

- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- Toronto: 416-863-0511

Legal Aid Ontario

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Centres (FLICs)

http://www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

Family Law Education for Women (FLEW)

<http://www.onefamilylaw.ca/en/resources/>

Femmes ontariennes et droit de la familles (FODF)

<http://undroitdefamille.ca/>

Ontario Women's Justice Network (OWJN)

www.owjn.org

Additional Resources (General)

Law Society of Upper Canada Lawyer Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

Toolkit for a good Client-Lawyer Relationship

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

Ministry of the Attorney General

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Find a community legal clinic near you

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

211 Canada.ca

<http://211canada.ca/>

Additional Resources (General)

Online forms

<http://www.ontariocourtforms.on.ca/english/family/>

Ontario Court Forms Assistant

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

Ontario Courts

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
 - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

Ontario Court Locations

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Additional Resources (General)

Victim Crisis Assistance and Referral Services (VICARS)

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Victim Support Line (VSL)

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Court Prep

www.courtprep.ca

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence

Domestic Violence and Abuse

For information, if your partner is abusive or violent:

Assaulted Women's Helpline <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868

Legal Aid Ontario http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Family Violence Authorization Program (Legal Aid Ontario)

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

FLEW (Family Law Education for Women) Resources page

<http://www.onefamilylaw.ca/en/resources/>