



MATRIMONIAL REAL PROPERTY LAW

Draft GRFN MRP Law – May 26, 2015

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GARDEN RIVER FIRST NATION MATRIMONIAL REAL PROPERTY LAW

EXECUTIVE SUMMARY

Introduction:

Garden River’s Technical Advisory Committee has worked with legal counsel to prepare a draft Matrimonial Real Property Law. This Law is to ensure that property on reserve that is held by spouses in a marriage or in a common-law relationship can be fairly dealt with if the relationship ends. This Law will shield Garden River from the application of the new federal law that deals with matrimonial real property on reserve by replacing the federal law with Garden River’s own law. The Garden River Law enables the BC Supreme Court to treat spouses fairly regarding the division of on-reserve real property when marital relationships end. Importantly, the Law protects the interests of the Band by ensuring that non-members cannot get permanent interests in Garden River reserve lands. However, non-members can get short- or long-term non-permanent interests in Garden River reserve lands under the Law, in certain circumstances; some examples of which are set out below.

Key Points:

- The Law applies equally to married, common-law and same-sex spouses (see “Spouse” in definitions section).
- The Law only applies to matrimonial real property that is on Garden River reserve land (section 3.1).
- A non-member spouse cannot receive a permanent interest in Garden River reserve land (sections 4.3, 11(a)).
- A non-member spouse can obtain a temporary right to live in a matrimonial home on Garden River reserve land under certain circumstances (e.g. through a domestic contract (Part 4) or where a judge orders it (sections 7.3, 8.1, 9.1, 10.1)). For example, where a member spouse dies and leaves behind a non-member spouse, it could be argued that the non-member spouse and any child for whom that spouse is primary caregiver should be able to live on reserve for a certain time after the death. Non-members cannot, however, receive any permanent interest in Garden River Reserve lands that they can pass on in a will to their heirs.
- The Law encourages spouses to resolve their differences through cooperative discussion and mediation or alternative dispute resolution, rather than going to Court (section 6.1).
- The Law sets out when and how spouses can use the courts to assist them to resolve disputes over matrimonial property on reserve (Part 6).

- If a dispute is brought before the courts under this Law, Council has standing to appear before the court to describe the unique circumstances involved with reserve lands, and Garden River members' collective interests in these lands (section 6.13).
- The court can make a number of different orders concerning the possession and/or division of property on reserve, depending on the circumstances. For example, the court can order that one spouse lease a matrimonial home to the other spouse for a specified period of time (section 7.3(f)). Another example is that the court can order a spouse to make a payment to the other spouse to recognize the contribution which the other spouse made to the acquisition, upkeep and/or improvement of the matrimonial home (section 7.3(j)).
- In certain circumstances, the court can make an order granting exclusive occupation of a matrimonial home to a spouse for a period of time specified by the court, even if that spouse is a non-member (Part 8). If family violence has occurred and a person requires immediate protection, the court can also make an order granting emergency exclusive occupation of a matrimonial home to a spouse for up to 90 days, even if that spouse is a non-member (9.1).
- The Council may make minor amendments to the Law by band council resolution (section 11.1). The Council may make substantive amendments to the law as long as it follows the consultation procedure set out in the Law (section 11.2).
- The Law can be repealed if a majority of at least 25 percent of GRFN's eligible voters vote in favour of repealing the law (section 11.4).

GARDEN RIVER FIRST NATION MATRIMONIAL REAL PROPERTY LAW

PREAMBLE

WHEREAS the Garden River First Nation are Ojibway people, maintaining a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and rich culture within a defined territory which pre-dates the establishment of Canada and continues to exist;

WHEREAS the Garden River First Nation has a sacred duty, in the spirit of our ancestors and our Treaty, to follow the Seven Grandfather Teachings given to us by the Creator:

*** Nbwaakaawin—Wisdom *** Zaagidwin—Love *** Mnaadendmowin—Respect
*** Aakdehewin—Bravery *** Gwekwadziwin—Honesty *** Dbaadendizin—Humility
*** Debwewin—Truth

WHEREAS, these teachings guide us in creating and maintaining a harmonious, self-sustaining community built on mutual respect and balance to fulfill the emotional, physical, mental and spiritual well-being of all members;

WHEREAS the special and historic relationship between Garden River First Nation and the Crown is evidenced by, among other things, the Royal Proclamation of 1763, the Robinson-Huron Treaty of 1850, and the Constitution of Canada;

WHEREAS Garden River First Nation's existing Aboriginal and Treaty rights, including our inherent right of self-government, are recognized and affirmed under section 35 of the *Constitution Act, 1982* and confirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, and in particular Articles 3, 4, 5, 8(1) and 34;

WHEREAS Garden River First Nation has established and maintained its own laws and processes for resolving real property issues such as disputes that arise regarding the division and distribution of matrimonial property upon the breakdown of marriage and common law relationships since time immemorial and continues to have the authority to do so;

WHEREAS it is essential to the health and survival of Garden River First Nation that its community and existing lands be maintained, and that Garden River First Nation members be able to live in the Garden River First Nation community if they wish to do so;

WHEREAS Garden River First Nation wishes to see matrimonial real property disputes resolved in a way that, first, is in keeping with the best interests of their children, second, does not

jeopardize the ability of our Nation’s members to reside on reserve and hold real property on reserve, and third, is fair to both spouses; and

NOW THEREFORE the Garden River First Nation hereby enacts the following Law: *The Garden River First Nation Matrimonial Real Property Law*.

PART 1 NAME

1.1 This Law may be cited as the “Garden River First Nation Matrimonial Real Property Law” or the “Garden River Matrimonial Real Property Law”.

PART 2 INTERPRETATION

Definitions

2.1 In this Law:

“**child**” means a person who, at the material time, is under the age of 18 and has not withdrawn from parental control, or who is over the age of 18 but unable, by reason of illness, disability or other cause, to withdraw from parental control or to obtain the necessities of life, and who is

- (a) the offspring of at least one spouse,
- (b) adopted, under Canadian law or Aboriginal custom, by at least one spouse,
- (c) the step-child of at least one spouse where that spouse is the primary caregiver of the Child, or
- (d) any child for whom either or both spouses stand in the place of parents,

and “**children**” shall have a corresponding meaning;

“**council**” means the duly elected chief and council of Garden River First Nation;

“**court**” means any federal or provincial court of competent jurisdiction;

“**domestic contract**” means an agreement made between two persons who are spouses, or who intend to become spouses, in which they agree on their respective rights and

obligations under the relationship or on separation, on the annulment or dissolution of the relationship, or on death, including,

- (a) ownership in or division of matrimonial property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of or access to their children; and
- (e) any other matter in the settlement of their affairs;

and includes a marriage contract, separation agreement, cohabitation agreement, paternity agreement or family arbitration agreement, and an agreement between the spouses to amend or rescind a domestic contract.

“family member”, with respect to a person, means

- (a) the person’s spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person’s child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
- (e) the person’s child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

“family violence” includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) psychological or emotional abuse of a family member, including:

- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member’s financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (d) in the case of a child, direct or indirect exposure to family violence;

“Garden River” means the Garden River First Nation, a “band” within the meaning of s. 2 of the *Indian Act*;

“Garden River land” means the Garden River Indian Reserve #14 and any lands set apart by Canada now or in the future as reserve lands of Garden River.

“interest in Garden River land” means any certificate of possession, allotment, lease, permit or any other equivalent instrument, but does not include rental agreements for Garden River property. For greater certainty, where there is a matrimonial home affixed to Garden River land that is the subject of an interest in Garden River land, the interest includes both the land and the matrimonial home;

“matrimonial home” means a dwelling where the spouses habitually reside, or which was mutually intended by the spouses to be the matrimonial home where one or both of them would habitually reside, or if the spouses have ceased to cohabit or one of them has died, the dwelling were they habitually resided on the day on which they ceased to cohabit or the death occurred and is::

- (a) owned exclusively by one of both spouses, and
- (b) affixed to Garden River land;

but does not include a dwelling that is ordinarily used for a family purpose and was inherited by or gifted to only one spouse, regardless of when it was inherited or gifted;

“matrimonial property” means

- (a) an interest in Garden River land that is held by one or both spouses and that includes a matrimonial home;
- (b) an interest in Garden River land that does not include a matrimonial home, is held by one or both spouses, was acquired during the relationship or in specific contemplation of the relationship, and was not gifted to or inherited by only one spouse; or

- (c) any increase in value of an interest in Garden River land that was acquired by either spouse prior to the relationship, except for a matrimonial home or an interest in Garden River land that was gifted to or inherited by only one spouse, where the increase in value occurred during the course of the relationship;

“member” means a person whose name appears or is entitled to appear on the Garden River membership list;

“rented matrimonial home” means a rental unit owned by GRFN and rented to at least one of the spouses and that is the dwelling where the spouses habitually reside, or if the spouses have ceased to cohabit, the dwelling where they habitually resided on the day on which they ceased to cohabit;

“spouse” means a person who:

- (a) is married to another person, whether by a customary Aboriginal, religious, or civil ceremony; or
- (b) has lived with another person in a marriage-like relationship for a continuous period of at least 1 year (i.e. common-law), and
- (c) includes a former spouse;

Relationship Between Spouses

2.2 A relationship between spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage

2.3 For the purposes of this Law,

- (a) spouses may be separated despite continuing to live in the same residence, and
- (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse’s intention to separate permanently.

PART 3 APPLICATION

Only to Reserve Land

- 3.1 This Law only applies to Garden River land and does not apply to the rest of Garden River's territory.

Only to Members and their Spouses

- 3.2 This Law only applies to Garden River members and their spouses in relation to a breakdown of a marriage or common-law relationship.
- 3.3 This Law does not apply to a matrimonial home held by either spouse, or both spouses, where neither spouse is a member.

Only to Matrimonial Homes and Matrimonial Property

- 3.4 This Law applies only to matrimonial homes and matrimonial property, except where explicitly stated, and not to other interests in or on Garden River land.

Federal and Provincial Laws

- 3.5 Subject to this Law and the common law, federal and provincial laws relating to divorce and separation still apply and, for greater certainty:
- (a) the Ontario *Family Law Act*, RSO 1990, c. F.3, as amended, and the Canada *Divorce Act*, 1985, c. 3 (2nd Supp.), as amended, apply as modified by this Law and to the extent possible subject to this Law, the *Indian Act*, RSC 1985, c. I-5, and the common law;
 - (b) nothing in this Law limits the application of valid and applicable federal or provincial laws in respect of matrimonial causes or any rights or remedies available in those laws, except to the extent that such laws deal expressly or implicitly with matrimonial homes or Garden River land, and to that extent this Law shall apply, and
 - (c) unless otherwise specified in this Law, nothing in this Law relieves either spouse of the requirement to observe the rules and procedures of a court in relation to matrimonial causes.
- 3.6 Despite section 3.5, the fact that a matrimonial home does not include future or contingent interests in Garden River land shall not be taken to confer jurisdiction upon a court over those interests under this Law.

Does Not Apply to Wills and Estates

- 3.7 Unless otherwise provided in a specific provision, this Law does not apply to wills and estates.
- 3.8 For greater certainty, a spouse does not have an election, on the death of the other spouse, to claim, take or pursue an interest in Garden River land 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 deceased spouse.

Continuation Where Spouse Dies During Proceedings

- 3.9 Despite sections 3.7 and 3.8, where a proceeding has been commenced under Part 6 of this Law, and either spouse dies before all issues relating to the matrimonial home have been determined by a court, the surviving spouse may continue the proceeding.

Subsection 89(1) of the *Indian Act*

- 3.10 This Law applies despite subsection 89(1) of the *Indian Act*.

PART 4 DOMESTIC CONTRACTS

- 4.1 Subject to this Law and all applicable laws, a provision in a domestic contract that reflects the agreement of the spouses with respect to an interest in Garden River land, including a matrimonial home or matrimonial property, is valid, binding and enforceable as long as it has been:
- (a) made in writing,
 - (b) signed by the parties, and
 - (c) witnessed by one or more other persons who are at least 18 years of age.
- 4.2 A domestic contract may provide an interest in Garden River Land, including the right to exclusively occupy a matrimonial home, to a spouse or child who is not a member, but such interest and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it.

- 4.3 A provision in a domestic contract is void if it purports to give, transfer, award, acknowledge or create any interest in Garden River land that is greater than a life estate for a person who is not a member.

Court May Set Aside or Vary Agreements

- 4.4 Subject to this Law, a court may, on application, set aside or vary a domestic contract or any provision therein concerning an interest in Garden River land or a matrimonial home:

- (a) if a spouse failed to disclose to the other spouse all of that spouse's interests in Garden River land, or any material information in respect of those interests;
- (b) if a spouse did not understand the nature or consequences of the domestic contract or provision;
- (c) if there is evidence of abuse or coercion, or that a spouse did not voluntarily enter into the domestic contract or provision; or
- (d) otherwise in accordance with the common law or the law of equity or contract.

- 4.5 Subject to section 4.6, section 4.4 only applies to

- (a) married spouses;
- (b) common-Law spouses;
- (c) formerly married spouses who have been divorced for less than 1 year; and
- (d) former common-law spouses who have been living separate and apart for less than 1 year.

- 4.6 Where the time limit described in section 4.5 has expired:

- (a) a formerly married spouse or former common law spouse may apply to the court for permission to bring a late claim under section 4.5 on the basis of compelling circumstances;
- (b) the court shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other spouse will suffer from the delay in the application; but
- (c) in no case shall the court allow late claims to proceed where the formerly married spouses have been divorced for over years or where the former common law spouses have been living separate and apart for over years.

Past and Future Agreements Valid

- 4.7 This Part applies whether the parties entered into the domestic contract on, before, or after the date that this Law comes into force and effect.

PART 5 MATRIMONIAL HOME

How to Determine Matrimonial Home

- 5.1 Whether or not a structure or interest is a matrimonial home is a question of fact.
- 5.2 Where part of a matrimonial home is normally used for a purpose other than residential purposes, including for carving or cultural uses, storage, rental or commercial purposes, the matrimonial home includes only that part of the structure or structures that may reasonably be regarded as necessary for use and enjoyment as the family residence.

Equal Rights

- 5.3 Subject to the limitations inherent in the nature of Garden River land and paragraphs *** and *** [no transfer of CPs] and to other factors set out in this Law:
- (a) both spouses have an equal right to possession of a matrimonial home; and
 - (b) each spouse is entitled to half of the value of the matrimonial home.
- 5.4 A spouse with rights under section 5.3 also has equal rights of redemption or relief against forfeiture.
- 5.5 Where a person or entity proceeds to realize upon an encumbrance or execution against a matrimonial home or an interest that affects the matrimonial home, both spouses have a right of redemption or relief against forfeiture for the matrimonial home and are both entitled to notice respecting the claim and its enforcement or realization.

Limits on Sales and Encumbrances

- 5.6 No spouse shall dispose of or encumber a matrimonial home unless:
- (a) the other spouse consents;

- (b) the other spouse joins in the instrument of disposal or encumbrance;
- (c) the other spouse has released all rights in respect of the disposition or encumbrance by domestic contract;
- (d) a court order has authorized the transaction; or
- (e) a court has released the matrimonial home from the application of this section.

5.7 If a spouse disposes of or encumbers a matrimonial home in contravention of section 5.6, the court may, on application:

- (a) set aside the disposal or encumbrance, or
- (b) order the spouse to pay compensation to the other spouse.

5.8 Subsection 5.7(a) does not apply where the person holding the disposition or encumbrance at the time of the application to the court acquired the disposition or encumbrance for value, in good faith and without notice at the time of acquiring, or making an agreement to acquire the disposition or encumbrance, that the property was a matrimonial home.

5.9 A court may, on application, authorize a disposition or encumbrance of a matrimonial home, provided that such disposition or encumbrance is otherwise authorized under this Law, if the court finds that the spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, and the court may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the court deems appropriate.

PART 6 ACCESS TO THE COURT

Cooperative Dispute Resolution Encouraged

6.1 Spouses are encouraged to resolve their differences regarding any matter addressed in this Law through cooperative discussion and mediation or alternative dispute resolution.

6.2 Any spouse may contact the lands manager of the Garden River Lands Department for information and resources relating to mediation and dispute resolution, but for greater certainty, neither the lands manager nor Garden River has any obligation to ensure or provide mediation or dispute resolution services.

General Access to Court

- 6.3 Where spouses are unable to resolve their differences regarding any matter addressed in this Law, they may apply to the court for a resolution of their dispute.
- 6.4 In the event of the breakdown of a marriage or a common-law relationship, a spouse may apply to a court to:
- (a) enforce a domestic contract,
 - (b) determine a dispute in relation to a matrimonial home, or
 - (c) deal with any matter provided for under this Law.
- 6.5 When a proceeding related to the consequences of the breakdown of a spouse's relationship is pending, including a divorce proceeding – as defined in subsection 2(1) of the *Divorce Act* – the court that has jurisdiction to hear and determine the matter, or that is seized of the matter, has jurisdiction to hear and determine an application made under this Law.
- 6.6 The court shall adjudicate a dispute under this Law with regard to any decisions and orders previously rendered by Canadian courts that settle related family law matters for the spouses, such as divorce, child custody, spousal support, child support, division of personal property or division of real property off-reserve.

Time Limit for Bringing an Application

- 6.7 A spouse seeking to apply for an order under this Part must apply:
- (a) before his or her divorce, or within one year after his or her divorce has been granted by a court; or
 - (b) before his or her separation, or within two years after the date on which the spouses ceased to cohabit.

Notice to All Affected Persons

- 6.8 Any person initiating a proceeding or making an application to the court under this Law, in addition to complying with the notice provisions set out in the rules regulating the practice and procedure in the court, must also provide notice of the proceeding or application to all affected persons and, for greater certainty:
- (a) to any person against whom the applicant is seeking to have an order made and to any other person who would be specified in or bound by such an order;

- (b) to council and to any person who holds an interest or right in or to the matrimonial home, matrimonial property or interest in Garden River land that is the subject matter of the proceeding or application; and
- (c) where the proceeding or application involves a deceased person,
 - (i) if the applicant is the survivor, to the executor of the will or the administrator of the estate of the deceased person, and to the Minister if applicable; or
 - (ii) if the applicant is the executor of the will or administrator of the estate, to the survivor, and to the Minister if applicable.

6.9 Section 6.8 does not apply in the case of *ex parte* applications for emergency protection orders made under Part 9 of this Law.

Court Orders

6.10 Regardless of which spouse holds a matrimonial home, a court may, on application:

- (a) order the delivering up, safekeeping and preservation of the matrimonial home;
- (b) direct that one spouse be given exclusive possession, consistent with this Law, of the matrimonial home, for such period as the court may direct to a maximum of the time limits set out in sections *** and ***, and release any other aspect or encumbrance relating to the matrimonial home from the application of this Part;
- (c) authorize a disposition or encumbrance consistent with Garden River law of a spouse's interest in a matrimonial home, subject to the other spouse's right of exclusive possession as ordered;
- (d) make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a spouse; and
- (e) make any ancillary order, including an order as to costs, that the court deems necessary to give effect to this Law.

Certain Orders Prohibited

6.11 No order shall be made under this Part:

- (a) in respect of a certificate of possession or allotment in favour of a spouse who is not a member, or
- (b) that results in a sale, partition or transfer of a certificate of possession or allotment.

Court May Vary Orders

- 6.12 A court may, on application, vary any declaration or order granted under this Part if:
- (a) there is a material change in circumstance,
 - (b) there is evidence of fraud, abuse or coercion, or
 - (c) the court determines that fairness or equity justify a variance.

Council May Make Representations

- 6.13 At the request of council, the court that is seized of the application must, before making its decision, allow the council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order sought should be made.
- 6.14 When the court makes any decision or order under this Law, the spouse in whose favour the decision is made shall promptly provide a copy of the decision or order to the council.

PART 7 DIVISION OF MATRIMONIAL PROPERTY OR COMPENSATION IN LIEU

- 7.1 Subject to section 7.2, Part 7 only applies to
- (a) formerly married spouses who have been divorced for less than 1 year; and
 - (b) former common-law spouses who cohabited in a marriage-like relationship for at least 1 year and who have been living separate and apart for less than 1 year.
- 7.2 Where a time limit described in section 7.1 has expired
- (a) a spouse may apply to the court for permission to bring a late claim under Part 7 on the basis of compelling circumstances, and
 - (b) the court shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other spouse will suffer from the delay in the proceeding, but
 - (c) in no case will the court allow late claims to proceed where the spouses have been divorced for over 5 years or have been living separate and apart for over 5 years.

- 7.3 Subject to this Law, the court may make determinations concerning interests in and the division of value of matrimonial property and may make orders that are necessary, reasonable or ancillary to give effect to the determination, including, but not necessarily limited to:
- (a) a declaration as to whether people are spouses or former spouses;
 - (b) a declaration as to whether the property at issue is in fact matrimonial property;
 - (c) a declaration as to whether a structure is in fact a matrimonial home;
 - (d) a declaration as to the ownership of an interest in Garden River land;
 - (e) where both spouses own the matrimonial property, order that one spouse transfer the matrimonial property to the other spouse exclusively;
 - (f) where both spouses are members, an order that one spouse lease an interest in Garden River land or a matrimonial home to the other spouse for a fixed period of time, subject to such conditions as the court deems just in all the circumstances and taking into account the best interests of any children living in the matrimonial home;
 - (g) an order granting an easement or access for a specified period of time across a certificate of possession or allotment held of shared by one spouse for the purpose of enabling the other spouse to access the matrimonial home;
 - (h) an order that restrains either spouse from disposing of or transferring his or her interest in the matrimonial property, either legally or beneficially, pending the resolution of the spouses' matrimonial property dispute; or
 - (i) an order directing one or both spouses to pay specified amounts of money in relation to rent, lease, mortgage, tax, utilities or other payments relating to the matrimonial home;
 - (j) an order that one spouse pay compensation to the other spouse to recognize the contribution which the other spouse has made to the acquisition, upkeep and/or improvement of the matrimonial home or matrimonial property;
 - (k) an order that one spouse pay compensation to the other spouse if the matrimonial home or matrimonial property has been encumbered or disposed of;
 - (l) any appropriate equitable order where one spouse has intentionally, recklessly, or fraudulently damaged, encumbered or disposed of the matrimonial home or matrimonial property.
- 7.4 In making any order under sections 7.3(e), (h), (j), and (l) the court shall begin with the presumption that each spouse is entitled to an equal share of the value of the matrimonial

home or the matrimonial property, and then shall consider whether this presumption should be varied in light of any of the following factors:

- (a) the date on which the matrimonial property was acquired or disposed of;
- (b) the duration of the relationship;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the needs of each spouse to become or remain economically independent;
- (e) direct or indirect financial contributions of each spouse toward the acquisition, upkeep, improvement or increased value of the matrimonial property;
- (f) the direct or indirect non-financial contribution of each spouse to the acquisition, upkeep, improvement or increased value of the matrimonial property, including through child-rearing responsibilities;
- (g) the amount of any outstanding debt or other liabilities assumed by either spouse to acquire, maintain, or improve the matrimonial property;
- (h) any relevant order or award by a court regarding the spouses' family law matters;
- (i) any other factor that the court considers relevant to an equitable division of the matrimonial home or matrimonial property.

7.5 In making any compensation order under section 7.3(k), the court shall:

- (a) not make any order until it has been provided with at least one valuation of the matrimonial home or matrimonial property that has been prepared by a qualified appraiser, and which accounts for the limitations on the ownership rights associated with the matrimonial home or matrimonial property and, in particular, the feasibility of selling or leasing the matrimonial home or matrimonial property or replacing it with a new interest in Garden River land; and
- (b) not make an order if the spouse who holds the interest(s) in Garden River land demonstrates that the order is likely to force him or her to sell or otherwise alienate the matrimonial home or matrimonial property.

7.6 Prior to making an order under sections 7.3(e), (h) or (j), the court may require the spouses to provide it with at least one valuation of the matrimonial property or any component thereof.

7.7 All appraisals provided pursuant to section 7.6 must be prepared by a qualified appraiser and account for the limitations on the ownership rights associated with the matrimonial property and, in particular, the feasibility of selling or leasing the matrimonial property or replacing it with a new Interest in Garden River land.

- 7.8 Where the interest of a spouse in Matrimonial Property is held through a corporation, the court may order that he or she transfer shares in the corporation to the other spouse.

PART 8 EXCLUSIVE OCCUPATION ORDERS

- 8.1 A Court may, on application by a spouse, make an order that the applicant be granted exclusive occupation of and reasonable access to a matrimonial home or rented matrimonial home subject to any conditions and for the period of time specified by the court.
- 8.2 An order made under section 8.1 in relation to a rented matrimonial home may be for a period of time specified by the court, or up to the end of the term of the rental agreement, whichever period of time is shorter, and must require compliance with the rental agreement for the duration of the order.
- 8.3 A spouse making an application under section 8.1 must provide the court with:
- (a) any domestic contract made between the spouses;
 - (b) any relevant order or award made by a court regarding the spouses' family law matters, including any order concerning custody of and/or access to any child;
 - (c) any further evidence required to establish that the applicant is the primary caregiver of any child; and
 - (d) in the case of a rented matrimonial home, a copy of the rental agreement.
- 8.4 An order made under section 8.1 may specify any terms that the court deems appropriate, including:
- (a) a provision requiring the applicant's spouse and any specified person to vacate the matrimonial home immediately, or within a specified period, and prohibiting them from re-entering the home;
 - (b) a provision requiring the applicant's spouse to preserve the condition of the matrimonial home until that person vacates it;
 - (c) the extent to which the contents of the matrimonial home are to remain in the matrimonial home for the duration of the exclusive occupation order;
 - (d) a provision directing the applicant to make payments to the other spouse toward the cost of other accommodation;

- (e) a provision requiring either spouse to pay for all or part of the repair and maintenance of the matrimonial home and of other liabilities arising in respect of the matrimonial home, or to make payments to the other spouse for these purposes; and
- (f) a provision that the order is subject to variation if there is a change of primary caregiver for a child affected by the order.

8.5 In making an order under subsection 8.1, the court must consider, among other things:

- (a) the best interests of any children who habitually reside in the matrimonial home, including the interest of any child who is a member to maintain a connection with Garden River;
- (b) the age of any children for whom the applicant spouse is the caregiver;
- (c) the terms of any domestic contract or other agreement between the spouses;
- (d) the collective interests of Garden River members in Garden River land and any representations made by council with respect to the cultural, social and legal context that pertains to the application;
- (e) the period during which the applicant has habitually resided on Garden River land;
- (f) the financial situation and the medical condition of the spouses;
- (g) the availability of other suitable accommodation that is situated on Garden River land;
- (h) any existing order made on a matter related to the consequences of the breakdown of the relationship;
- (i) any family violence, including any acts or omissions by one of the spouses that reasonably constitute psychological abuse against the other spouse, any child in the charge of either spouse, or any other family member who habitually resides in the matrimonial home;
- (j) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse from the matrimonial home in order to give effect to the granting to the applicant of exclusive occupation of that home;
- (k) the interests of any elderly person or person with a disability who habitually resides in the matrimonial home and for whom either spouse is the caregiver;
- (l) the fact that a person, other than the spouses, holds an interest or right in or to the matrimonial home;

- (m) the views of any person who received a copy of the application, presented to the court in any form that the court allows; and
- (n) in the case of a rented matrimonial home, the terms of the rental agreement and whether the spouses are in compliance with the terms of the rental agreement.

8.6 Any person in whose favour or against whom an order is made under section 40, any person specified in the order, or the holder of an interest or right in or to the matrimonial home or the rented matrimonial home may apply to the court to have the order varied or revoked if there has been a material change in circumstances. The court may, by order, confirm, vary or revoke the order.

PART 9 EMERGENCY PROTECTION ORDERS

9.1 The court may, on *ex parte* application by a spouse, make an emergency exclusive occupation order for the matrimonial home, rented matrimonial home, or other dwelling where that person resides in favour of that spouse, whether or not the spouse is a member and whether or not a child is involved, if the judge is satisfied that:

- (a) family violence has occurred; and
- (b) the order should be made without delay, because of the seriousness or urgency of the situation, to ensure immediate protection of the person who is at risk of harm or property that is at risk of damage.

9.2 The spouse may make the application even if that person has been forced to vacate the matrimonial home as a result of family violence.

9.3 A peace officer or other person may also make the application on behalf of the spouse with that person's consent, or if that person does not consent, with leave of the court granted in accordance with this law.

9.4 An order made under section 9.1 in relation to a matrimonial home may be for a period of up to 90 days.

9.5 An order made under section 9.1 in relation to a rented matrimonial home may be for a period of up to 90 days, or to the end of the term of the rental agreement, whichever period of time is shorter.

9.6 An order made under section 9.1 must include a provision directing a peace officer to enforce any provision of the order if requested to do so by the applicant spouse.

9.7 An order made under section 9.1 may include any or all of the following additional provisions:

- (a) a provision required the respondent spouse and any other person to vacate the matrimonial home or rented matrimonial home and prohibiting them from returning to the matrimonial home or rented matrimonial home for the duration of the order;
- (b) a provision directing a peace officer to remove the respondent spouse and any other person from the matrimonial home or rented matrimonial home;
- (c) a restraining order;
- (d) a provision directing a peace officer to escort the person who is required to vacate back to the matrimonial home or rented matrimonial home to supervise the removal of personal belongings; or
- (e) any other provision that the court considers necessary for the immediate protection of any person who is at risk.

9.8 In making an order under sections 9.1 to 9.7, the court must consider, among other things:

- (a) the history and nature of the family violence;
- (b) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
- (c) the best interests of any child in the charge of either spouse, including the interest of any child who is a member to maintain a connection with Garden River;
- (d) the interests of any elderly person or person with a disability who habitually resides in the matrimonial home and for whom either spouse is the caregiver;
- (e) the fact that a person, other than the spouses, holds an interest or right in the matrimonial home or rented matrimonial home;
- (f) the period during which the applicant has habitually resided on Garden River land; and
- (g) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse from the matrimonial home in order to give effect to the granting of the order, including the fact that the person has committed acts or omissions constituting family violence against the applicant, any child in the charge of either spouse, or any other person who habitually resides in the matrimonial home or rented matrimonial home.

- 9.9 In deciding whether to grant an order under sections 9.1 to 9.7, the court is not bound by the terms of any domestic contract made between the spouses.
- 9.10 Any person in whose favour or against whom an order is made under sections 9.1 to 9.7, or any person specified in the order, may apply to the court to have the order varied or revoked within the time determined by the court or, if no time limit is stipulated, at any point while the order remains in force.
- 9.11 The court may, by order, confirm, vary or revoke an order made under section 9.1, and may extend the duration of the order beyond the period of 90 days referred to in sections 9.4 and 9.5.

PART 10 OCCUPATION OF MATRIMONIAL HOME UPON DEATH OF A SPOUSE

- 10.1 When a spouse dies, the surviving spouse and any child for whom the surviving spouse is primary caregiver, may continue to occupy the matrimonial home for a period of _____ after the day on which the death occurs, regardless of whether the spouse is a member or holds an interest in or right to the matrimonial home.

PART 11 AMENDING AND REPEALING PROCEDURES

- 11.1 The council may make amendments to this law that do not change the substance of this law by band council resolution made at a duly convened meeting of council. Such revisions include, but are not necessarily limited to:
- (a) corrections to clerical, grammatical or typographical errors;
 - (b) minor improvements to the language of the Law that bring out more clearly the intent of GRFN without changing the substance of any provision;
 - (c) changes as may be required to reconcile seemingly inconsistent provisions;
 - (d) amendments to reference any relevant new or amended GRFN laws; and
 - (e) amendments ordered by any court of competent jurisdiction.
- 11.2 Council may make substantive amendments to this law as long as the following steps have been followed:
- (a) council approves the proposed amendment in principle at a duly convened meeting of council;

- (b) council makes the wording of the proposed amendment available for members to review;
- (c) council consults with members about the proposed amendments by holding a minimum of two community meetings over a period of at least three months;
- (d) council finalizes the wording of the proposed amendment in response to the consultation with members and the proposed amendment receives at least one reading in a duly convened meeting of council;
- (e) the proposed amendment receives at least one reading at a duly convened general band meeting and is approved by a quorum of the members in attendance at the general band meeting; and
- (f) council adopts the amendments by band council resolution made at a duly convened meeting of council.

11.3 An amendment to this law comes into force upon passage of the band council resolution adopting the amendment in accordance with section 11.1 in the case of a minor amendment, and section 11.2 in the case of a substantive amendment.

11.4 This law may be repealed in its entirety if a majority of at least 25 percent of GRFN's eligible voters vote in favour of repealing the law.

11.5 If GRFN intends on repealing this law under section 11.4, the council must before proceeding with the repeal vote, take reasonable measures that are in accordance with GRFN's practices to locate eligible voters and inform them of their right to vote, the means of exercising that right and the consequences of repealing the law.

PART 12 OFFENCES AND PENALTIES

12.1 A person who contravenes an order made by a court pursuant to this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.

12.2 A fine payable under section 12.1 shall be remitted to Garden River by the court, after reasonable court costs have been deducted.

PART 13 GENERAL PROVISIONS

Interpretation

- 13.1 Headings in this Law are for reference only and do not form part of the Law.
- 13.2 All provisions of this Law are severable. If a court determines that any provision of this Law is invalid or inapplicable, the provision shall be severed from the Law and the remainder of the Law shall remain in force with any necessary revisions.

Certain Pre-Relationship Gifts and Inheritances Exempt

- 13.3 An interest and the value of the interest in Garden River land
- (a) received prior to the relationship, and
 - (b) received as 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 family members,
- shall be deemed, subject to proof to the contrary, to have been transferred with the intention that the interest in Garden River land should continue to be held within that family exempt from any claim of the other spouse.
- 13.4 The exemption in subsection 13.3(b))
- (a) does not apply with respect to an interest in Garden River land that is a matrimonial home, and
 - (b) only applies to the value of the gift or inheritance prior to the relationship.

Rights of Non-Members Non-Transferable

- 13.5 A non-member who is granted interim occupation or possession rights on Garden River land under this Law cannot dispose of, transfer or assign these rights or pass them to their heirs in a will.
- 13.6 As soon as a non-member ceases use or occupation personally, or the term of the order expires, all rights are deemed to be terminated.

Date Law Comes Into Force

- 13.7 This Law shall come into force and effect on the date it is adopted by council pursuant to a band council resolution.