

# Need for MRP Act

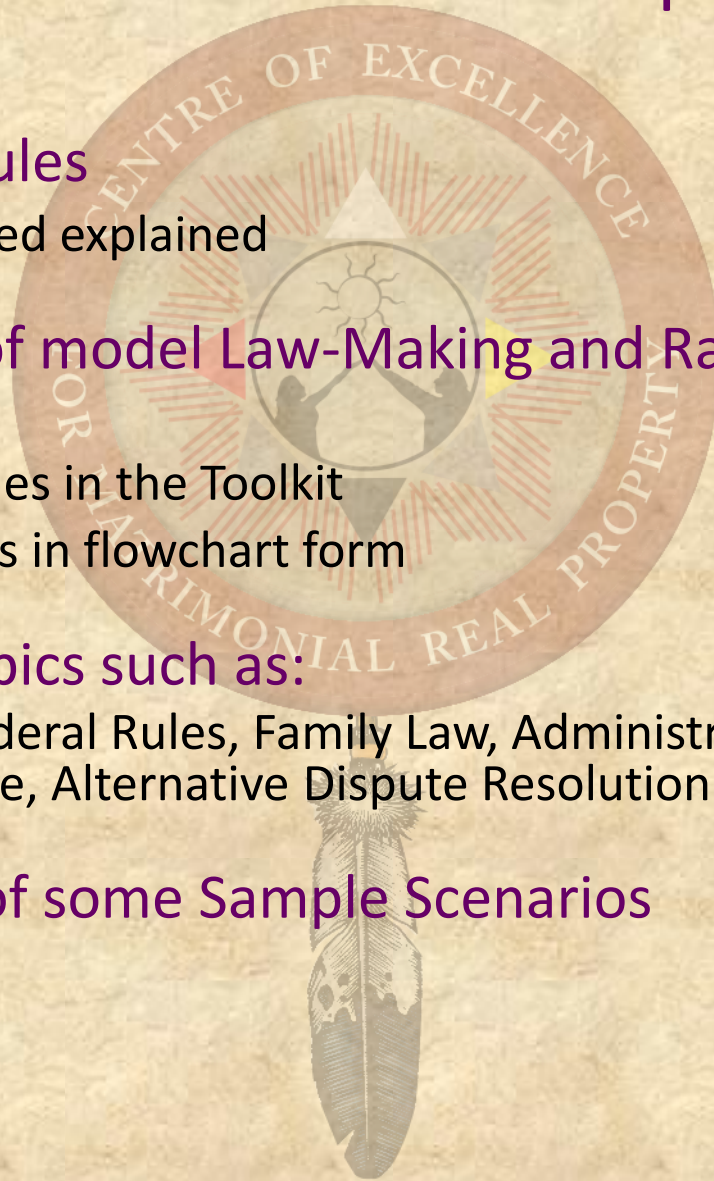
CENTRE OF EXCELLENCE  
FOR MATRIMONIAL REAL PROPERTY



Version 3.0

# MRP Toolkit Components

- Overview modules
  - Toolkit and need explained
- Detailed view of model Law-Making and Ratification Processes
  - Process Guides in the Toolkit
  - Process Steps in flowchart form
- Chapters on topics such as:
  - Provisional Federal Rules, Family Law, Administration of the Law on Reserve, Alternative Dispute Resolution
- Walk-through of some Sample Scenarios



# MRP Toolkit Components (Cont'd)

- Other Resources

- Provincial Resources
- A copy of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Plain Language Version of the *Act*
- Model MRP Law for Certificates of Possession
- Model MRP Law for Custom Allotments
- Checklists
- MRP Law-Making Journal

# Other Publications

- MRP Desk Book for Land Managers
- Alternative Dispute Resolution Toolkit
- Matrimonial Real Property Rights on your Reserve Pamphlet
- Role of Chief and Council under the Provisional Federal Rules
- On-Reserve Matrimonial Real Property Rights
- Understanding Estates Management On-Reserve

# The History

- The *Indian Act* governs reserve land, and thus a home on that land on reserve
- First Nations members could seek protection for matrimonial holdings off reserve
- **No** protection was provided for matrimonial homes and lands **on reserve** or any related rights
- The result is a “legislative gap”

# Rights in Family Matters

- Occupation of the family home during a conjugal relationship
- A survivor's right to occupy the family home
- Granting of Emergency Protection Orders
- Exclusive occupation orders for the family home after a relationship breakdown
- Formula for division of matrimonial property on relationship breakdown
- Formula for division of property for survivors

# The Proposed Solution

- A collaborative undertaking with consultations and consensus-building amongst:
  - the Native Women's Association of Canada
  - the Assembly of First Nations
  - Aboriginal Affairs and Northern Development Canada
  - the provinces and territories
  - the First Nations Lands Advisory Board
- The *Family Homes on Reserves and Matrimonial Interests or Rights Act*, (the Act) passed in June 19, 2013
- The Act came into effect in two stages to allow FNs time to develop their own MRP Law
  - Dec 16, 2013 - Dec 16, 2014: timeframe for FNs to develop a law
  - After Dec 16, 2014 – Provisional Federal Rules came into force until the FN develops/implements its own MRP Law

# The Proposed Solution

- Establishment of a Centre of Excellence for Matrimonial Real Property, hosted by NALMA
  - Guide FNs who are opting to develop their own MRP Law
  - Provide information on the protections and rights available to individuals and families living on reserve
  - Assist with understanding the Provisional Federal Rules
  - Provide research on alternative dispute resolution mechanisms
- Development of a Matrimonial Real Property Toolkit to assist FNs in the development of their own MRP Law
- Scheduling of nation-wide training on the development of an MRP Law, using the Toolkit
- The development of other tools and resources to assist First Nations in the implementation of *FHRMIRA*

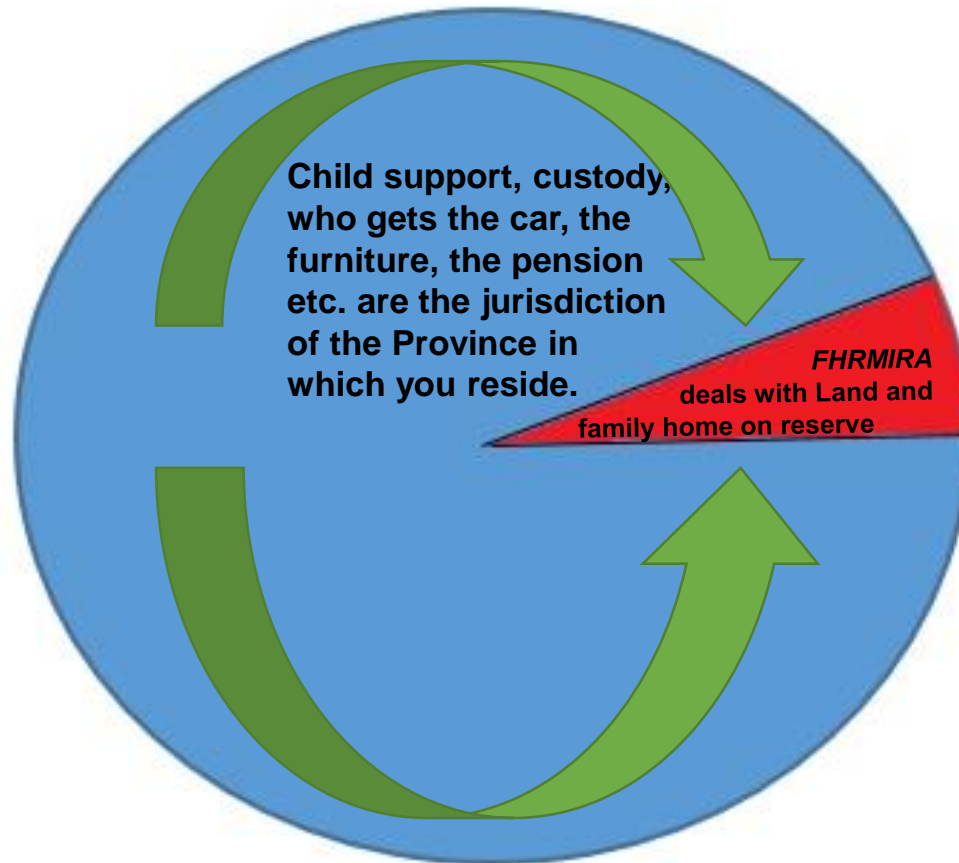


# Division of Powers

## Under the Constitution Act of 1867:

- Powers of Parliament
  - Section 91(24) “Indians and Lands reserved for the Indians”
  - Section 91(26) Marriage and Divorce
- Powers of Provincial Legislatures
  - Section 92(13) Property and Civil Rights in the Province (including matters related to Family Law)

# What does the Act cover?



# The Act

- Provides rights to spouses during a relationship and after it ends with respect to 2 major issues:
  - Use, possession and **occupation of family homes** on reserve
  - **Division of value** of any interests that they hold in structures and lands on reserve

**–The Act has two main parts**

## FN Law-Making Mechanism

(Took effect Dec 16, 2013)

- FN submits proposed law to members for approval
- Proper notice to members re: voting
- At least 25% of members must vote
- Law approved if majority achieved

## Provisional Federal Rules

(Took effect Dec 16, 2014)

Provides laws for dealing with matrimonial real property until FN passes its own MRP law.

# Overview of the Provisions contained in FHRMIRA

- **FN Lawmaking Provisions - s.s 7-11 came into force December 16<sup>th</sup>, 2013**
- Provides lawmaking authority regarding
  - use, occupation and possession of the Family Home and
  - division of the value of any interests or rights held by spouses and common law partners in or to structures and lands on its reserves.
- The Act is not prescriptive so that laws can be designed to respect a First Nation's particular needs, values and customs.
- The content and acceptability of any law is determined between a First Nation government and its members.
- The First Nation Law cannot be disallowed, altered, or cancelled by the Minister or any government official.
- Must include process for amending and repealing First Nations MRP Law s. 7(2)

# Overview of the Provisions contained in FHRMIRA

- **Provisional Federal Rules - s. 12-52 came into force December 16<sup>th</sup>, 2014**
- provide a set of interim rules that allow parties to determine what they are entitled to when a marriage or common-law relationship breaks down or upon the death of a spouse.
- applies to married couples and common law partners living on reserve where at least one of them is a First Nation member or an Indian as defined by the *Indian Act*.

# Overview of the Provisions contained in FHRMIRA

- **Provisional Federal Rules - s. 12-52 cont'd**
- right of each spouse or common-law partner to occupy the family home during the conjugal relationship (s. 13);
- right of a non-interest holding survivor to remain in the family home automatically for 180 days after the death of their spouse or common-law partner (s. 14);
- requirement for consent of spouse or common-law partner to dispose of or encumber the family home (s. 15);

# Overview of the Provisions contained in FHRMIRA

- **Provisional Federal Rules - s. 12-52 cont'd**
- emergency protection orders in the case of family violence to ensure the immediate protection of a person who is at risk of harm or a property that is at risk of damage (s.s 16-19);
- temporary exclusive occupation of the family home (s.s 20-21);
- division of the value of matrimonial interests or rights (s.s 28-31);  
and
- entitlement of a survivor on the death of a spouse or common-law partner (s.s 34-40).

# Overview of the Provisions contained in FHRMIRA

- Provisional Federal Rules - s.s 12-52 no longer apply to a First Nation that, at any time, enacts its own law under the legislation.



# FN MRP LAW – Benefits

In developing its own MRP law, a First Nation may accomplish the following:

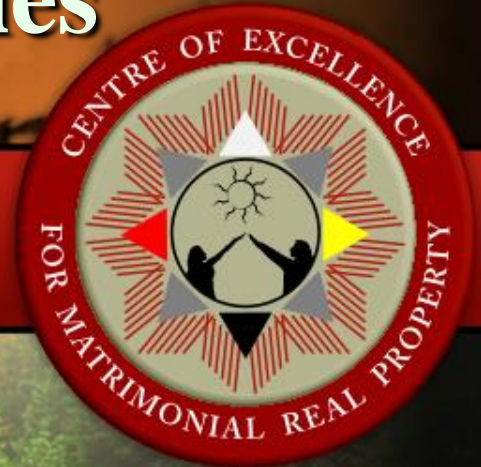
- Allows FNs to exercise jurisdiction over land and family real property matters
- Aids in resolving property disputes through community-based solutions (e.g., as a result of marital breakdown)
- Protects / ensures interests of children as a priority
- Promotes fairness, rights and remedies, without discrimination on the basis of sex
- Preserves and protects the well-being of all parties involved and prevent further conflict from arising

## FN MRP LAW – Benefits (Cont'd)

- Protects the human rights of members while balancing individual and collective rights
- Complements FN traditional laws, customs, practices, and policies
- Complements dispute resolution mechanisms to assist couples in resolving disputes relating to family matrimonial real property matters
- Clarifies the mechanism for the disposition of matrimonial real property on reserves following marital breakdown

# Provisional Federal Rules

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# The Provisional Federal Rules

- The Provisional Federal Rules (PFR) provide basic rights and protections to individuals on reserves:
  - during a marriage or common-law relationship,
  - in the event of a relationship breakdown, and
  - on the death of a spouse or common-law partner
- The PFRs:
  - Came into effect on December 16, 2014, with some exceptions, and
  - Stay in effect until the date an FN enacts its own MRP Law
- The PFRs stay in effect indefinitely in any First Nation that chooses to not enact its own MRP Law

# Terminology

- The **Act** means the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- **Spouses** means married partners or common-law partners
- **MRP** means Matrimonial Real Property
- **Home** means the family matrimonial home
- **EPO** means Emergency Protection Order

# Provisional Federal Rules:

## 1) Equal right to occupancy of the family home

Each spouse may occupy the family home during the conjugal relationship, whether or not that person is an FN member or an Indian.

### Questions to consider:

- What are the implications for a community's Residency By-law?
- How does this affect a community's Housing Policy or Rental Housing Policy?
- Do these policies and laws need to be adjusted?

# Provisional Federal Rules:

## 2) Requirement of spousal consent for sale or disposal of the family home

This provides spouses with protection that the family home cannot be sold, or otherwise disposed of, or encumbered during the marriage or common-law relationship without the free and informed **written** consent of the spouse or common-law partner, **whether or not that spouse is a First Nation member or an Indian.**

### Points to consider:

- Understand the role for the FN administration to ensure compliance
- Ensure you are familiar with the requirements under ILRS

# Requirement For Spousal Consent Disposal or Encumbrance Of Family Home



## Issue:

- **John, a member spouse, holds a certificate of possession to lands on which the family home has been built.**
- **John has decided to relocate his family to Vancouver and wishes to sell his property to a neighbour.**
- **In order to register the transfer of the CP to the purchaser, MRP forms must be completed.**
- **These forms are required even if John is the only person on the CP and whether or not his spouse is a member or an Indian.**




# Requirement For Spousal Consent Disposal or Encumbrance Of Family Home

## MRP Administrative processes:

• Among the other forms required to transfer the property, John must complete an MRP Assessment and Statutory Declaration to determine if the family home is being affected

• If the family home is located on the property, John's partner must complete a Statutory Declaration of Spouse or Common-Law Partner to confirm their awareness of and support for the transaction.

 Aboriginal Affairs and Northern Development Canada / Affaires autochtones et Développement du Nord Canada

Protected B (when complete)

### Assessment of Matrimonial Real Property And Statutory Declaration

Concerning real property transactions under the *Indian Act* and the rights of Spouses and Common-law partners under the *Provisional Federal Rules of the Family Homes on Reserves and Matrimonial Interests or Rights Act*

**Privacy Act Statement**  
This statement explains the purposes and use of your personal information. Only information needed to respond to program requirements will be requested. Collection and use of personal information is in accordance with the *Privacy Act*. In some cases, information may be disclosed without your consent pursuant to subsection 8(2) of the *Privacy Act*. The collection and use of your personal information for this Statutory Declaration is authorized by sections 21, 24, 28(2), 53(1b) and 58 of the *Indian Act* [http://laws-lois.justice.gc.ca/eng/act/53/ and sections 15-18, 20, 31-32 and 50 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* [http://laws-lois.justice.gc.ca/eng/act/50/ and is required for your participation. We will use your personal information, your contact information, for the processing of the form. We share the personal information you give us with Bands (First Nation Governments) for whom AANDC tracks this. The information collected is described in Personal Information Bank "Monitoring and Compliance of Reserve Land Instruments", AANDC PPIU 096, located at http://www.aandc.ca/eng/1300100011338/1300100011506. will be retained for a period of 30 years after the last administrative action and then transferred to Library and Archives Canada (LAC) as archival records. Contact our office (toll-free) at 1-800-567-9604 to notify us about incorrect information. For more information on privacy issues and the *Privacy Act* in general, you can consult the *Privacy Commissioner* at 1-800-283-1376.

**Important Note**  
If you are an Executor of a will or an Administrator of an estate wanting to distribute the estate of a deceased First Nation member or Indian, you do not have to complete this form. Please complete the form *Statutory Declaration of Executor of a will or Administrator of an estate*.

This document is to be completed by applicants wanting to effect the following real property transactions:

- Leases and Assignments pursuant to s. 53(1)(b) and s. 58 of the *Indian Act*
- Sub-Leases requiring Ministerial approval
- Transfers
- Permits s. 28(2) (Locate)

#### Section A - Legal Land Description

Province: \_\_\_\_\_  
Reserve Name: \_\_\_\_\_  
Legal Land Description: \_\_\_\_\_

#### Section B - Statutory Declaration

(made pursuant to s. 41 of the *Canada Evidence Act*, R.S. 1985, c. C-5)


I, \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Indian registration number, if applicable) (Name of city, town, etc.)

in the Province or Territory of \_\_\_\_\_

**SOLEMNLY DECLARE THAT:**  
(Check the applicable boxes)

1. I am, or my Spouse or Common-law partner is, a First Nation member or an Indian.  
 Yes (proceed to statement 2)  
 No (sign declaration)

2. I am married or in a common law relationship.  
 Yes (proceed to statement 3)  
 No (proceed to statement 6)

 Aboriginal Affairs and Northern Development Canada / Affaires autochtones et Développement du Nord Canada

PROTECTED B (when complete)

### Statutory Declaration of Spouse or Common-law partner

Concerning real property transactions under the *Indian Act* and the rights of Spouses and Common-law partners under the *Provisional Federal Rules of the Family Homes on Reserves and Matrimonial Interests or Rights Act*

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- Leases and assignments pursuant to s. 53(1)(b) and s. 58 of the *Indian Act*
- Sub-Leases requiring Ministerial approval
- Transfers
- Permits s. 28(2) (Locate)

**Important Note:** This transaction may affect your legal rights. You may wish to obtain independent legal advice before making the Statutory Declaration.

Please attach this document to the form *Statutory Declaration of Matrimonial Real Property*.

#### Section A - Legal Land Description

Province: \_\_\_\_\_  
Reserve Name: \_\_\_\_\_  
Legal Land Description: \_\_\_\_\_

#### Section B - Statutory Declaration

(made pursuant to s. 41 of the *Canada Evidence Act*, R.S. 1985, c. C-5)

I, \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Indian Registration No., if applicable) (Name of city, town, etc.)

in the Province or Territory of \_\_\_\_\_

**SOLEMNLY DECLARE THAT:**

1. I am the \_\_\_\_\_ of \_\_\_\_\_  
(Spouse or Common-law partner) (Name of applicant)

2. I am aware of the application by my Spouse or Common-law partner to \_\_\_\_\_ the Property.  
(transfer, lease, etc.)

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NCR/272294 - 17

# Provisional Federal Rules:

## 3) Emergency Protection Order

Enable courts to order that a member or non-member spouse be provided exclusive occupation of the family home on an urgent basis and for a short duration. This type of order is used, for example, in situations of family violence.

**Note: EPOs are not currently available in all provinces.**

### Questions to consider:

- Does a First Nation have family violence worker, a drug and alcohol counselor or a child welfare worker who may be able to assist the family? Should your First Nation consider developing a Family Violence Prevention Plan?
- Are you aware of any alternative provincial rules that may be accessible to your members?

# Provisional Federal Rules:

## 4) Exclusive Occupation Order

Enables the court to provide a spouse short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners.

The duration of this order could range from a set number of days to a longer period, e.g., until dependent children reach the age of majority.

First Nations have the opportunity to make representations to the courts respecting their cultural, social and legal traditions before temporary exclusive occupation orders are made.

### Questions to consider:

- What if the property is owned by someone else? (custom allotment)
- What if there is a mortgage or Ministerial Guarantee?

# Application for Exclusive Occupation on Separation



**Come to agreement together or through mediation**

**One spouse may apply for Exclusive Occupation**

**Notice to other parties**

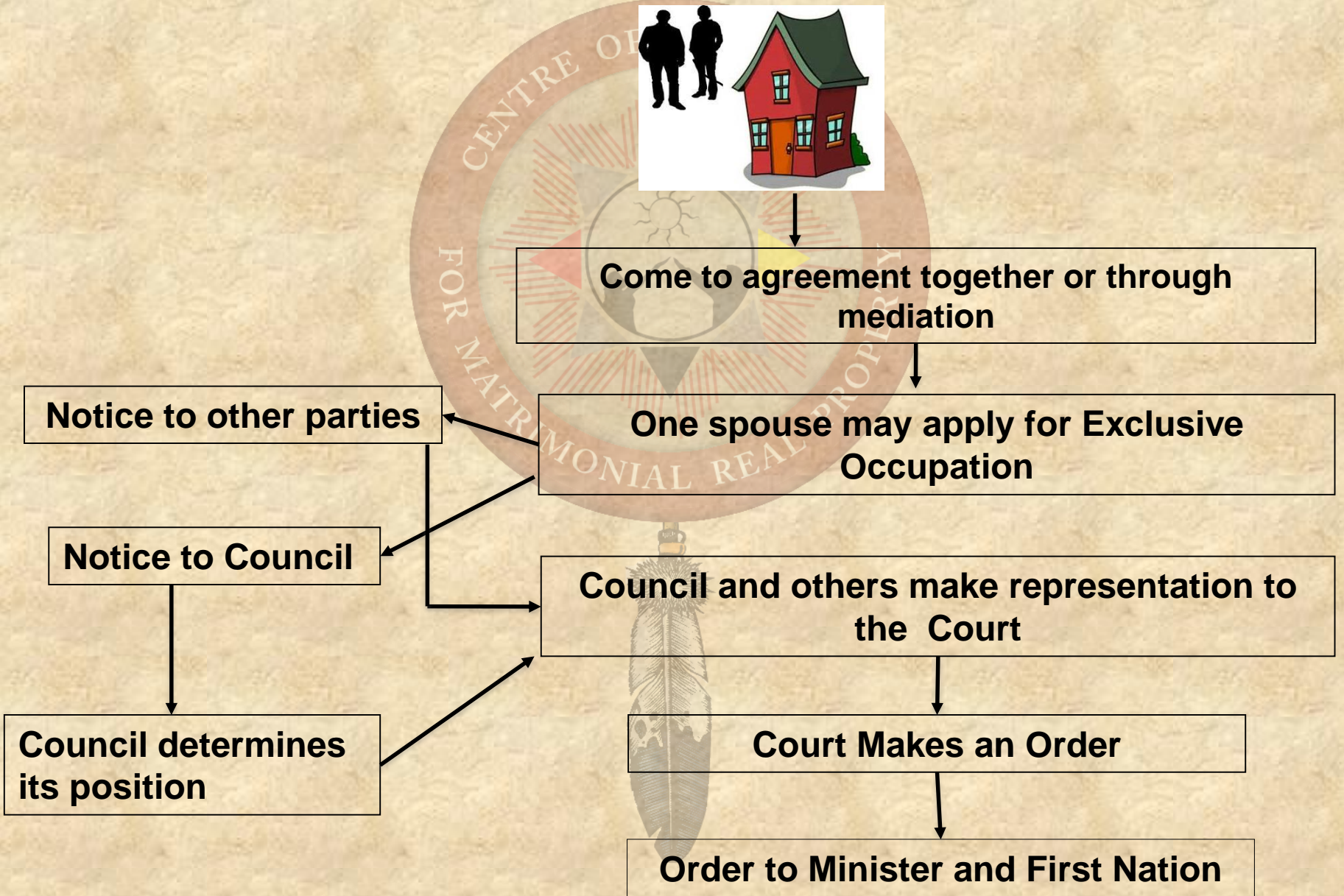
**Notice to Council**

**Council and others make representation to the Court**

**Council determines its position**

**Court Makes an Order**

**Order to Minister and First Nation**



# Provisional Federal Rules:

## 4) Exclusive Occupation Order (continued)

A court may, on application by a survivor whether or not that person is a First Nation member or an Indian, order that the survivor be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies.

### Questions to consider:

- How does this affect a community's residency law?
- Is this consistent with a community's rental housing policy?
- What happens when the deceased has willed the property to someone else?
- What if there is a mortgage or Ministerial Guarantee?

# Provisional Federal Rules:

5) Entitlement of each spouse to an equal division of the value of the family home and any other matrimonial interests or rights

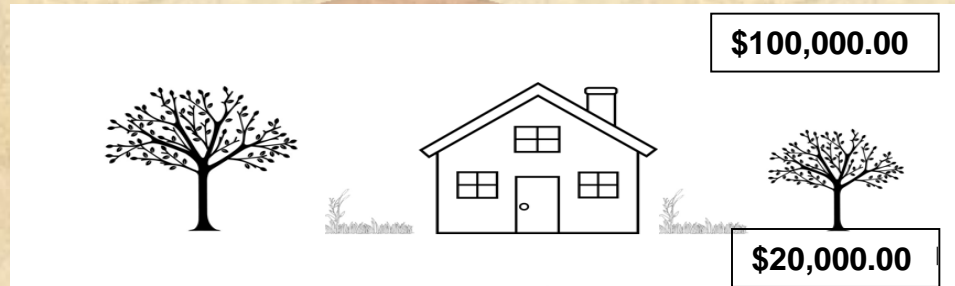
Ensures that the proven value of a couple's matrimonial interests or rights in, or to, the family home and other structures and lands on the reserve are shared equally on the breakdown of a relationship.

However, non-members do NOT benefit from the value of the land.

## Questions to consider:

- How do you determine the value?
- If the house is the main asset, how do you come up with the money to compensate the other spouse?

# Division of Value



**Come to agreement together or through mediation**

**Notice to spouse (others?)**

**Apply for Division of Value - Court**

**Notice to Council**

**Council and others make representation to the Court**

**Council determines its position**

**Court Makes an Order**

**Order to Minister and First Nation**

# Division of Value Calculation



**Member and Member**

**Member and Non-Member**

$\frac{1}{2}$  value of family home = \$50 K  
 $\frac{1}{2}$  value of land = \$10 K  
**Possible Division \$60,000.00**

$\frac{1}{2}$  value of the Family Home = \$50K  
**Possible Division – \$50,000.00**

**Note: Non-members cannot share in the value of the land**



# Provisional Federal Rule:

## 6) Order for the transfer of matrimonial real property between member spouses

Allows a court to order the transfer, in some circumstances of the matrimonial interests or rights between member spouses together with, or instead of, financial compensation.

Registration of this order is completed by INAC.

# Provisional Federal Rule:

## 7) Entitlement of surviving spouses

Ensures that when a spouse dies, a survivor who does not hold an interest or right in or to the family home may occupy that home for a period of 180 days after the day on which the death occurs, whether or not the survivor is an FN member or an Indian.

### Questions to consider:

- Will the First Nation need to make amendments to its Housing Policy?
- How will this impact a community Residency By-law?
- A First Nation may need to educate its members on the implications of this clause, especially where the survivor is not an FN member.

# Rights and Remedies on Death of Spouse or Common-Law Partner



**Automatic 180 days**

**Family Resolves Amongst Itself**

**Apply for Exclusive Occupation and/or Division of Value if applicable to Court**

**Council and others make representation to the Court**

**Court Makes an Order**

**Order to Minister and First Nation**

**Notice to other parties (eg heirs)**

**Notice to Council**

**Council determines its position**

# Death of Spouse - Estates



If property is held in joint tenancy, it passes automatically to the survivor and does not form part of the estate. If land is not held jointly, estate rules must be considered

**Will**

- Estate managed in accordance with Indian Act
- Land would be transferred to heir
- Survivor has options (FHRMIRA)

• **EOO application**

• **Division application**

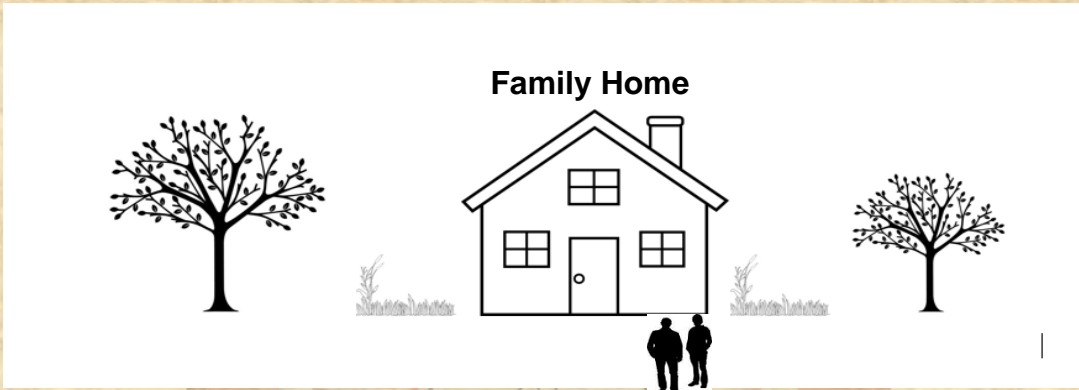
**No Will**

- Estate managed in accordance with section 48 of Indian Act
- Survivor has options (FHRMIRA)

• **EOO application**

• **Division application**

**\*\* Note: survivor could apply for both EOO and Division**



**Member dies with a will leaving house to oldest child**

**Transfer of Certificate of Possession to heir**

**If EOO granted, heirs use and enjoyment of property is delayed until order expires**

**An Order for division might become a debt against the estate that would require the attention of the Executor**

**Family can resolve survivors rights and occupancy amongst themselves**

**If they cannot, survivor has options**

**Apply for EOO**

**Apply for Division**

# Provisional Federal Rules:

## 7) Entitlement of surviving spouses

The survivor can, within 10 months of the date of death, apply under the federal rules for half of the value of the matrimonial real property interests or rights as an alternative to inheriting from the estate of the deceased.

### Questions to consider:

- What happens if the home has a mortgage attached to it?
- What happens if the home is on leased lands?

# Provisional Federal Rule:

## 8) Enforcement of agreements on the division of the value of the matrimonial property

Allows a court to make an order that can be used to enforce a free and informed written agreement made by spouses that is not unconscionable and that sets out the amount to which each is entitled and how to settle the amount. This includes agreements reached through the use of traditional dispute resolution mechanisms.

### Questions to consider:

- Should FNs educate their members on the importance of domestic contracts?
- Should FNs encourage their members to execute domestic contracts?

# Role of C&C Under the PFR

- A range of values and practices exist among First Nations concerning individual interests in reserve lands
- The *Act* provides for First Nations to be notified in regard to any proceedings under this *Act*, except in the case of emergency protection and confidentiality orders
- Where a community receives notice, the First Nation may make representations to the courts about the cultural, social and legal context relevant to the proceeding.



# Role of C&C Under the PFR

## Section 41

### Notice to Council

An applicant for an order under this Act, except under sections 16 and 19, must, without delay, send a copy of the application to the Council of any First Nation on whose reserve the structures and lands in question are situated.

#### Questions for discussion:

- What happens when an Application is received?
- Who at the Band Office will be responsible for Applications?
- Should the Council develop a policy and or procedure?
- Should the community send a preliminary response?
- Where will these Applications be stored?
- Who will have access to the Applications?

# Role of C&C Under the PFR

## Section 41(2)

### Representations by Council

On the council's request, the court that receives 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 should be made.

Questions for discussion... →



# Role of C&C Under the PFR

## Section 41(2)

### Representations by Council

#### Questions for discussion:

- How does Council determine when to make representations?
- Will the Council appoint a Committee to decide whether or not to make representations? If so, who will be on the Committee?
- Who will draft the comments or submission?
- What will the content of the submission be?
- How do you determine whether or not to support an application for an order?
- What are the local court rules for making submissions?

# Role of C&C - Enforcement of Orders

## Section 52

On application by a person who is neither a First Nation member nor an Indian and in whose favour an order is made under subsection 30(1), section 33, subsection 36(1) or section 40 [sections relating to division], a council may, on behalf of the person, enforce the order on a reserve of the council's First Nation as if the order had been made in favour of the First Nation.

# Role of C&C: Enforcement of Orders

## Section 52 (2)

If the council notifies the person that it will not enforce the order or does not enforce it within reasonable period after the application is made, a court may, on application by the person, vary the order to require the person against whom the order was made to pay into court the amount payable that was specified in the order, if the court is satisfied that it is necessary for the enforcement of the order.

### Questions to consider:

- When would a First Nation consider or not consider enforcing a court order?
- How would a First Nation go about enforcing this kind of order?

# Offence Provision

## Section 27

Any person who contravenes an order made under any of sections 16 to 19, a provision referred to in paragraph 20(4)(a) contained in an order made under section 20 or a provision referred to in paragraph 21(4)(b) contained in an order made under section 21 is guilty of an offence punishable on summary conviction and liable

- a) in the case of a first offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding three months, or to both; or
- b) in the case of a subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year, or to both.

# Offence Provision

## Section 42

When the court makes an order under this *Act*, except under section 19, the person in whose favour the order is made must send, without delay, a copy of the order to the council of any First Nation on whose reserve the structures and lands in question are situated.



# Notifications

## Section 50

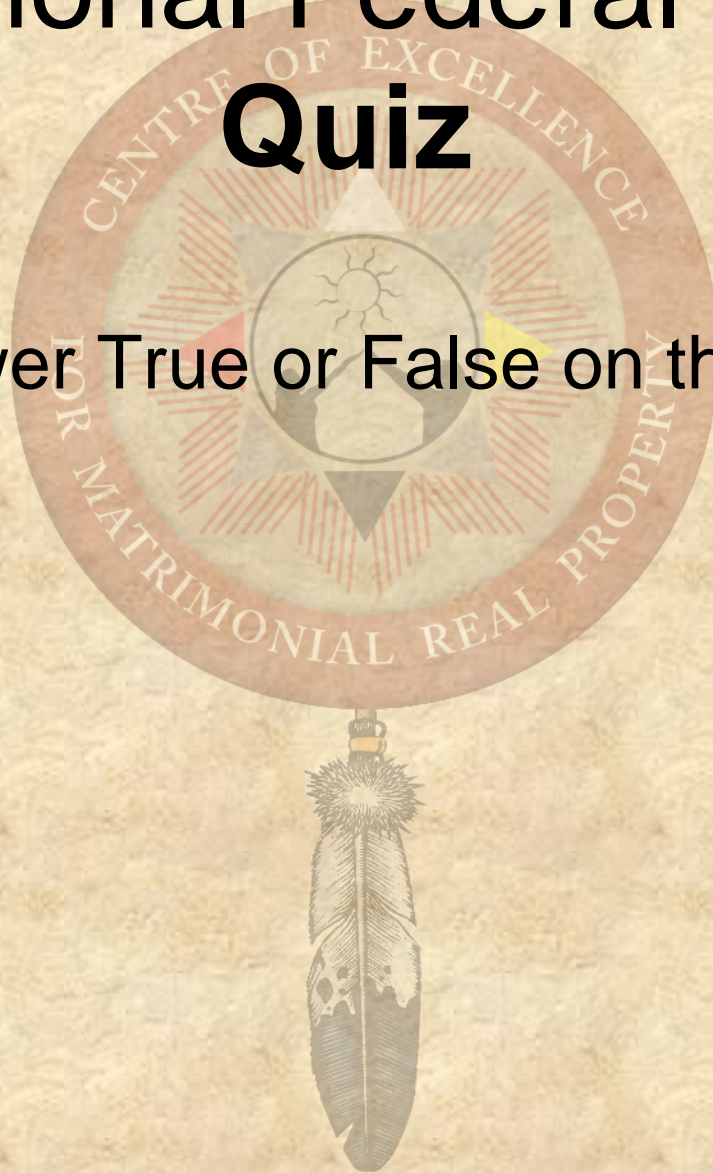
When a court makes an order under this Act, except under section 19, the applicant must, without delay, send a copy of the order to the Minister, or, if the order is in respect of any structure or land situated on the following reserves or land base, to the council of the FN:

- a) a reserve of an FN that is subject to a land code as defined in subsection 2(1) of *FNLMA*
- b) a reserve of an FN that is on the list referred to in subsection 12(5); or
- c) The Kanesatake Mohawk interim land base as defined in subsection 2(1) of the *Kanesatake Interim Land Base Governance Act*.



# Provisional Federal Rules Quiz

Please answer True or False on the quiz sheets handed out.



# Law-Making: Model Process

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# Model Law-Making Process

This section will:

- Enable you to understand the model law-making process
- Enable you to recognize the prerequisite steps for each task
- Provide background understanding for the necessity of the requirements and tasks

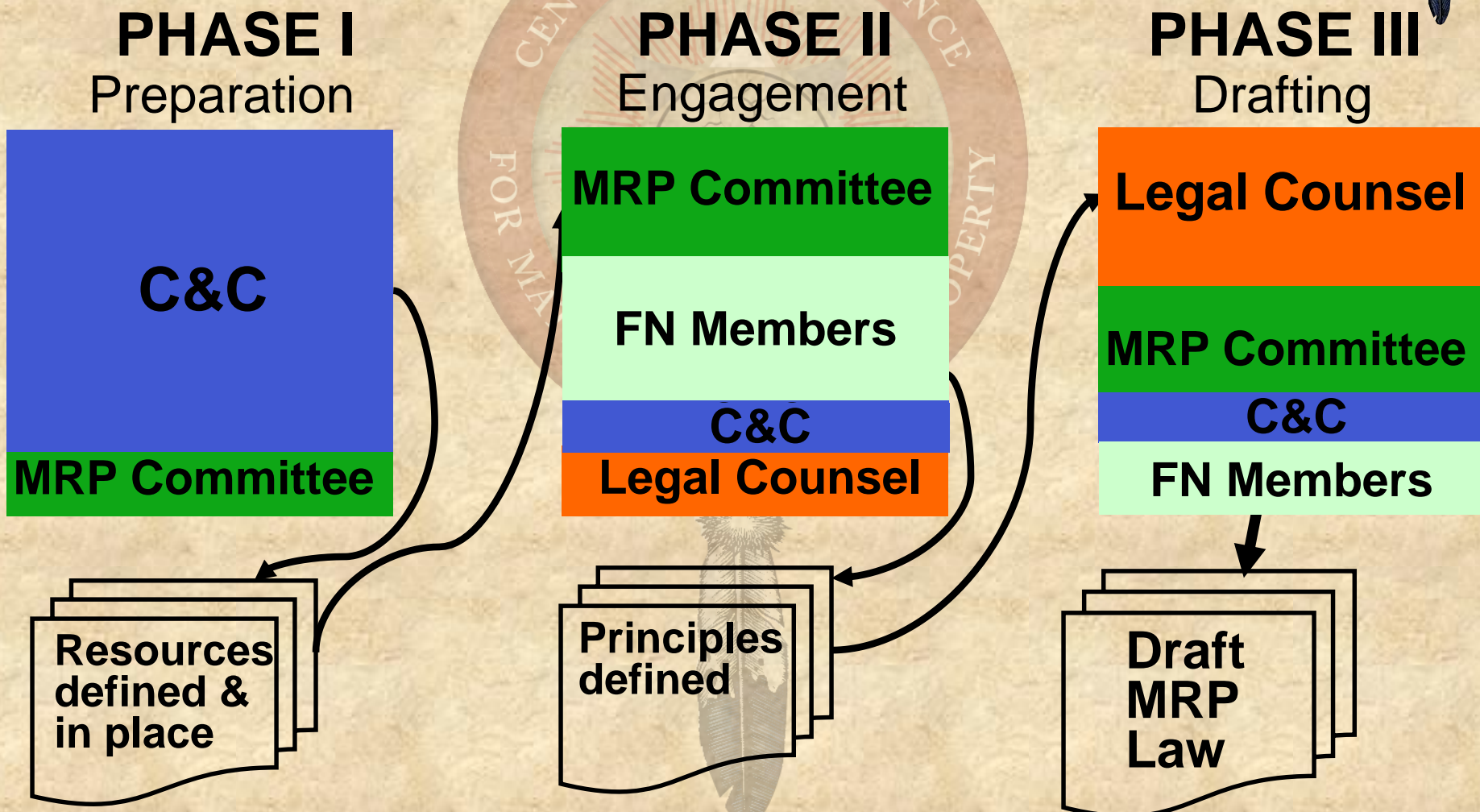


# Terminology

- The **Act** means the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- **Spouses** means married partners or common-law partners
- **MRP** means Matrimonial Real Property
- **Home** means the family matrimonial home
- **EPO** means Emergency Protection Order



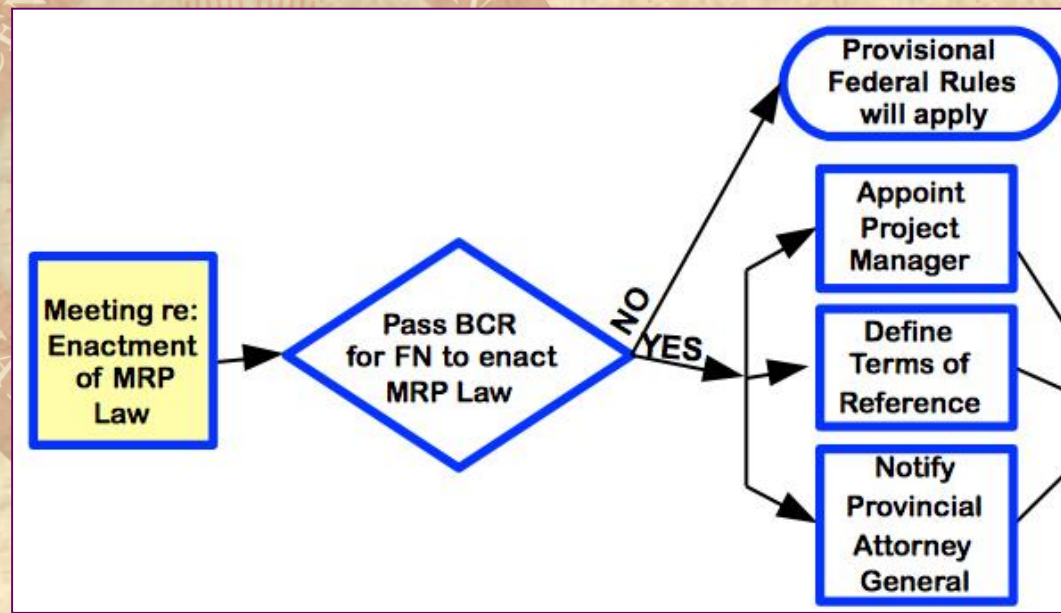
# Model MRP Law-Making Process



# MRP Law-Making Phase I Decision



- Timeliness
- Major effort
- C&C decision
- Proceed?



- Weigh the benefits of having own law
- ... vs. implementation cost and social cost
- Do the Provisional Federal Rules suffice?

# Break-out Session #1

## What is Involved?



Your group represents a steering committee for the C&C in a First Nation with 1000 members.

You must “scope” the project of developing an MRP Law for your FN:

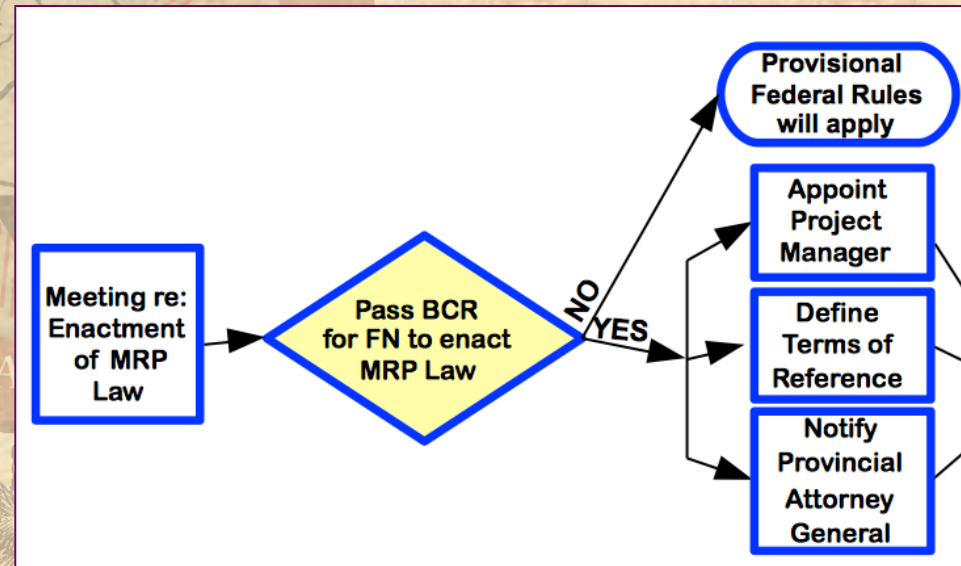
- 1) Work up a budget for the project noting major expense items
- 2) Work up a timeline for major milestones along the way to completion
- 3) Be prepared to have a member of your group present your findings

# MRP Law-Making Phase I

## BCR for MRP Law-Making Project



- Topics to be included in the MRP Law
- Staff required
- Committee type
- Schedule
- Budget & funding considerations
- Pass a BCR by Quorum of Council



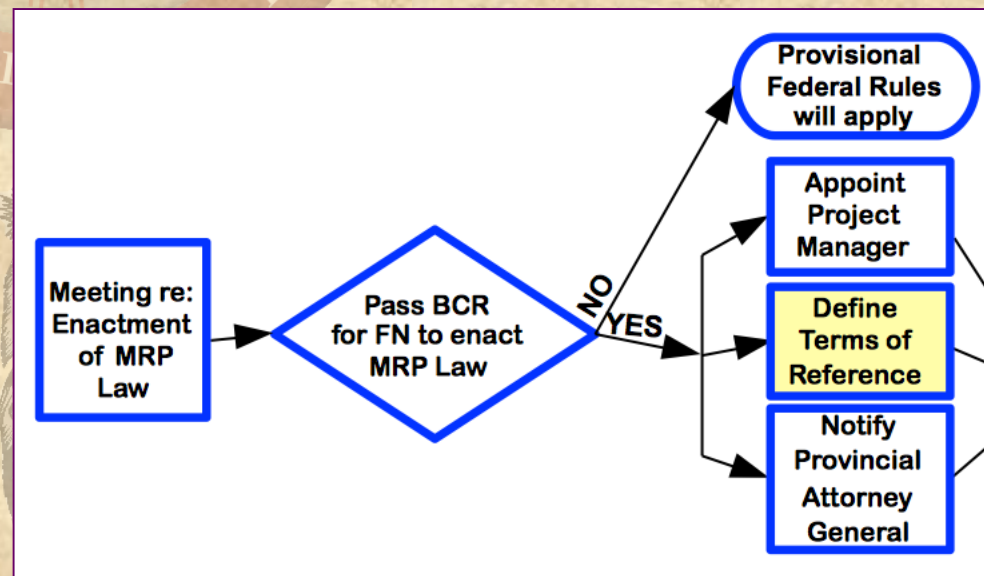


# MRP Law-Making Phase I

## Terms of Reference



- Define the Terms of Reference
  - ... for legal counsel
  - ... for the MRP Committee
- Define criteria for:
  - Project Manager
  - or Committee Chair



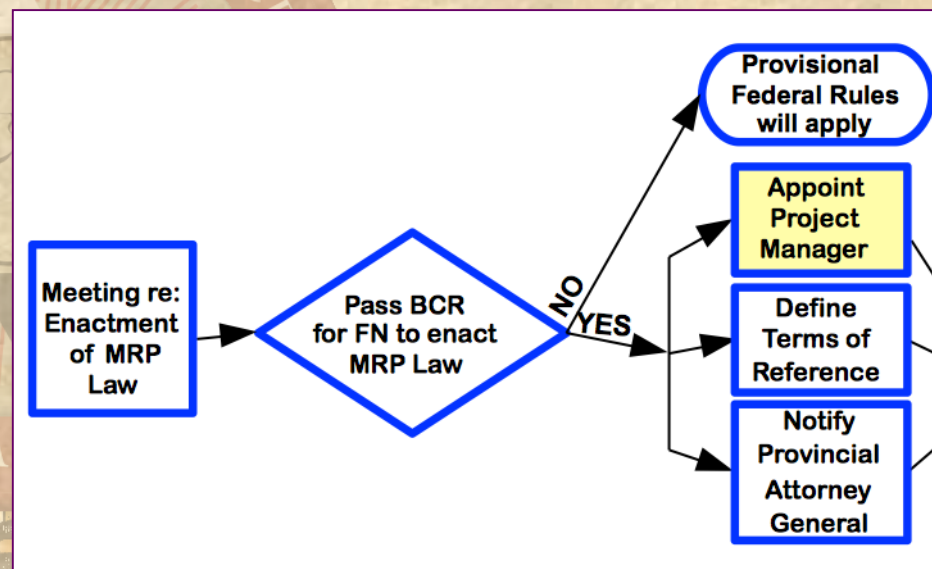


# MRP Law-Making Phase I

## Project Manager/Committee Chairperson

### Selection criteria:

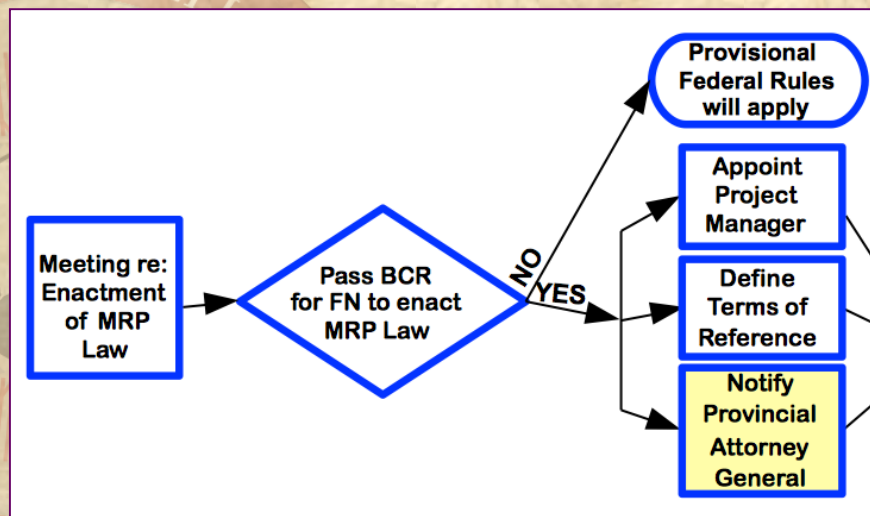
- Knowledgeable about land management
- Knowledgeable about matrimonial laws
- Strong leadership qualities
- Good communicator (oral and written)
- Well organized
- A history of “getting the job done”



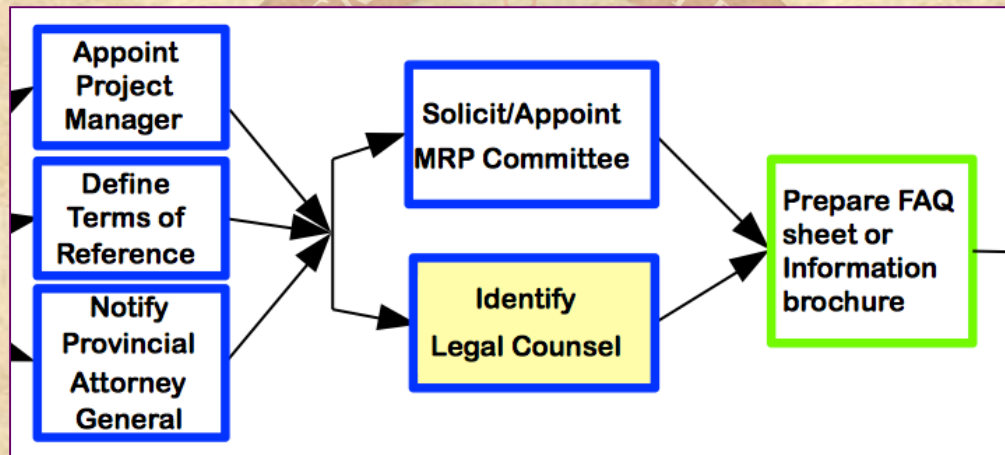
# MRP Law-Making Phase I Notification



- Once decision is made to proceed, notify the Attorney General(s)
- ... of any province(s) in which you have a reserve
- Provincial courts will need to be aware that your FN has its own MRP law
- In applicable cases, this law will be used when rendering judgement



# MRP Law-Making Phase I Legal Counsel

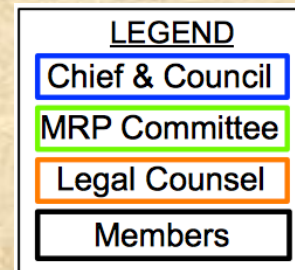


Engage a lawyer at the outset

- ... with experience in drafting laws,
- ... with knowledge of First Nations affairs, and
- ... preferably with family law experience

•Balance between expertise and cost

•On-going commitment



# MRP Law-Making Phase I Legal Counsel



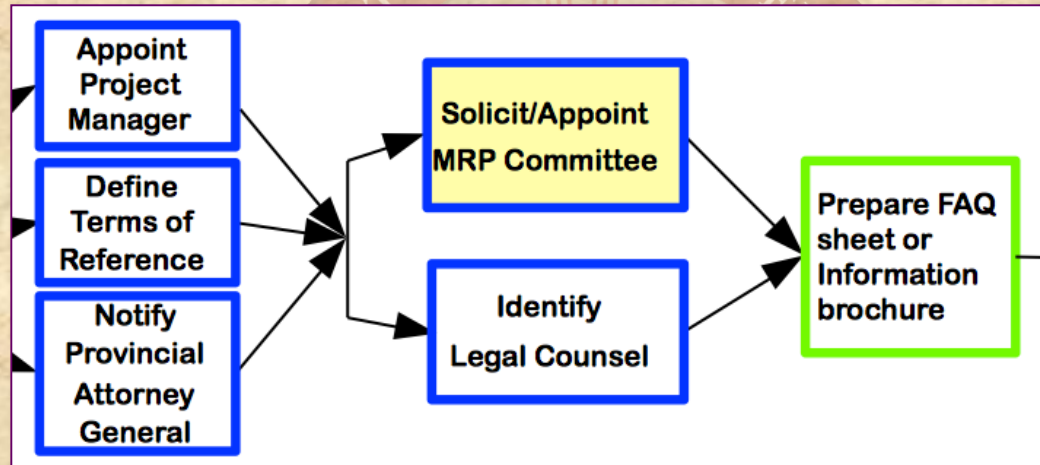
Background research required:

- Studying and understanding the MRP legislation
- Gaining knowledge about the FN values and practices
- Research on existing FN MRP laws



# MRP Law-Making Phase I

## The MRP Law-Making Committee



- Solicit applications for committee appointments
- Not a full-time job, but...
  - ...must attend all meetings
  - ...must be prepared to review all documentation (e.g., member input, drafts)

# MRP Law-Making Phase I

## Who is on the Committee?



- Key people required:
  - Chairperson
  - Council member
- Include other representatives such as:
  - An elder
  - A married member
  - A member who has children
  - A youth representative
  - A non-member living on reserve
  - Department heads

**Balance between enough knowledgeable expertise versus a group that is too large to be effective. The membership at large will have ample opportunity for input.**

# MRP Law-Making Phase I

## MRP Law-Making Committee



- Outline duties
- Establish areas of responsibility
- Keep in constant communication with the C&C
- Have regularly scheduled meetings
  - Achievements
  - Issues
  - Action items with responsibility and due dates specified



# MRP Law-Making Phase I Committee Meetings



- Meet regularly
- Identify all known issues
- Make/update the plan and the schedule
- Assign roles and responsibilities with due dates
- Schedule next meeting
- Keep minutes, they make a good paper trail

# MRP Law-Making Phase I

## Meeting Minutes



- Date
- Attendees
- Meeting purpose
- Review previous meeting
- Updates:
  - Goals achieved
  - Issues encountered
- Decisions/agreements
- Assign roles and responsibilities with due dates
- Re-adjust timeline if required
- Schedule next meeting

# MRP Law-Making Phase I

## Communication with Members



- Choose a good spokesperson
- Keep FN members well informed
  - Let members know they will be involved
  - Solicit input
- Prepare FAQ sheet or an information brochure, and...
  - Post it on the community bulletin boards
  - Post the FAQ sheet on your website
  - Deliver or mail a copy to each household

# Break-out Session #2



- You are the newly appointed MRP Committee
- You want to keep the members “in the loop” about the MRP Law creation project
- Prepare a one-page FAQ sheet to be provided to members
- Choose a member of your group to present your FAQ sheet.

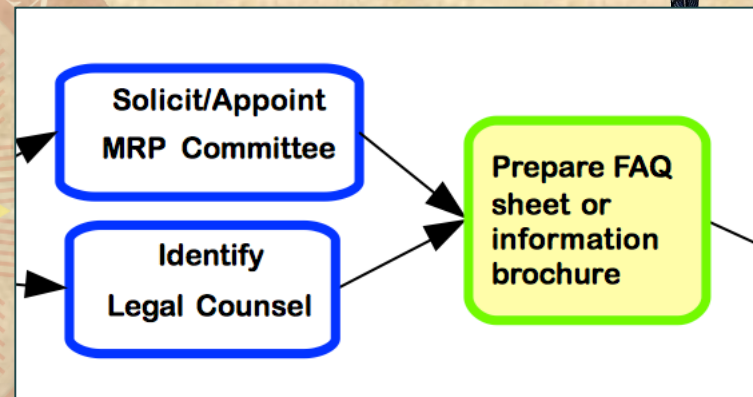
# MRP Law-Making Phase I

## Initial FAQ Sheet

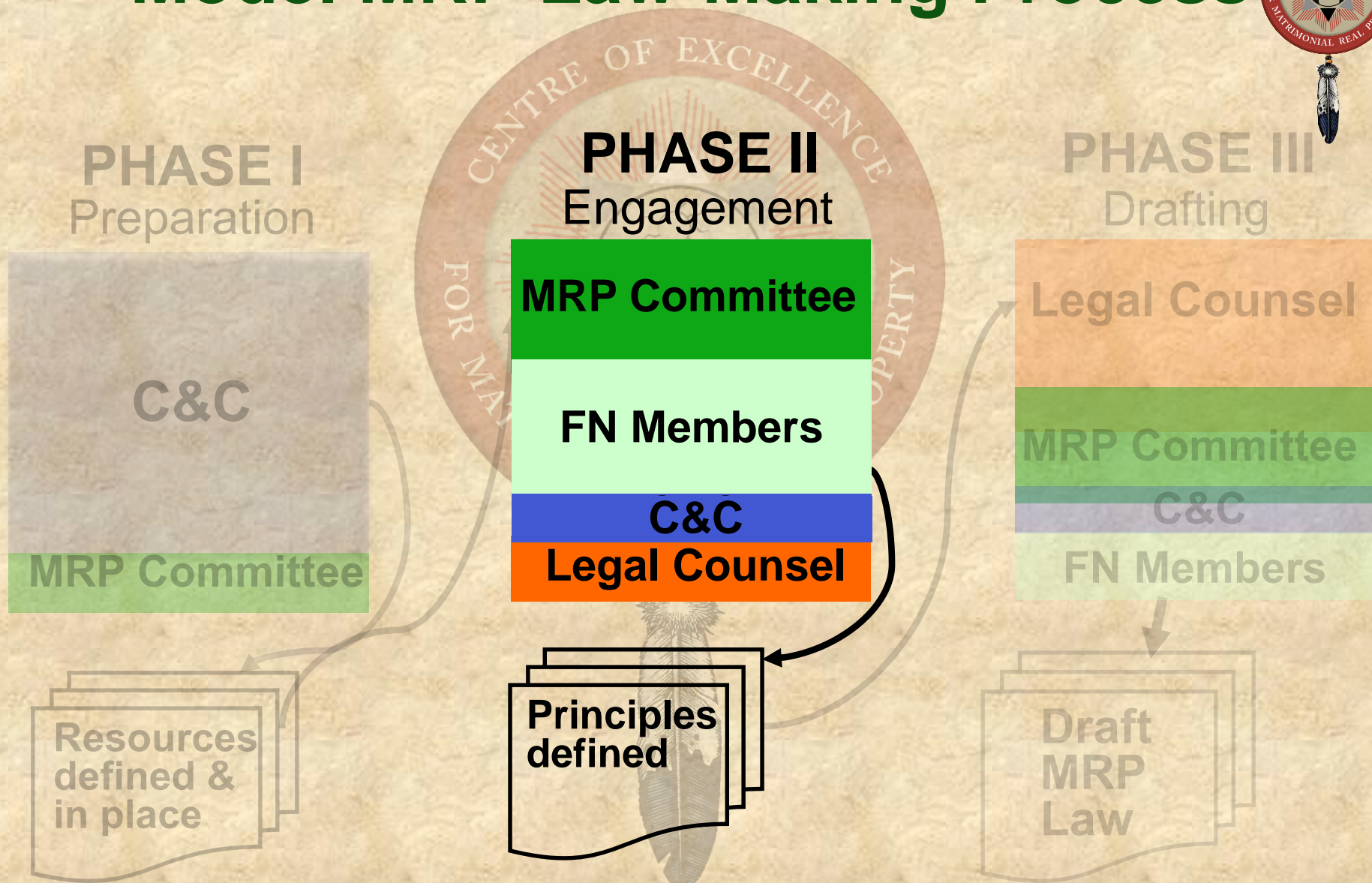


What members must know to be informed at this stage

- Background info on the law
- Current practices dealing with MRP on reserve
- Summary on the Provisional Federal Rules
- Importance of having your own law
- Basic values and principles on which this new law should be based
- Announcement of date and time of first community meeting



# Model MRP Law-Making Process



# MRP Law-Making Phase 2

## Why Involve the Members?



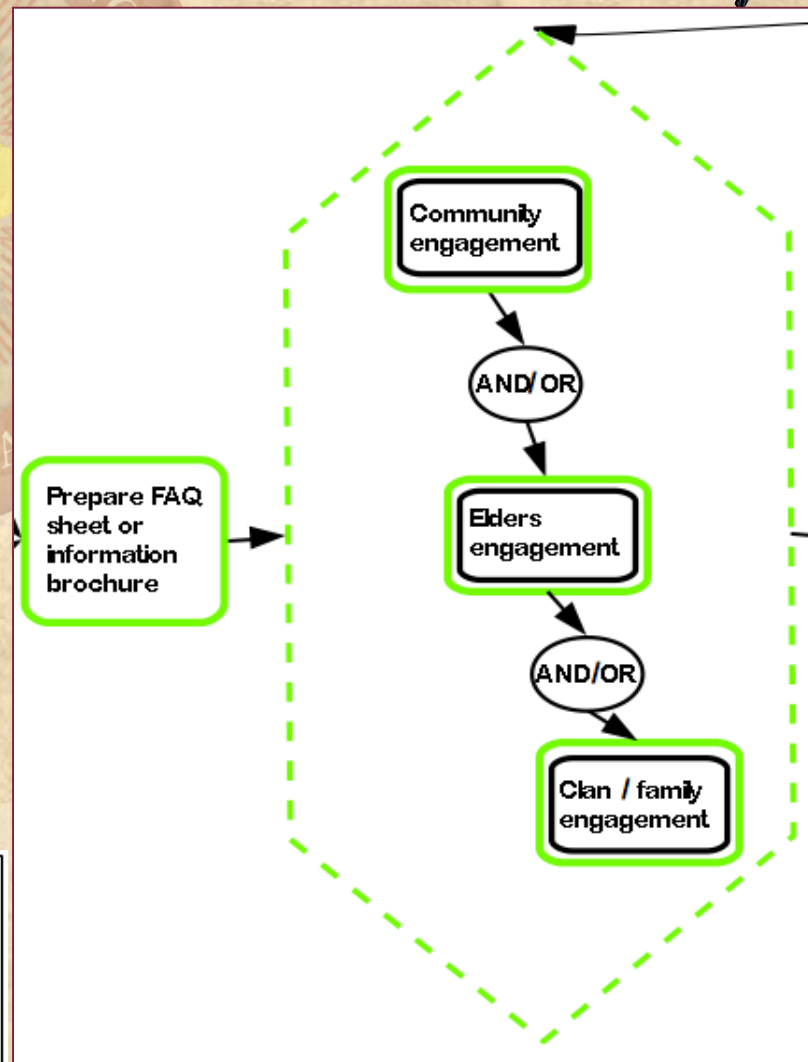
- Matrimonial real property affects families as a whole as well as individuals
- Dealing with real property on reserve is central to, and is an important piece of this law
- Members are more likely to vote if they feel strongly about the MRP Law
- Build a strong sense of “ownership” by engaging the members early and throughout the process.
- Solicit the members’ input.

# MRP Law-Making Phase 2 Engaging the Community



Whose suggestions and ideas will help?

- Start with the elders
- Plan a community meeting
- Mail out questionnaires to off-reserve members
- Meet with smaller groups, with clans, with individual families



LEGEND
Chief & Council
MRP Committee
Legal Counsel
Members



# MRP Law-Making Phase 2

## Engaging the Community



- Before the meetings, the Committee should prepare the following:
  - an explanation of the need for the MRP Law
  - a basic list of values and principles
  - ready answers for anticipated questions
  - clear responses to objections
  - basic explanation of the process involved
- At all these meetings, solicit ideas on values and principles to be honoured in the new MRP Law
- Have someone present to record all ideas received
- Compile a list of values and principles for review

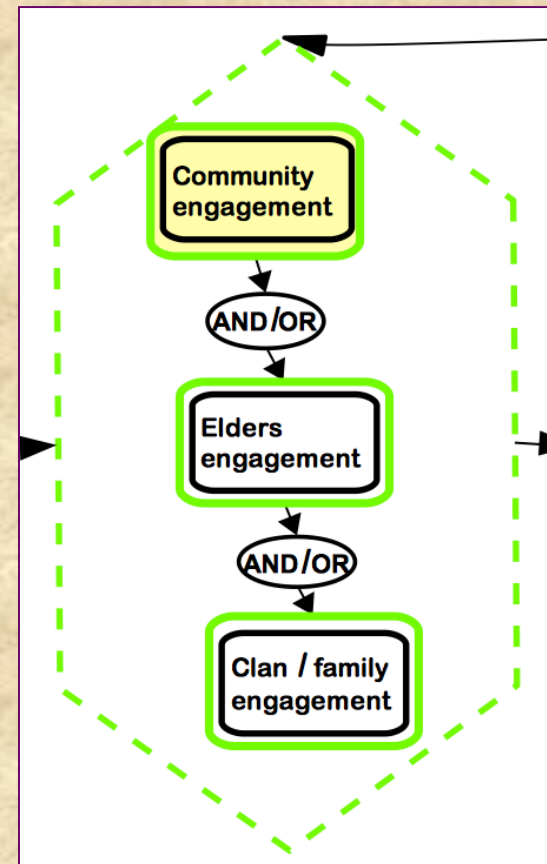
# MRP Law-Making Phase 2

## Main Community Meeting



### Preparing for a successful meeting

- Prepare an agenda, with presenters' names
- Prepare visuals
- **Perform a DRY RUN**
- **Anticipate objections/questions** that might arise and...
- **Incorporate solutions/responses** in main presentation
- Select an experienced Chairperson/Spokesperson
- All presenters must refer to the agreed-to list of principles



# MRP Law-Making Phase 2 Main Community Meeting



- Important attendees:
  - All Committee members
  - Chief and Council
  - Legal Counsel
- Increasing participation
  - Convenient location(s)
  - Timed with no conflicts
  - Announce via band newsletter, newspaper, website
  - Webcast for those who cannot attend in person
  - Provide refreshments, incentives
  - Word-of-mouth invitation by Committee, C&C, elders

# MRP Law-Making Phase 2 Main Community Meeting



## Best Practices for a good meeting

- Provide ample notice prior to the meeting
- Agenda and welcome
- Provide translation, if necessary
- Provide opportunities for members to present their input and ask questions
- Follow the agenda
- Keep detailed meeting minutes
- Have video conference capabilities for those unable to attend in person, if possible

**KEEP ON TRACK!**

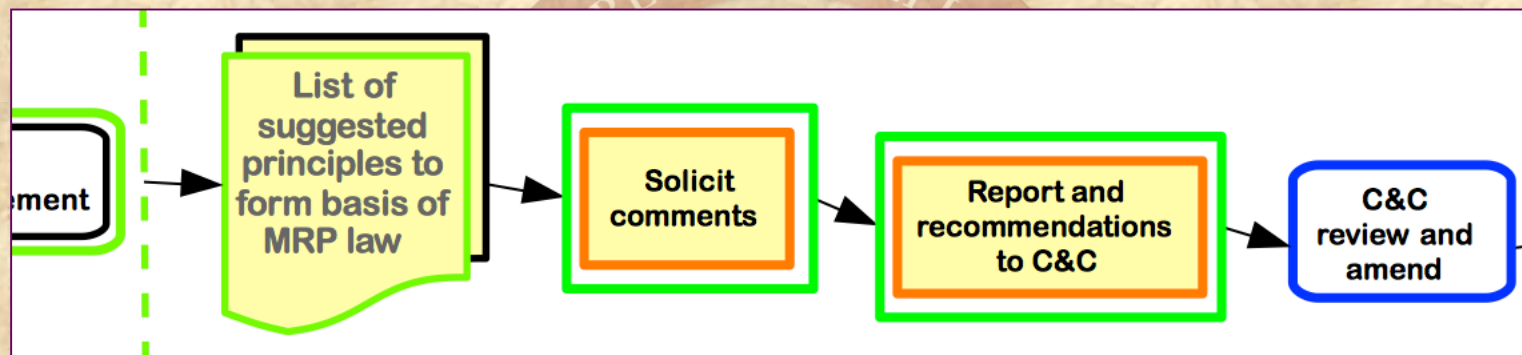
# Break-out Session #3



- Your extended family is meeting with a member of the MRP Committee
- You have been asked to provide input about traditional values that you think are important for the drafter of the MRP Law to consider
- Make a list of the five principles/values that you feel are the most important to be taken into account when the MRP Law is being drafted

# MRP Law-Making Phase 2

## List of Principles



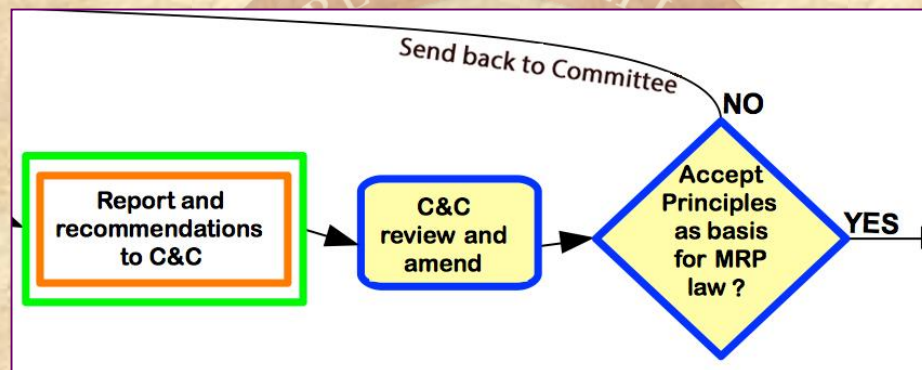
### Result of all meetings, the Committee:

- Compiles a preliminary list of the principles suggested
- Posts list where members can read it over, e.g., website, community bulletin board
- Solicits input from those who missed meeting
- (On advice of legal counsel, may remove items)
- Drafts List of Principles with recommendations
- Submits List of Principles to Chief and Council

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Chief & Council
MRP Committee
Legal Counsel
Members

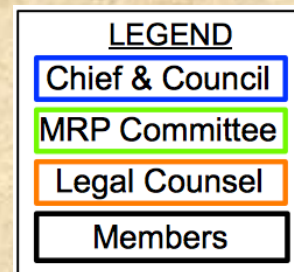
# MRP Law-Making Phase 2

## C&C Review



### The Chief and Council:

- Review the List of Principles
- May amend it if they feel that a law drafted on the basis of these principles will not garner support
- May send it back to the Committee for further work through:
  - more individual meetings
  - another community meeting
- If satisfied, direct legal counsel to draft MRP Law



# Model MRP Law-Making Process



## PHASE I Preparation



## PHASE II Engagement



## PHASE III Drafting





# MRP Law-Making Phase 3

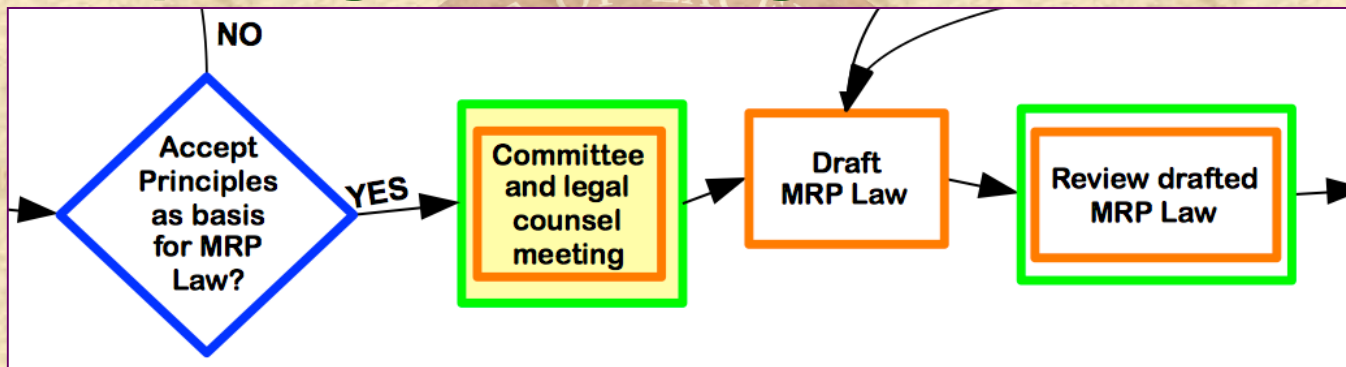
## MRP Law Requirements



- Conform to the Canadian Charter of Rights and Freedoms
- Strike a balance between individual and collective rights
- Respect the inalienability of reserve lands
- Take into account the best interests of children
- Protect people from family violence and abuse
- Result in greater certainty for spouses and common-law partners on reserves concerning the family home and other matrimonial rights or interests
- Be enforceable

# MRP Law-Making Phase 3

## Preparing for Drafting the MRP Law

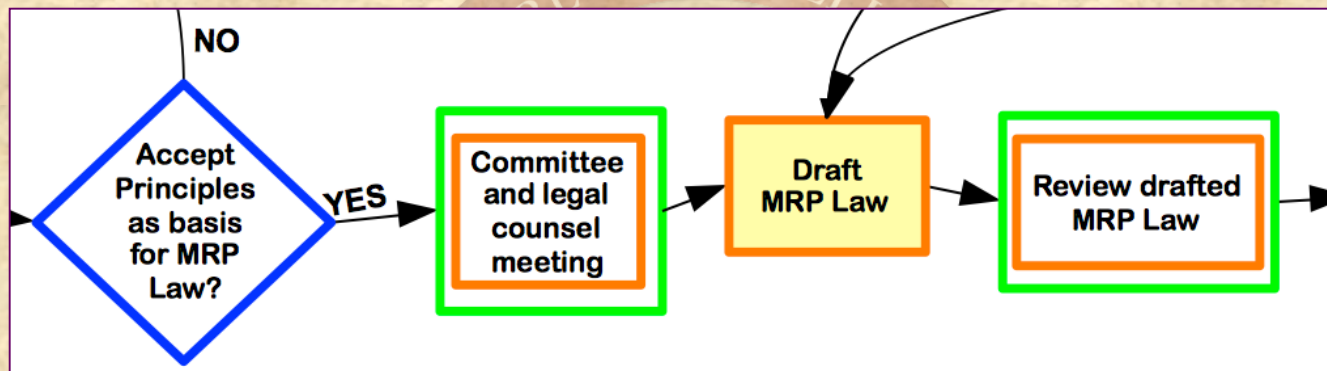


- Committee presents:
  - List of Principles
  - Specifics of existing laws or practices
  - Goal of the MRP Law for their FN
- Legal Counsel presents scope of an MRP Law
  - What it should cover
  - What it should not cover
- Review of sample or existing MRP Law from other communities if available
- Discuss the process

LEGEND
Chief & Council
MRP Committee
Legal Counsel
Members

# MRP Law-Making Phase 3

## Drafting the MRP Law



The MRP Law could address the following:

- Effects of death of a spouse for either a surviving FN member or a non-member
- Effects of separation where one or both spouses are First Nation members
- Emergency protections orders requested by either spouse, whether a First Nation member or not.
- Exclusive occupation orders

# MRP Law-Making Phase 3

## What is Legislative Drafting?



- *The writing*
- *of Documents*
- *for a Legislative Body*
- *to Enact*
- *as Law.*

# MRP Law-Making Phase 3

## Criteria for Good Legislative Drafting



- The law must properly address the real problem or issue. This means the drafter must truly understand what the purpose of the law is and what problem or issue is to be solved (the "policy") and must actually do his or her best to implement it with legislative words.

# MRP Law-Making Phase 3

## Criteria for Good Legislative Drafting



- The law must be capable of being easily understood by the intended reader. This means the drafter must use language understood by the reader and expressed in a simple and clear way.

# MRP Law-Making Phase 3

## The Legislative Drafting Process



- Doing the actual Drafting work:
  - Preparing an outline
  - Writing and organizing the provisions properly
  - Getting information from the "policy person" on issues as they arise
  - Sending successive drafts to the policy person for comments.

# MRP Law-Making Phase 3

## The Legislative Drafting Process



- Final Review:
  - Review the final draft carefully and critically.
  - Get others to read it and comment.
  - Check whether you used each defined term consistently.
  - Double check all cross-references.



# MRP Law-Making Phase 3

## Organizing the Law



- Normal outline for a complete law:
  - Title: Short and Descriptive
  - Definitions
  - Main Provisions
  - Administrative / Procedural Provisions
  - Sanctions
  - Transitional
  - Coming into force date

# MRP Law-Making Phase 3

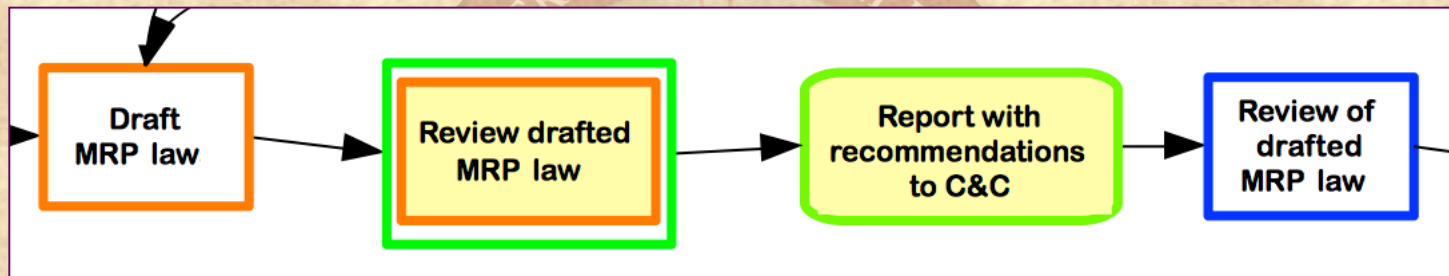
## Basic Principles:



- **Respect your First Nation and your Members**
- Be careful and thorough.
- Be Accurate: the provision should be written to achieve its purpose exactly.
- Be Clear: the provision should be easy to understand.
- Be Precise: The provisions should not be ambiguous, vague or easily misunderstood.
- Be Concise: Use short, direct and simple sentences. Subject - verb - object. Leave out unnecessary words.

# MRP Law-Making Phase 3

## Review of Draft MRP Law

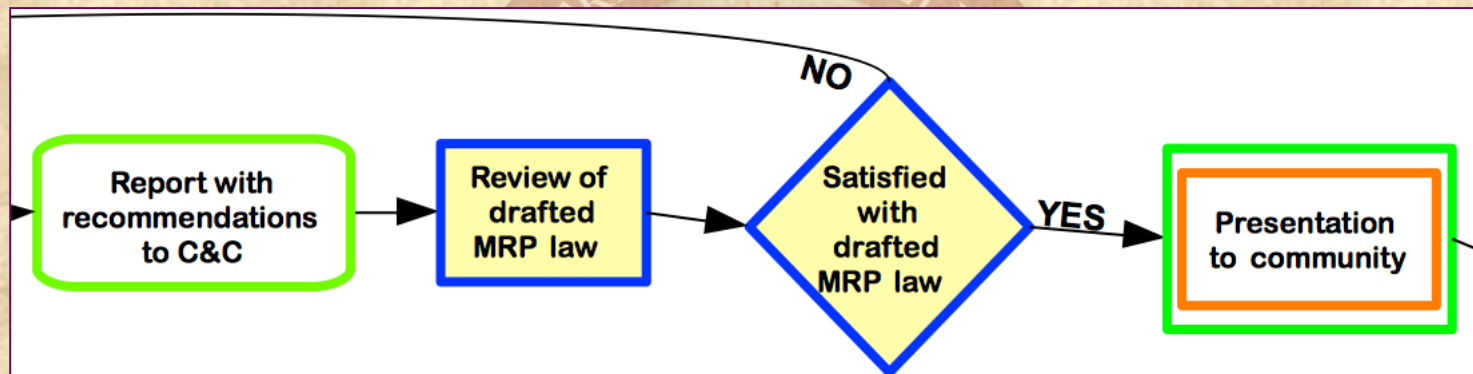


- The Committee and legal counsel review the draft MRP Law
  - All terms of the law must be understood
  - All questions must be clarified
- Legal counsel prepares an updated version
- This cycle is repeated until all parties are satisfied
- Committee sends Draft MRP Law and recommendations to C&C

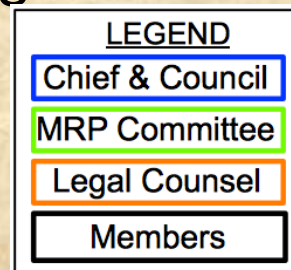
LEGEND
Chief & Council
MRP Committee
Legal Counsel
Members

# MRP Law-Making Phase 3

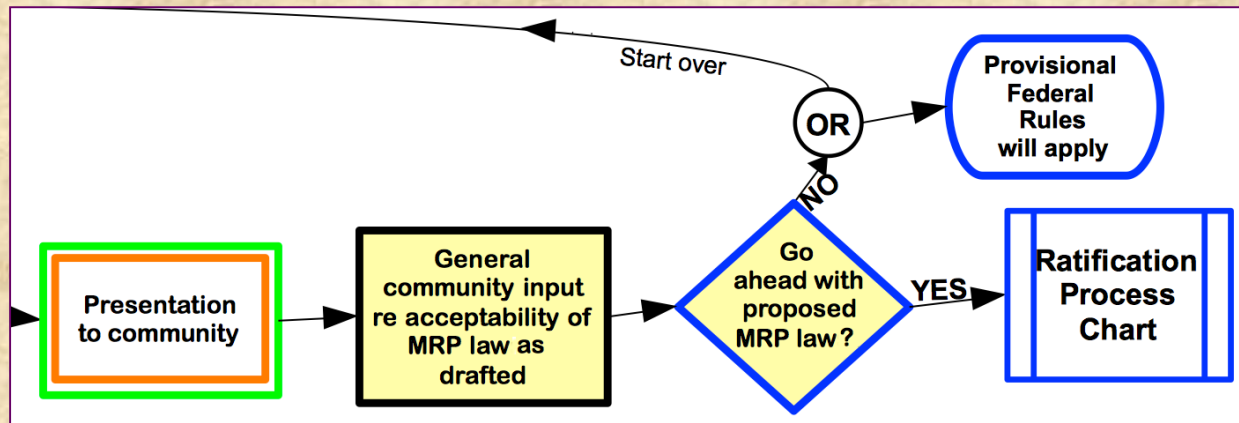
## C&C Review Draft MRP Law



- The Chief and Council review the draft MRP Law
- C&C may request changes or clarification
- Draft MRP Law updated as required
- This cycle is repeated until the C&C
  - are satisfied that the draft MRP Law meets the FN's needs while respecting the List of Principles, and
  - decide to present it to the community



# MRP Law-Making Phase 3 – Final Input



- The draft MRP Law is presented for final feedback from the community by
  - Posting it in community
  - Posting it on website
  - Through email
- Depending on feedback, the C&C decides
  - To seek acceptance through ratification
  - To not go ahead and use the Provisional Federal Rules
  - To start over
- If it is a “go-ahead” → **Start Ratification Process**

LEGEND
Chief & Council
MRP Committee
Legal Counsel
Members

# Quiz



## 1) First Nations may

- a) Pass their own MRP Law if approved by INAC
- b) Pass their own MRP Law any time after December 16, 2013
- c) Ignore the Provisional Federal Rules if they intend to pass an MRP Law within 5 years
- d) Ignore parts of the Provisional Federal Rules that don't fit their customs



The correct answer is: **(b)**

# Quiz



## 2) The FN MRP Committee

a) Reports to the C&C and to INAC



b) Consults the community and holds information meetings

c) Must include a representative from INAC


d) Has final say on the draft MRP Law

The correct answer is: **(b)**

# Quiz



3) When drafting the FN MRP Law

- a) The principles are set solely by the C&C
- b) The Committee does NOT need to involve members living off reserve
-  c) The principles must conform to the Canadian Charter of Rights and Freedoms
- d) The FN must engage a lawyer approved by INAC

The correct answer is: **(c)**



# First Nation Matrimonial Real Property Model Law Walk Through

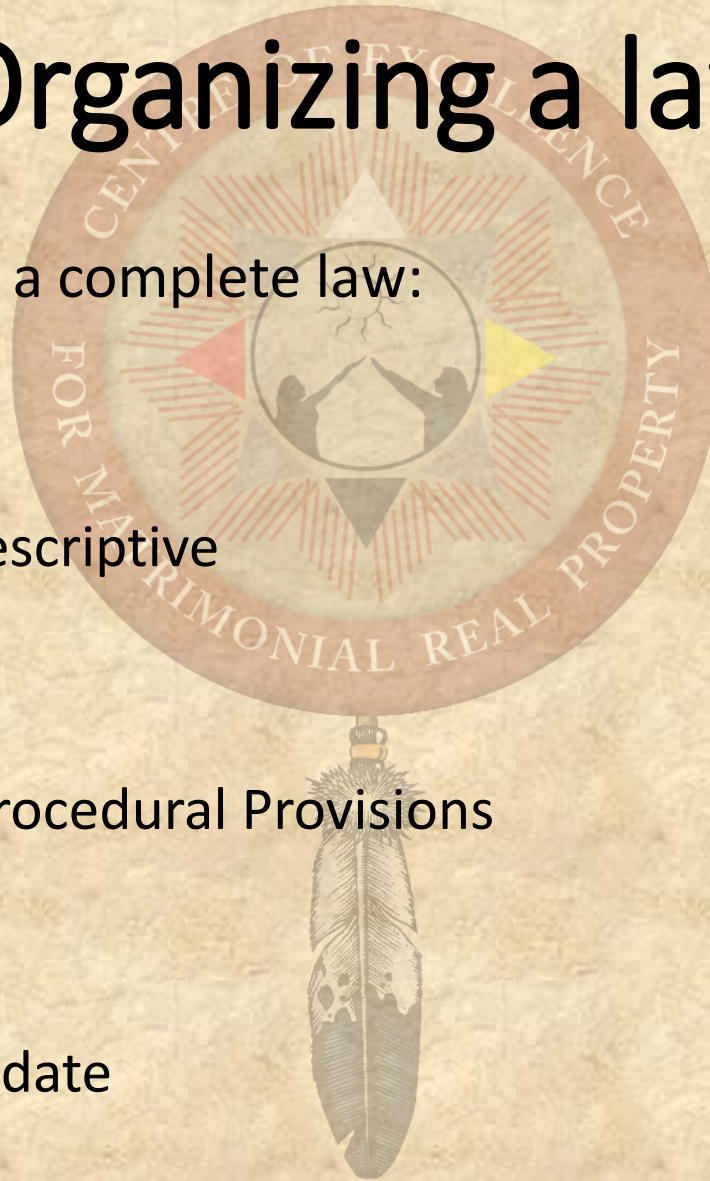
CENTRE OF EXCELLENCE  
FOR MATRIMONIAL REAL PROPERTY



# Organizing a law

Normal outline for a complete law:

- Preamble
- Title: Short and Descriptive
- Definitions
- Main Provisions
- Administrative / Procedural Provisions
- Sanctions
- Transitional
- Coming into force date



# First Nation family real property law

The COEMRP has developed two model laws that may be a starting point for FN's wishing to develop their own MRP Laws

- **Model Law #1 First Nation Family Real Property Law**

was prepared for use by a First Nation where members only hold CPs or other formal ways of holding real property on the reserve.

**Model #2 First Nation Family Real Property Law** was prepared for use by a First Nation that has customary or traditional land holding only. Members do NOT hold CPs or other formal ways of holding real property on the reserve.

# First Nation family real property law

- Both Model Laws reflect similar content and principles as contained in the PFRs
- First Nations may choose to include all aspects
- **The First Nation must find a lawyer who is appropriately knowledgeable to draft its First Nation's matrimonial real property law. Drafting laws is a unique type of legal task that differs from litigating in court or drafting contracts or agreements.**
- **The information in this document is to be used only by a qualified lawyer who is knowledgeable in First Nation's matrimonial real property law. You must not rely on the information in this document as an alternative to legal advice from a qualified lawyer.**

# First Nation family real property law

- Model Law was prepared for use by a First Nation that agrees with the following statements:
  1. On separation or divorce, taking care of the best interests and welfare of children is most important
  2. C/L partners should be treated the same as married
  3. (a) FN where members only hold CPs or other formal ways of holding real property on the reserve, **OR**; (b) FN has customary or traditional land holding only. Members do NOT hold CPs
  4. Spouses can make agreements
  5. Disputes should be resolved through mediation.
  6. If spouses cannot resolve their disputes the court should do so and decide how to apply this Law to their family real property.

# Preamble

- *An introduction that gives some context to the Law*

i.e. WHEREAS [*name of the First Nation*] does not wish to be bound by the default provisions of the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (Canada)

WHEREAS [*name of the First Nation*] desires to provide a law appropriate to our culture and traditions respecting the use, enjoyment and occupation of family homes on its reserve lands and the division of real property rights or interests held by spouses or common-law partners on reserve lands

- *Matters of substance should be put into the Law itself, rather than the Preamble.*

# Title

The Chief and Council of the [*name of the First Nation*]  
enacts as follows:

Title

The title of this Law is the [*name of the First Nation*]  
*Family Real Property Law.*

# Definitions

"family home" means a structure

- (a) where the spouses habitually reside or, if they separated or one of them died, they habitually resided on the day on which they separated or the death occurred; and
- (b) in which at least one spouse has any right or interest or that was allocated to at least one of the spouses by the [*name of the First Nation*].

***Note: This definition deals with the situation where the spouses are living in band housing or someone else's house, e.g. they are living in the house of one of the spouse's parents or grandparents***



# Definitions

*Use the same terminology. No use of synonyms. Better to repeat the noun rather than use a pronoun. Use the same word or phrase everywhere.*

"spouse" means an individual who, in respect of another person,

- (a) is married to the other person;
- (b) has in good faith entered into a marriage with the other person that is void or voidable; or
- (c) is a common-law partner of the other person.

*Be consistent - don't also use: wife, husband, partner, other half, significant other, etc.*

# Main Provisions

## Rules of Interpretation

- A marriage is valid if performed in accordance with the law of a province or territory or in accordance with Aboriginal custom.
- If a family home is also normally used for more than just a residential purpose, the rules on family homes include only the portion of the structure that may reasonably be regarded as necessary for the residential purpose.
- Family real property does not include any asset acquired by a spouse by way of inheritance, unless it can be shown that the inheritance was devised or made with the intention of benefiting both spouses.
  - Note: Review the definition of Family Home.

# Main Provisions

Application of this Law:

For greater certainty, this Law does not apply to the division of **any traditional or customary right** of a member of [*name of the First Nation*] to occupy or possess land, as opposed to a structure on land or a fixture or other property permanently affixed to land.

*Note: This Law does not apply to the land itself, only to structures and fixtures on the land. It also does not apply to personal property, such as bank accounts, household goods or other personal property.*

# Main Provisions

## Domestic Agreements:

Spouses and people entering into a marriage or common-law relationship are encouraged to enter into a domestic agreement.

A domestic contract is only enforceable if

- (a) it is made in writing; and
- (b) it is signed by the parties; and
- (c) the signatures of the parties are witnessed.

# Main Provisions

## Use, Enjoyment and Occupation of Family Home

A family home is for the use, enjoyment and occupation of the spouses and their children.

The right of a child to use, enjoy and occupy the family home is

(a) paramount over the right of a spouse to use, enjoy and occupy the family home; and

(b) continues until the court makes an order, or other accommodation is arranged, in the best interests and welfare of the child.

A spouse who is occupying the family home when the other spouse dies is entitled to continue to occupy the family home for [180] days after the spouse's death.

*Note: The 180 day period is a period used in other similar provincial legislation. A First Nation could choose a different period.*

# Main Provisions

## Restrictions on Disposition of Family Home

No spouse shall dispose of or encumber a right or interest in a family home unless

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights or interests in the family home by a domestic agreement; or
- (c) the Council consents to or authorizes the transaction or releases the property from the application of this section.

Any disposition or encumbrance contrary to section 7.1 has no effect.

*Note: This rule is absolute. A third party purchaser would not be protected. A First Nation could allow a third party purchaser who buys in good faith without notice of the contravention of s. 7.1 to obtain rights, but that would work against the injured spouse.*

# Main Provisions



## Application for Exclusive Occupation of Family Home

The court may, on application, order that

(a) one spouse or child be given exclusive rights to use, enjoy and occupy the family home or part of it for the period that the court directs...

When making an order..., the court shall consider all the circumstances of the parties, including

(a) the best interests and welfare of any affected children and their paramount right to use, enjoy and occupy the family home;

# Main Provisions

## Application for Exclusive Occupation of Family Home

When making an order..., the court shall consider all the circumstances of the parties, including

(f) any risk of violence or harm to a spouse or child or another person occupying the family home;

If an order under this section is needed urgently, the application may be made to a designated judge, instead of the court, and the designated judge may make the order on a temporary or emergency basis and without prior notice to another party pursuant to sections...



# Main Provisions

Application for Exclusive Occupation of Family Home

For greater certainty, an order made under section 8.1 does not

- (a) change who holds a right or interest in or to the family home; and
- (b) prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy.

# Main Provisions

## Application for Exclusive Occupation of Family Home

If the family home is owned by the [*name of the First Nation*], an order under section 8.1 cannot grant exclusive occupation to a spouse for more than one year without the consent of the First Nation, but the order may be renewed by the court, on application, for successive periods not exceeding one year.

*Note: The order is limited to a maximum of one year for a spouse unless the First Nation consents. An order made to a child is not limited to a year. If the spouse is a member, the First Nation could consent to a longer period. If the spouse is a non-member, the First Nation could refuse consent. The First Nation could consent to more than one year for a non-member spouse with children, e.g. until the children become adults. If there is no consent, the spouse has to reapply for exclusive occupation every following year.*

# Main Provisions

## Valuation of Rights and Interests

Unless the court determines that another value is more appropriate, rights and interests must be valued at the cost of replacing the structure, fixture or other property, to which the right or interest right applies, minus the following amounts:

- (a) the amount of any accrued depreciation applicable to it;
- (b) the amount of any outstanding debts or other liabilities assumed for acquiring it; and
- (c) the amount of any outstanding debts or other liabilities assumed for improving or maintaining it.

*Note: Replacement value has been chosen as the method to value real property on reserve, since there is little market for these rights and interests and there is little market data available. This is particularly true for remote First Nations. A First Nation may choose another more appropriate method of valuation, if one is available.*

*Note: Valuation will be affected by whether your members hold Certificates of Possession or Custom Holdings.*

# Main Provisions



## Mediation

Section 2(3) *FHRMIRA* – “*For greater certainty, for the purposes of this Act, an agreement between spouses or common-law partners includes an agreement reached through the use of traditional dispute resolution.*”

Spouses who have a dispute about matters under this Law should make a reasonable attempt to resolve it through the efforts of a mutually agreed upon mediator in a process that accords with the traditions, customs and practices of the [*name of First Nation*].

Note: If the First Nation has an alternate dispute resolution method available, e.g. an Elders Committee, it could require the parties to use that method instead of or in addition to mediation.

# Administrative Provisions

## Administration

A copy of this Law appearing to be certified as a true copy by an officer of the [*name of First Nation*] is proof of the original without proof of the officer's signature or official character.

The Council shall ensure that a copy of this Law, as amended from time to time, is available for public inspection at locations designated by the Council and may make it public any other means of communication that the Council considers appropriate.

An applicant who obtains an order or decision under this Law shall, without delay, send a copy of it to the Reserve Land Register, established under the *Indian Act*.

# Sanctions

A peace officer may arrest without warrant any person the officer believes on reasonable and probable grounds to have contravened an order for exclusive occupation

Any person who contravenes the provisions of an order or decision made under this Law is guilty of an offence and is liable upon summary conviction to

- (a) in the case of a first offence, a fine not exceeding \$2,000 or to imprisonment for a term not exceeding three months, or both; or
- (b) in the case of a subsequent offence, a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year, or both.

*Note: The amounts of the fines and imprisonment above are the same as in the provisional federal rules. A First Nation could choose lesser amounts or periods.*

# Transitions



This Law may be amended or repealed only by a subsequent law made by the Chief and Council.

An amendment or repeal of this Law is not valid unless approved by a majority of the eligible members who participated in the final meeting.

*Note: A First Nation may use another method of approval. For example, the same method required under the Act to approve this Law*

# Coming into force date

This Law comes into force on [December 1, 2015].

*Note: A First Nation could choose a different date, but it must be a date after the approval vote. The Law should not be retroactive. Keep in mind that the federal provisional rules came into force on December 16, 2014, and so if the Law was not yet in force the federal provisional rules will apply until the Law does come into force.*



# MRP Law Ratification: Model Process

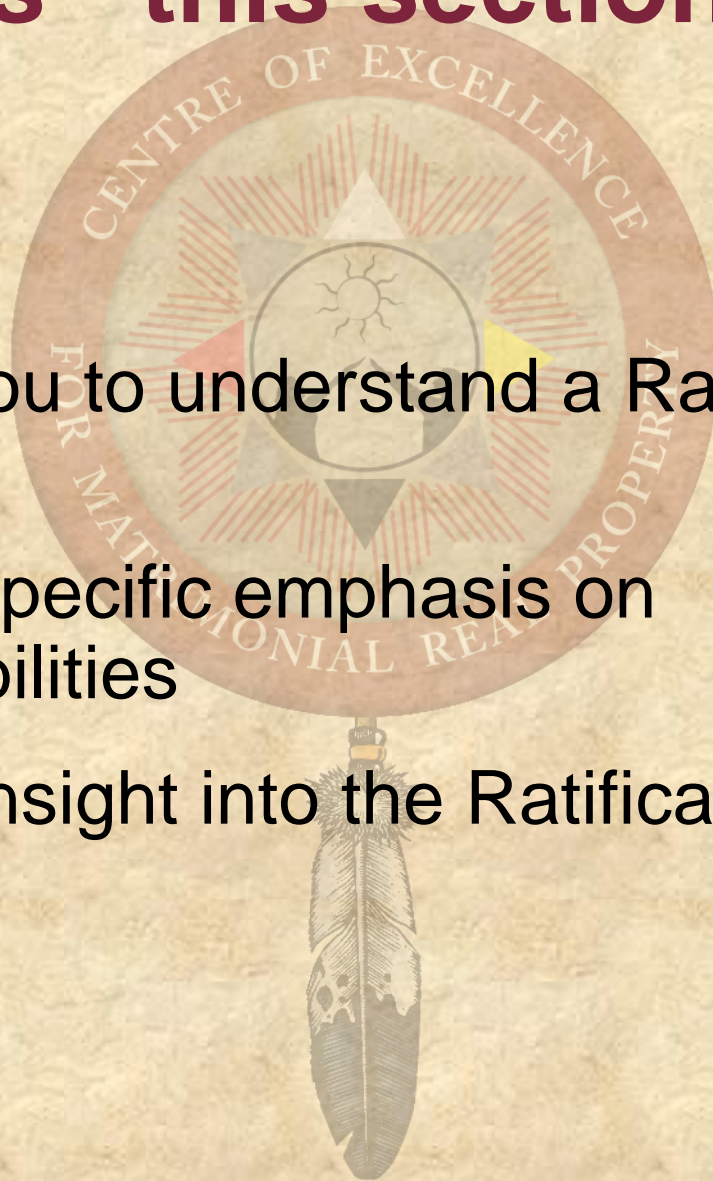
CENTRE OF EXCELLENCE  
FOR MATRIMONIAL REAL PROPERTY



Version 3.0

# Goals - this section will:

- Enable you to understand a Ratification Process
- Provide specific emphasis on responsibilities
- Provide insight into the Ratification logistics



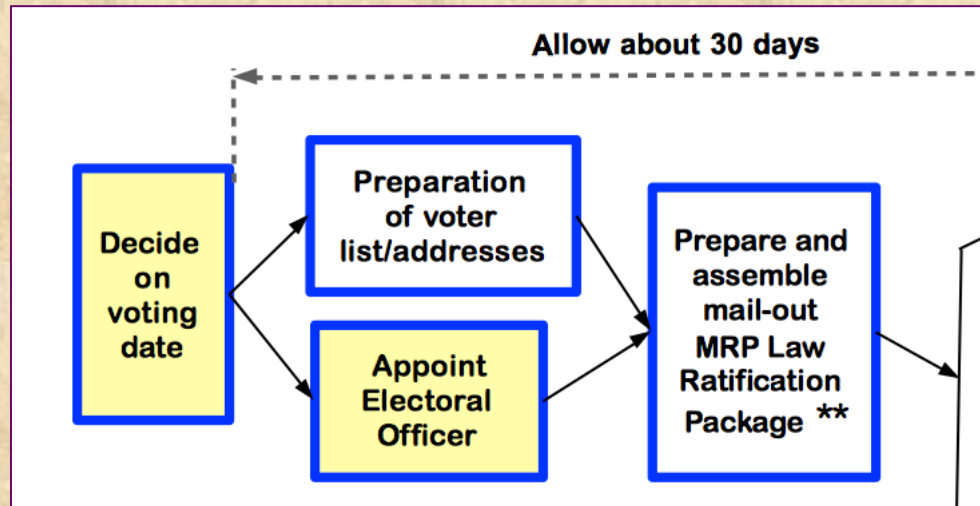
# Topics

## Sample Ratification Process

- Electoral Officer
- Voter list
- Ratification Notice & Package
- Information Meeting
- Logistics
- Vote
- Counts & Certifications

Note: for those in FNLMA, this process is as described in your land code

# Ratification Process: Electoral Officer



## The C&C

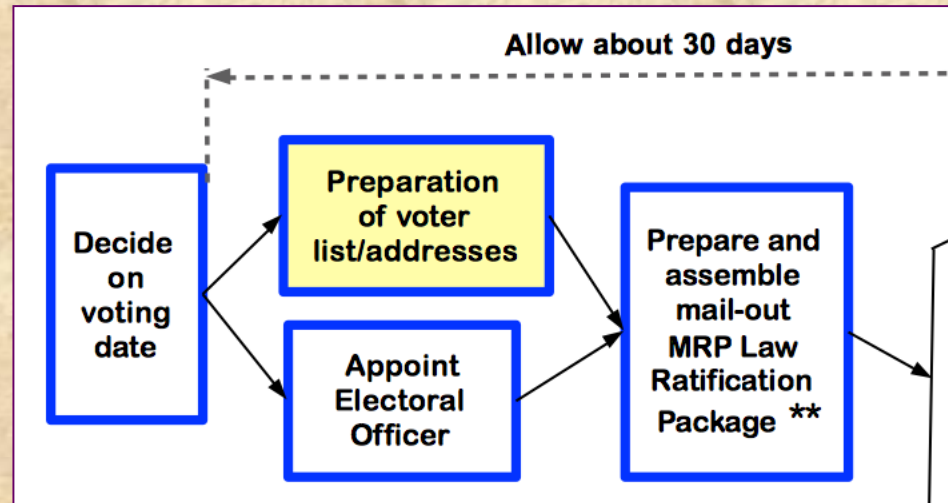
- Chooses the date for Ratification Vote, which should be at least 10-12 weeks later
- Appoints an Electoral Officer (EO), preferably someone with previous experience in elections or referendums

## Ratification Process: **Electoral Officer**

The EO has the main responsibility for all aspects of the ratification process, including:

- Appointing Deputy Electoral Officers (DEO)
- Preparing the Voter Lists
- Assembling the Ratification package
- Posting the Notice of Ratification
- Mailing out of the Ratification package
- Attending Information Meeting(s)
- Arranging the poll logistics
- Managing the running of the polling stations
- Counting and certifying the ballots
- Reporting results

# Ratification Process: Preparing Voter List



- EO may assign this task to the Membership Clerk
- Voter list is comprised of eligible members 18 +
- Electors eligible: both on- and off-reserve
- All eligible voters count in the calculation of the 25% threshold

# Ratification Process: Preparing Voter List

- The Master Voter List must include:
  - Member name
  - Membership number
  - Address
  - Date of birth
- The Voter List for posting includes only:
  - Member name
- The Master Voter List often includes additional information that is useful during the voting, such as shown on this spreadsheet:

# Ratification Process: Sample Master Voters List

Name	Member Number	Date of Birth	On/Off reserve	Address	Ballot type	Date Ballot mailed	Comments
A - Last name, First name	9999999	yyyymmdd	On	1234 First Street, Reserve, Prov, Postal Code	In person	n/a	
B - Last name, First name	9999998	yyyymmdd	Off	567 Any Street, City, Prov, Postal Code	Mail-in	yyyymmdd	



## Ratification Process:

# Preparing Voter List: Section 10 Band

- Section 10 Band: manages own member list
- Prepare the Master Voter List from the most recent Voter List:
  - Add names of new members
  - Add names of those who have reached 18 years of age
  - Delete names of deceased members
  - Update any know changed addresses
- From the Master Voter List, create the Voter List for posting:
  - Delete the Date of Birth
  - Delete the addresses
  - Delete the membership number

## Ratification Process:

# Preparing Voter List: Section 11 Band

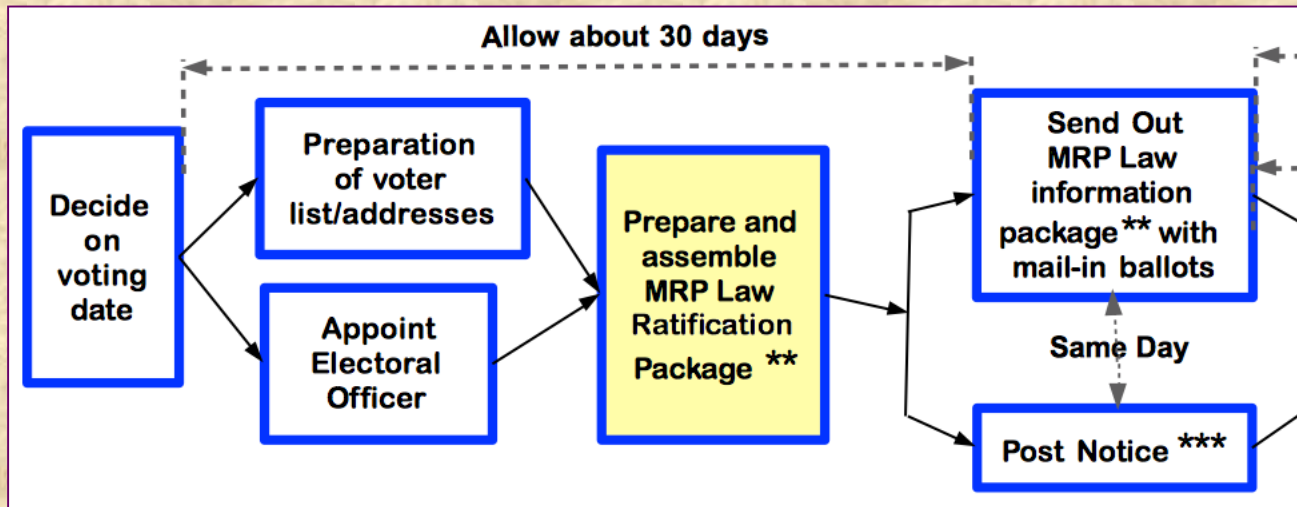
- Section 11 Band: member list managed by INAC
- The EO or the Membership Clerk requests a list of members eligible to vote from INAC
- From this list, create the Master Voter List by selecting all eligible members over 18 years of age, including at least:
  - Member name
  - Membership number
  - Address, update if necessary
  - Date of birth
- Delete any deceased member names still on INAC's list
- From the Master Voter List, create a Voter List for posting:
  - Delete the Date of Birth
  - Delete the addresses
  - Delete membership number

# Ratification Process: Voter List Certification

- All Voter Lists should be certified
- Official Certification:
  - Chief, or authorized Councillor or appointee of C&C
  - May be the FN requirement, but if it is not a requirement, it is a Best Practice



# Ratification Process: Ratification Package Preparation



- Package is for all voters
- Tasks that the Electoral Officer is responsible for include:
  - Document preparation
  - Voting items preparations
  - Arranging for all printing
  - Collating of items for the package
  - Stuffing envelopes

## Ratification Process:

# Ratification Package Preparation

Package for off-reserve voters must include:

- Copy of the draft MRP Law
- Information about the MRP Law, for informed consent
- Information about the MRP Ratification Process
- Voting items:
  - Ballot
  - Statutory Voter Declaration
  - Pre-addressed post-paid envelope
  - Instructions

Package for on-reserve voters must include:

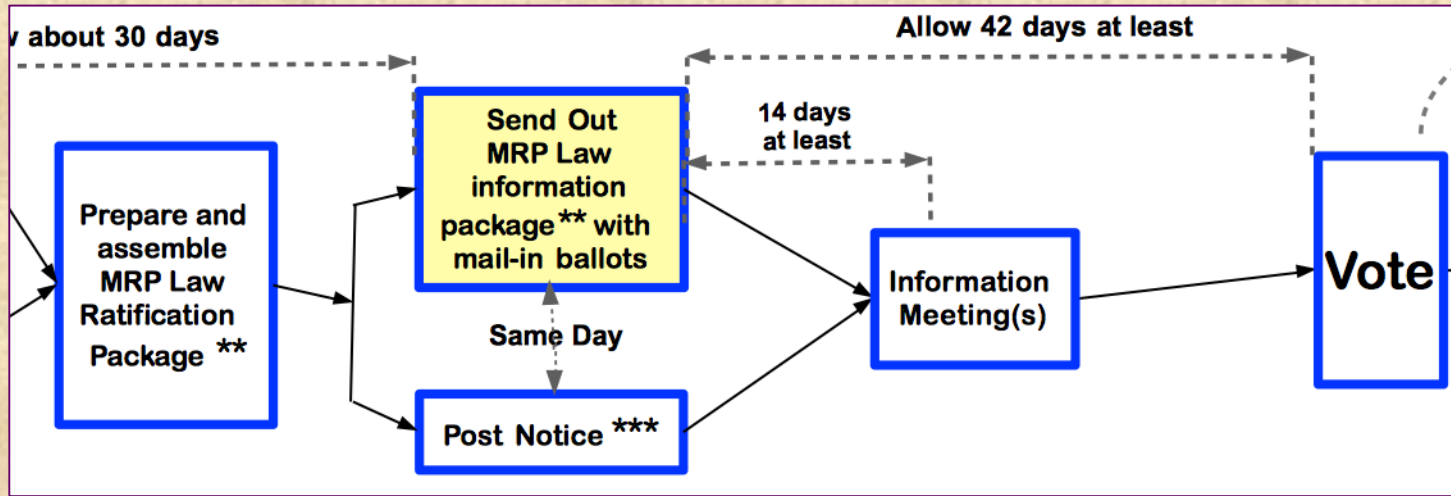
- Copy of the draft MRP Law
- Information about the MRP Law, for informed consent
- Information about the MRP Ratification Process
- NO Voting items

# Ratification Process:

## Ratification Package Preparation

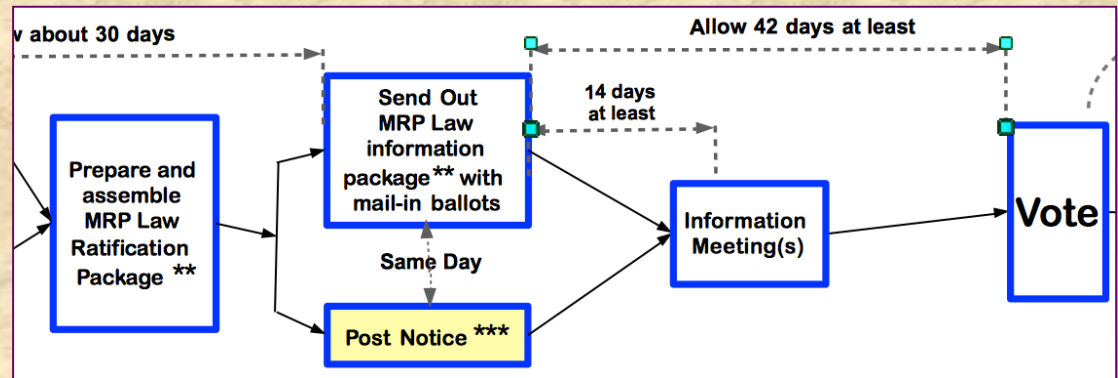
- Optional items in both off- and on-reserve voter packages could include (one-page):
  - an Executive Summary or
  - a cover letter from the Chief and Council, (which could include information about where the results will be posted after the vote)
- On-reserve members can request a ballot if they know that they will be away on the day of the vote...
- ...**however**, the ballot can only be supplied by the EO who must make a note of it on the Master Voter List

# Ratification Process: Mail-Out Ratification Package



- Depending on the number of members, preparation of packages can take several days.
- Usually a bulky package
- Timing:
  - Mailing date should be at least 42 days ahead of Vote day
  - Mailing date should be at least 14 days ahead of Information Meeting
  - Mailing day should be **same day** as Posting of Notice day
- Project Manager: have package available onsite (info portions only, not ballots)

# Ratification Process: Post the Ratification Notice



- Posting includes:

- MRP Draft law
- Notice of Ratification
- Information Document (or Executive Summary)
- Voter List (names only)

- EO (or DEO) post as many as possible:

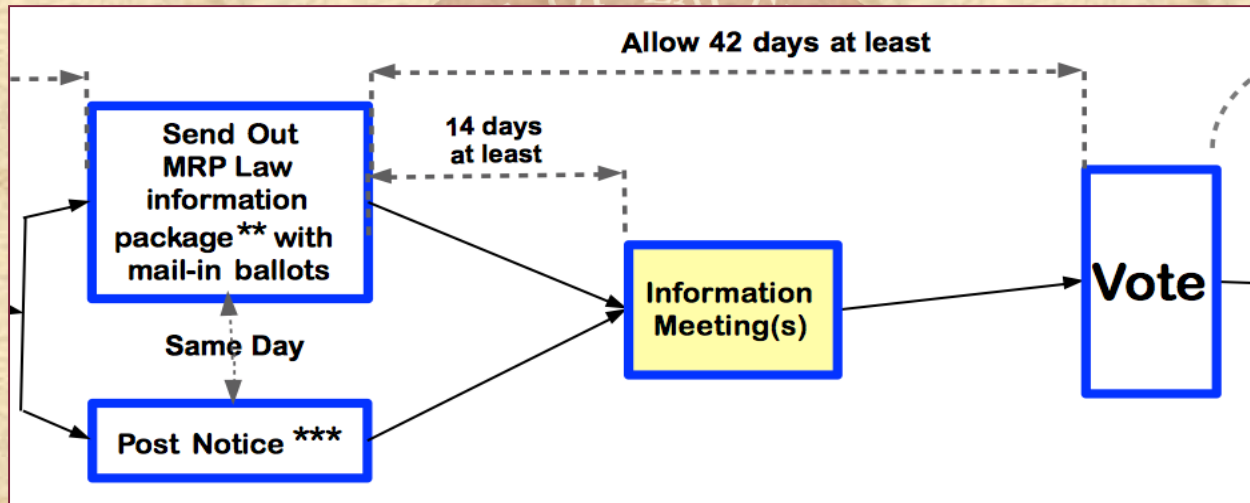
- Band Office, Community Centre, and gathering places
- Notice in newspaper, in newsletter, on website

- Timing:

- Posting day should be the **same day** as Mail-out day
- Posting date should be at least 42 days ahead of the first vote day
- Posting date should be at least 14 days ahead of Information Meeting



# Ratification Process: Information Meeting



- Timing: at least 14 days after mailing/posting
- Organized by the MRP Committee
- Number of meetings:
  - One is required
  - More if large number of attendees expected
  - More if follow-up information needs to be provided
  - More if needed for off-reserve members in different locations

# Ratification Process: Information Meeting

- Who MUST attend:
  - All Committee members
  - Chief and Council
  - Legal Counsel
  - Electoral Officer
- Increasing attendance
  - Convenient location(s)
  - Timed with no conflicts
  - Announcements via band newsletter, newspaper, website
  - Provide refreshments, incentives
  - Word-of-mouth invitation by Committee, C&C, elders

# Ratification Process: Information Meeting

## Best Practice for a successful meeting

- Prepare visuals
- **Perform a DRY RUN**
- **Anticipate objections/questions** that might arise and...
- **Incorporate solutions/responses** in main presentation
- Select an experienced Chairperson/Spokesperson
- All presenters must be clear on the same message
- Prepare an agenda, with presenters' names
- Idea: plan a webcast for those who can't attend

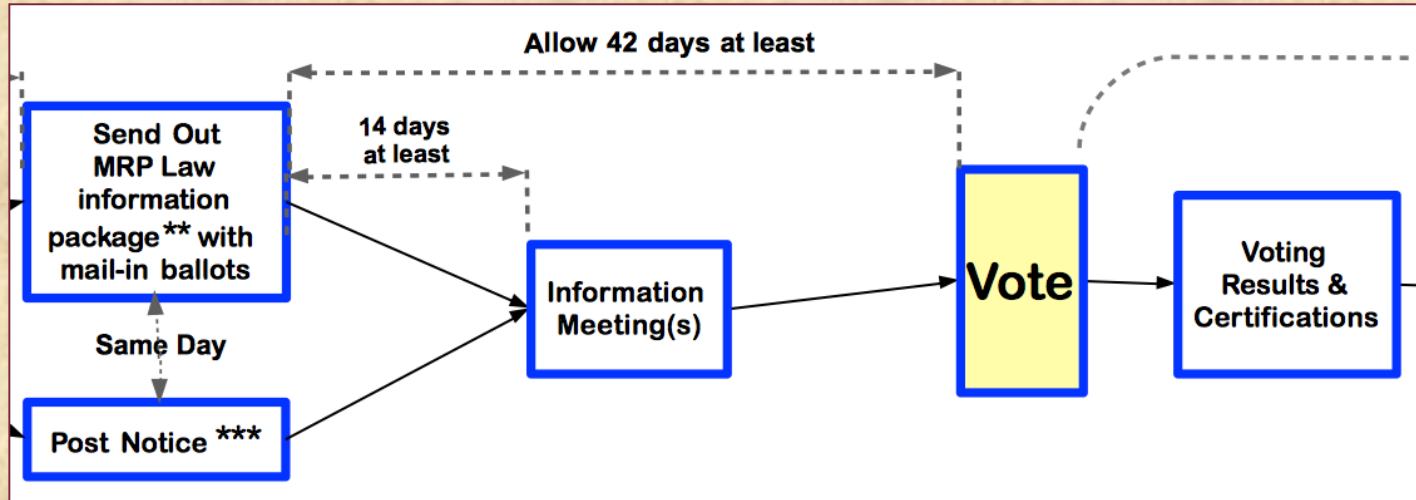
# Ratification Process: Information Meeting

## Best Practices for your Information Meeting

- Agenda and welcome
- Have an translator, if required
- MRP Committee Chairperson presents overview
- Presentation of drafted MRP Law by Legal Counsel
- EO explains MRP Ratification requirements
- Endorsement by Chief/Council Member
- Question and Answer period

**KEEP ON  
TRACK!**

# Ratification Process: Vote Logistics



- Well ahead of time:
  - Determine if electronic voting will be available (if so, select and involve the contractor early in the process)
  - Determine if there will be more than one voting day
  - Reserve easy-to-access facility for polling station(s)
  - Arrange for tables, chairs, etc.
  - Retain a Commissioner of Oaths (if required)
  - Retain a translator (if required)

The EO is responsible for arranging the polling stations, ballot boxes, etc.

# Ratification Process: **Vote**

## Day of vote

- EO sets up ballot boxes
- EO examines ballot boxes and completes declaration
- EO opens and closes the polling stations in accordance with the time indicated on the notice
- Provide transportation, where necessary
- Membership Clerk ratifies electors not on Voter List
- Chief and Council members present to show support
- Running tab of # of ballots cast: to encourage voting and to meet the 25% threshold

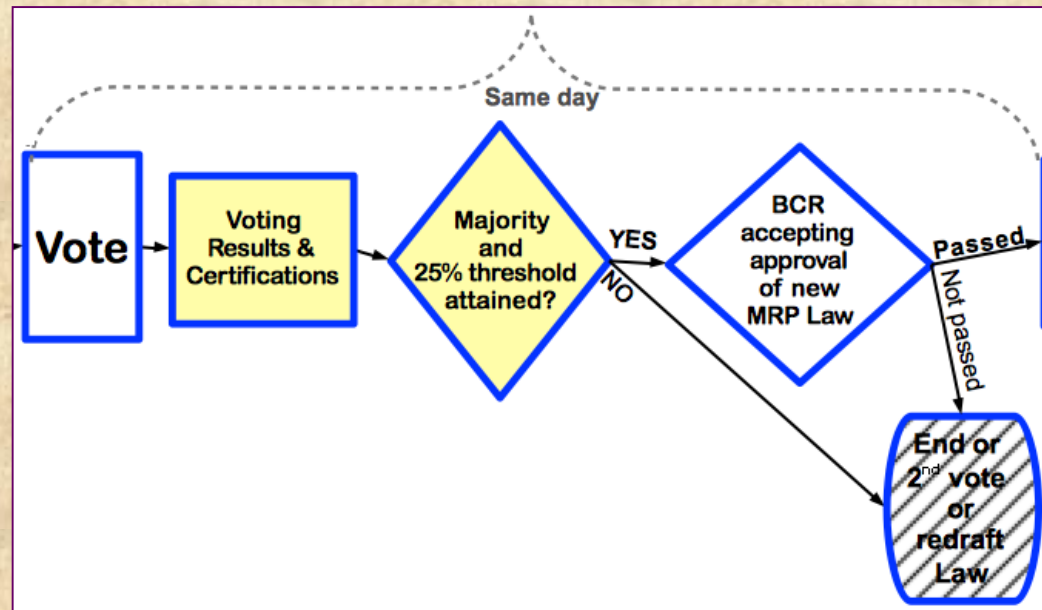
# Ratification Process: Count & Certifications

Night of vote, or next morning:

- EO counts all ballots:

- from all polling stations
- all mailed in ballots
- All electronic ballots, if applicable
- including spoiled ballots

- EO determines if 25% threshold met

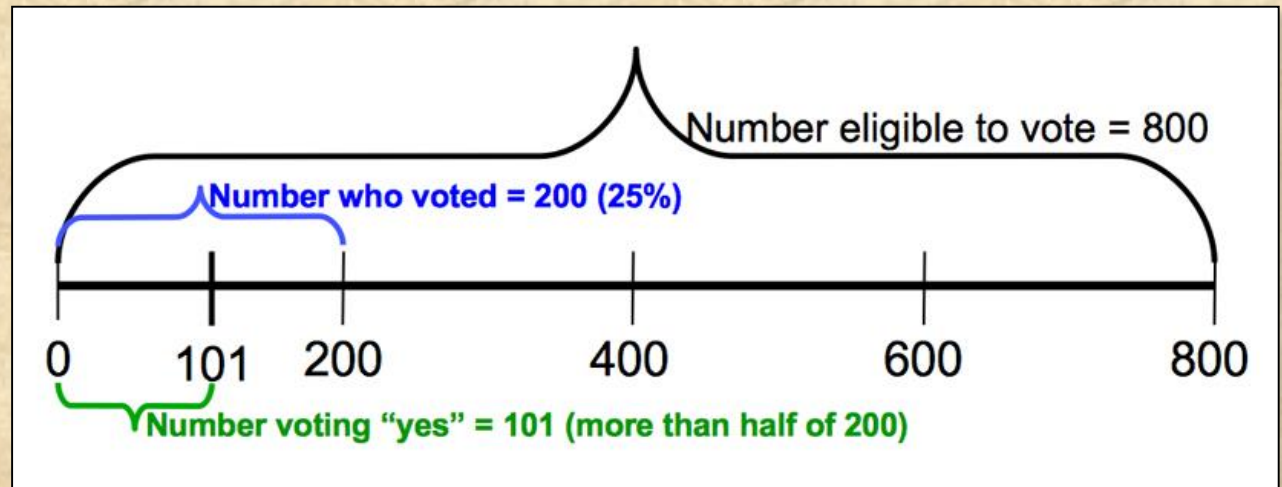


- Documents to be signed:

- Polling Statement -> Chief/Councillor, EO
- Statement of Ratification Results -> Chief/Councillor, EO

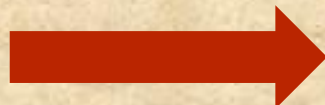
# Ratification Process: Success? YES

- The 25% threshold was met
- Majority: At least 50%+1 “yes” from ballots cast
- Example:



- 800 electors
- 200 ballots cast (which is 25% of 800)
- At least 50% +1 of those said “yes” = at least 101 “yes”

Result



MRP Law has been ratified



# Ratification Process: **Success? NO**

## Failure

- The 25% threshold was met, but...
- ... there was NOT a Majority:  
Less than 50%+1 “yes” from ballots cast
- Example:
  - 800 electors
  - 200 ballots cast (which is 25% of 800)
  - Less than 50% +1 of those said “yes” = less than 101 “yes”

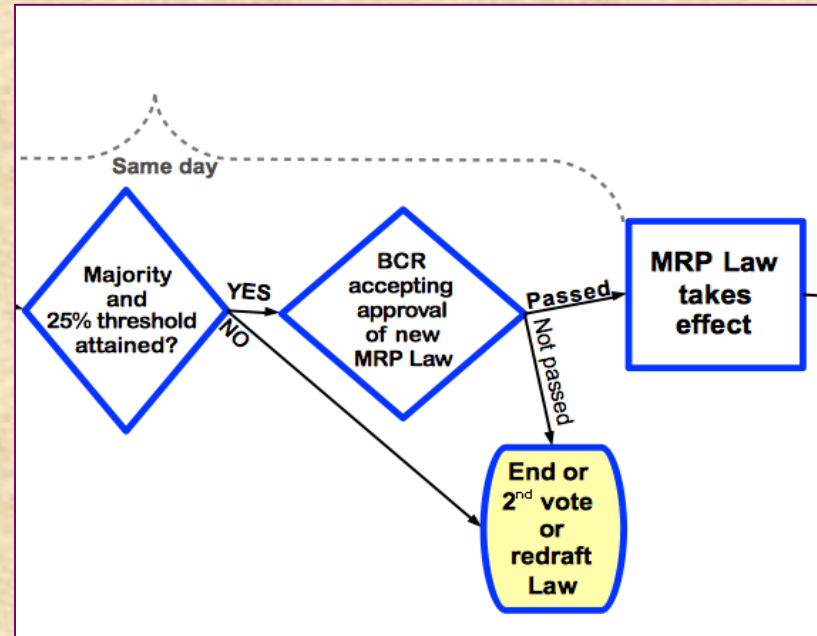
Result



**MRP Law has NOT been ratified**

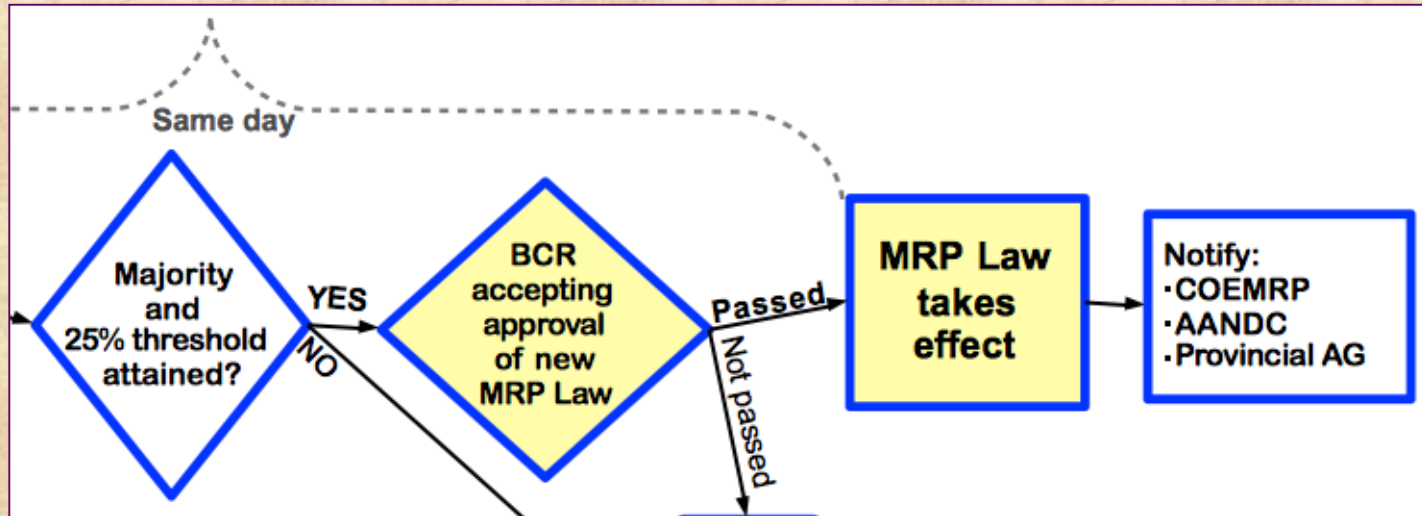
# Ratification Process: Failure

- 25% threshold NOT met
- Majority is irrelevant
- Example:
  - 800 electors
  - 195 ballots cast (which is less than 25% of 800)
  - Number of “yes” or “no” votes is irrelevant



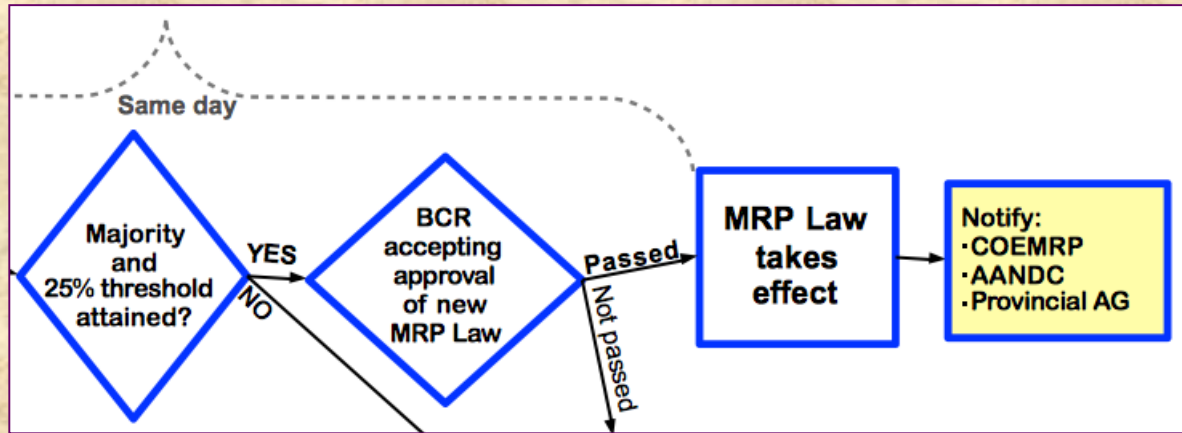
**Result**  **MRP Law has NOT been ratified**

# Ratification Process: Acceptance BCR



- Success = 25% voting threshold met + majority voted to approve the law
- MRP Law signed by:
  - Chief and Quorum of Council
- MRP Law takes effect
  - Immediately, or
  - On pre-assigned date

# Ratification Process: Law in Effect → Notifications



- True copy of the MRP Law sent to:
  - INAC
  - COEMRP
  - Provincial Attorney General
- It may be beneficial to provide a copy to:
  - The local court
  - The INAC Regional Office

# Notification to the Minister

- In order to have a community-specific law listed on the Departmental website it is helpful to Departmental employees to have the following information:
  - The total number of eligible voters
  - Number of voters equal to 25% of the total number of eligible voters
  - Total number of individuals who voted on the law
  - If the 25% voting threshold requirement was met
  - The voting results on the law
- **Note: This is particularly important for Section 10 Bands managing their own membership list**

## Ratification Process:

# Law in Effect → Inform members

- Publish the voting results for members to view
- The approved MRP Law must be available for members to view
- Notify the FN members by any or all of these methods:
  - Notice at Band Office
  - Newsletter
  - Website announcement
  - Email or hard copy letter

# Quiz

- 1) An FN has 600 voters living on reserve and 400 living off reserve. Assuming the threshold was just met, there must be a minimum of \_\_\_\_\_ in favour to pass its own MRP Law, .
- a) 301
  - b) 120
  - c) 250
  - d) 126



The correct answer is: (d)

# Quiz

2) The FN should engage a lawyer who is...



- a) Knowledgeable about family law
- b) Skilled at negotiating with INAC
- c) Reasonably priced
- d) Approved by the AFN

The correct answer is: **(a)**





# Quiz

- 3) If a vote is held and is NOT successful...
- a) The C&C must hold another vote within 30 days
  - b) The Provisional Federal Rules come into effect
  - c) The Provisional Federal Rules remain in effect
  - d) The Provisional Federal Rules cease to apply



The correct answer is:

**(c)**