

REPORT

First Nations Law-Making & Implementation Experience when enacting Matrimonial Real Property Laws under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

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1) Introduction

Arbutus Law Group LLP has been commissioned by the Centre of Excellence for Matrimonial Real Property (“**COEMRP**”) to review the law-making and implementation experiences of those First Nations who have enacted matrimonial real property laws (“**MRP Laws**”) under the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (“**FHRMIRA**”). In particular, the COEMRP asked Arbutus Law Group to interview individuals closely involved in the drafting, ratification and implementation of these matrimonial real property laws, and to draft a report looking at the lessons learned and best practices related to:

- How best to streamline the MRP Law-development process, while ensuring it is specific and personalized to each First Nation’s needs;
- What have been the most effective ways to inform and involve community members in MRP Law development;
- How to best ensure that, after all the hard work of drafting an MRP Law, a First Nation successfully ratifies its MRP Law;
- What policies are required to fulfill the intended matrimonial real property regime, in addition to the MRP Law;
- How does the MRP Law impact the First Nation’s other laws and policies;
- Which processes should a First Nation put in place to fully implement an MRP Law; and
- What are the administrative needs to support the MRP Law.

In order to carry-out the above mandate, we interviewed representatives (internal lawyers, external lawyers, various officers and employees) from the following First Nations who have enacted MRP Laws under FHRMIRA¹:

- Algonquins of Pikwàkanagàn First Nation, Ontario (adopted on April 8, 2014)
- Pictou Landing First Nation, Nova Scotia (December 16, 2014)
- Millbrook First Nation, Nova Scotia (December 1, 2014)
- Bear River First Nation, Nova Scotia (December 16, 2014)
- Paqtnkek Mi’Kmaq Nation, Nova Scotia (December 18, 2014)
- Whitefish River First Nation, Ontario (March 6, 2015)
- Tk’emlúps te Secwépemc, British Columbia (July 30, 2015)
- Sipekne’katik First Nation, Nova Scotia (September 25, 2015)
- Mohawks of Akwesasne, Ontario and Quebec (November 26, 2015)
- Membertou First Nation, Nova Scotia (April 30, 2016)

In this report we do not make particular reference to the above First Nations or the individuals interviewed when we discuss specific experiences or recommendations, in order to protect the

¹ We were not able to communicate with a representative from Salt River First Nation #195, Northwest Territories and Alberta, which adopted an MRP Law on December 6, 2015.

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confidentiality of the information provided. The information derived from the interviews and the review of each community's laws and various forms, brochures and other documents are combined to provide a succinct overview of all of the experiences, best practices and recommendations that can be gleaned from these experiences.

This report has been prepared for those who already have an understanding of the background and content of FHRMIRA. Therefore, there are very few explanations given to the basic concepts, and to the rights and processes created under FHRMIRA. For those who require this information, there are several background documents on FHRMIRA and on the process to create an MRP Law, which are accessible on the COEMRP website (<http://www.coemrp.ca>).

2) Executive Summary

Over the past two and a half years or so, approximately ten First Nations have adopted MRP Laws under FHRMIRA. This, of course, does not include the numerous Aboriginal communities that may have adopted MRP Laws under their Land Codes or self-government agreements. The experiences of these ten First Nations allow us to draw conclusions as to certain best practices for the drafting phase, the work of the committee, consulting with community members, and ensuring a successful turnout for the referendum. One of the clear lessons, for example, was the importance of having a committed and knowledgeable committee whose members are willing to meet for full-day meetings at least once per month and to report back often to Council. It is also important to have a competent lawyer work closely with the committee throughout the process, and for the committee to meet with numerous community groups to ensure all concerns are understood and the community understands and supports the Law. During the referendum, it is important to use all available communication tools to generate interest and get people out to vote – radio, social media, brochures, etc. Council and the committee should encourage people to vote, and go door-to-door or offer to drive people to the polling station. E-voting has also had great success in helping communities meet the 25% threshold, as has aligning the date of the vote with a general Council election.

Given that the MRP Laws are still pretty new, and because of a significant lack of funding in many cases, there has been limited implementation and use of the MRP Laws so far. As a result, those interviewed were only able to give limited feedback and suggestions for best practices beyond the referendum. Nonetheless, there were useful discussions on the need to provide training to staff and to create clear processes on how to administer the law. Other laws and policies also need to be reviewed to ensure proper integration between the communities' related laws. A major impediment to the Law being used is a lack of awareness by community members of the MRP Law and their rights thereunder, underlining the need for educational campaigns, and the distribution of easy-to-understand written materials. Similarly, education and training initiatives are needed for local lawyers, judges and police. Finally, there has been limited experience using dispute resolution mechanisms, as several communities did not have the time required to create a dispute resolution mechanism in their law. However, the limited use so far has been positive, and most communities have the intention to create and use internal dispute resolution mechanism in the future. In most

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interviews, *regional* dispute resolution bodies were discussed as a way to address the very real concern of conflicts of interest for decision-makers in small communities. Proper training for mediators and decision-makers is also an important component of dispute resolution mechanism, given the need to ensure decisions are fair and impartial.

3) Law-Development Process

This portion of the report provides an overview of the experiences reported by the interviewed First Nations with the drafting of their MRP Laws. It aims to determine best practices to streamline the MRP Law-development process, while ensuring that it is specific and personalized to each First Nation's needs.

i. Overview of Experiences

Why embark on this process?

All First Nations interviewed agreed that embarking on the process to develop, ratify and implement an MRP Law is a large undertaking: it requires a lot of work and commitment from the Chief & Council and all others involved. Community members must view the development of an MRP Law as an important initiative if it is to be successfully ratified. The required level of commitment means those involved must have a clear reason for taking on such a project.

The most common reason communities were driven to develop their own MRP law was to avoid the application of the provisional federal rules under the FHRMIRA which came into force in First Nations communities on December 16, 2014. The provisional rules intended to fill the legislative gap for First Nations who did not already have their own MRP Law in place, either under FHRMIRA or a self-government agreement. Under the FHRMIRA, federal rules continue to apply until a First Nation enacts its own law under the Act. Some First Nations felt an urgency to avoid the federal provisional rules during the tenure of the previous Conservative government, as they did not trust that government had the best interests of First Nation members at heart. Though the looming December 16, 2014 deadline felt ominous to these First Nations, it had the positive effect of putting the adoption of an MRP Law onto the list of priorities for the Councils and community members. Given the constant flood of important issues that Councils and staff must deal with, and the corresponding competition for resources, this deadline helped to put the draft MRP law at the top of the pile.

On the other hand, the reality is that this deadline prevented some First Nations from addressing important components they otherwise would have liked to address in the law, particularly the creation of alternative dispute processes (to be discussed further below).

Most First Nations also felt that it was important to address this significant legislative gap in their communities in a way that reflected their particular culture and demographic needs (i.e. whether there was significant home ownership, whether there was a significant number of non-Members in the community, whether there was a long waiting list to rent or own a home etc.). In the same vein,

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many First Nations felt that they needed to exercise and increase their jurisdiction wherever they could, and community members were strongly supportive of this path.

Creation of a Committee:

Makeup of Committee: Each First Nation set-up its committee slightly differently. For example, some included Council members, while others did not. Most committees had a lawyer, and included the heads of related departments (such as housing, justice, social services, etc.). Some First Nations included non-staff members, such as a representative of the RCMP. This helped the committee to understand what was required of the law to make it implementable by law enforcement. Some First Nations spoke of the importance of naming community members who were well-respected and well-known in the community, as this sent a clear signal to the community and to other committee members that the Council took the process seriously, and it should be considered carefully by everyone. Given that the issues addressed in an MRP Law must be highly individualized for each community, it was also important to name members with long histories in the communities as they understand the community's past and how it functions. Some First Nations had a standing Housing Committee or Lands Committee, and these pre-existing committees took on the work to draft the MRP Law.

Regional Committee: One group of First Nations, all members of a larger Nation, felt that the work involved in creating an MRP Law was significant, and it was appropriate to work together through their regional organization to create one draft law that could then be individually adopted by each First Nation. Importantly, this meant that instead of having many individual committees redoing the same work, one committee was doing the work for numerous First Nations. This way, only one person needed to be named from each community, thereby reducing the burden on each First Nation and increasing the chance that the one nominee was highly qualified and committed. The regional committee worked with an external lawyer, who did all drafting, thereby avoiding the need for each individual First Nation's legal counsel to take on timely legal drafting in addition to an already full plate of work. The regional entity also named a committee member who was responsible for coordinating the work of the committee. This was critical to the committee's success, because having to coordinate numerous peoples' schedules proved difficult, and would have been more difficult to organize without a regional coordinator. Those interviewed said that the law incited greater confidence from community members that it was well thought-out and represented the needs and culture of their Nation because it was communally drafted.

Commitment of Committee: Regardless of exactly how the committee was set-up, the First Nations were unanimous on the need for the committee members to be highly committed. As people are busy, weather can be bad, and other priorities can intervene, it is extremely helpful for the committee to set up a schedule of meetings from the beginning, to commit to the schedule, to always start on time, to send reminders for meetings, and to provide funding if members need to travel to attend the meetings.

Work of Committee: Some First Nations found it useful to begin their work with education sessions, where committee members were educated on FHRMIRA, the provisional federal rules, and the

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types of issues that could be addressed in a local MRP law. These sessions were provided either by COEMRP or prepared by the hired legal counsel.

Some First Nations began their work discussing whether the provisional federal rules sufficiently met their Nation's needs, the thinking being that if the provisional rules were sufficient, there was no need to embark on developing their own law.

Most communities discussed the need to clearly define the basic principles on which the law would rest, such as a clear agreement on whether non-members could acquire real property rights. Some committees also clearly set out from the beginning that the MRP Law should be understandable and accessible, thereby avoiding the creation of a law that was overly complex. These over-arching principles played an important guiding role as the committee worked through many details in the law. In order to agree on guiding principles that made sense for the community, it was important for the committee to have a clear sense of the history of the First Nation, how the First Nation operates, and how community members would respond to various options.

Some individuals discussed the sensitive nature of the discussions that led to the drafting of the MRP Laws. For example, the issues addressed in the MRP Laws brought up difficult discussions about who has rights, or about the role of family services in cases where emergency protection orders may be necessary. To get through these difficult discussions, it was important for all committee members to be polite and respectful and to work as a team, always with the initial guiding principles in mind.

Throughout their work, the committee members also had to consider the various other laws, departments and agencies that would be affected by an MRP Law. This was important to ensure that the law was implementable and fit into the structures already set up in the community.

Funding of Committee: Although there currently seems to be more funding available through the COEMRP, most First Nations interviewed received little or no funding for the preparation and ratification of their MRP Laws. This proved to be quite burdensome for some First Nations, whose existing staff was already very busy, but then had to take on the large and important task of coordinating the drafting and ratification of the MRP Law. Some individuals reported spending hundreds of hours on MRP Law development, which was in addition to their paid work.

Some of the funding that was offered by the COEMRP caused problems for the First Nations because of the short time-lines imposed. For example, a call for funding applications went out in September, and the work had to be completed by March 31st. By the time the funding was approved and the committee was formed, there was an extremely short timeframe to complete a very complex law.

Legal Representation:

Having a lawyer experienced in drafting laws, and who understands the legal framework within First Nations and matrimonial real property laws was an important ingredient for successfully drafting and ratifying an MRP Law. Most communities hired such a lawyer from an external law firm. However, at least one community used an internal lawyer to their satisfaction throughout the committee's work, and only used an external lawyer to do a legal review of the document once it was complete.

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The communities who seemed the most satisfied had their lawyer attend all committee meetings, even though this may have resulted in higher legal fees. Attending the committee meetings allowed the lawyer to more fully understand the issues, concerns and complexities of the First Nation, which resulted in a law which better responded to the community's needs and realities. Certain lawyers did not attend community sessions or weren't in the community for election-day, but were available by phone at all times to answer questions that arose. Some other lawyers also attended the community sessions to be able to answer questions in person.

Support of the COEMRP:

Many of the individuals interviewed received training from the COEMRP and/or had various interactions with COEMRP staff during the law-making process. Without exception, the feedback was extremely positive. People talked about the usefulness of the training and how the COEMRP staff was easy to work with and a great source of information.

Some who did not take part in COEMRP trainings found the sessions were offered too late: they felt the community would not have been able to meet the deadline to approve the MRP Law before the application of the federal rules if they had waited for COEMRP training before beginning their work.

Template MRP Law:

Most First Nations used the template prepared by the COEMRP as a starting point for the committee's work. Although the MRP Laws ended up being significantly amended from the template, in order to reflect each community's realities and wishes, the template provided the committee and the lawyer with a useful starting place. Some lawyers said they found it helpful to compare the template to the federal provisional rules as well. Nonetheless, it was important for the committees to not overly rely on templates. Although templates are useful tools to help with drafting and to initiate discussions, each committee needed to develop a law that reflected its culture, traditions, specific circumstances and needs.

Role of Chief & Council:

With constant competing priorities and deadlines, if work was to advance and if it was to be seen as important to community members, it was essential that each First Nation's Chief & Council saw the MRP Law as a priority. Those interviewed said that, if at all possible, the work of the committee should not overlap with a Council election, given that a change of Council could significantly slow down the work.

To keep Council abreast of the committee's work, and to ensure the Council was supportive of the approach, it was useful to provide routine updates during Council meetings. If there were several other items on the Council meeting's agenda, it was important for the person providing the review to be clear and to the point. It was also important to have an entire Council meeting set-aside solely for a review of the MRP Law, once the draft was completed. This was to ensure they had sufficient time to understand and get through the Law.

It is important for the Chief & Council to continue to see the MRP Law as a priority throughout the entire law-development process. Otherwise, it can stall. For example, one First Nation ratified their

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MRP Law through a referendum and has now been waiting for over a year and a half for a Band Council Resolution to accept the approval of the Law.

Timeline:

Each person interviewed discussed the importance of allotting sufficient time to draft an MRP Law. As mentioned above, by the time numerous First Nations became aware of FHRMIRA and the deadline for the application of the provisional federal rules, they were under tight time constraints. Although this helped place the MRP Law at the top of the priority list for Chief & Council, it meant that certain difficult topics ended up being dropped from the law, particularly dispute resolution mechanisms and sometimes wills & estates. Most First Nations felt that allotting one-year from setting up the committee to holding a ratifying referendum was sufficient. During those 12 months, the committee had to meet at least on a monthly basis (normally for full-day meetings), with numerous reports back to Council. As discussed further below, once the draft law was completed, the committees held numerous sessions and carried out significant preparation required for a successful referendum.

Controversial Issues that Arose:

Rights of non-members: Given the long waitlists for band housing that exist in many First Nations, the issue of whether to provide exclusive occupation rights to non-members under the MRP Law was often a difficult conversation for the committee. Some First Nations decided at the outset that their foundational principle was housing was for children first and then adult band members, meaning that the only way a non-member would get exclusive occupation would be if he or she was the primary caregiver for a band member(s), or if she or he got a temporary emergency protection order. This principle could result in long-time and perhaps elderly residents being forced out, but the committees felt that the extremely limited housing made this the best option to ensure that First Nation members could stay on their land. How each First Nation dealt with this issue depended largely on their unique circumstances: for example, whether a large portion of members held Certificates of Possession, whether housing was held communally, whether rent was levied from residents, whether the waitlist for housing was long, how many band members were married to (or in a common-law relationship with) non-members in the community. One interviewee also noted that the band is responsible for providing social assistance payments to residents, regardless of whether they are band members, so this financial factor also weighed into the First Nation's decision on how many rights to offer non-members.

Role of Child Protection Services: Another thorny issue that was raised often was the role of child protection services. Given the long history of the government removing band members from the reserve, First Nations were worried that any application for an emergency protection order would result in child protection services removing their children. There was a fear that a mother, for example, who wanted to protect her children from violence in the home would not trust that she could disclose information about violence to the courts, because the very fact that there was violence could be enough to justify removal of her children – even if the mother was doing her best to remove the perpetrator of this violence. This deep lack of trust in the justice system and in the child welfare system gave some committees serious pause as to whether emergency protection orders would result in further removal of their children, or whether band members would feel safe to share the required information with the court in order to obtain the orders.

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Definition of Common Law relationship: Numerous discussions were held among various committees on the length of cohabitation required for a relationship to be considered “common law”. One year was often regarded as insufficient, considering the important rights and obligations that would be created. Some committees felt two years was sufficient, while other committee members felt that five years was necessary, unless the couple had a child together. As discussed below, this was also a point of much discussion during community consultation sessions.

Dispute resolution mechanism: A lack of time prevented certain committees from creating an internal dispute resolution mechanism. Creating such a mechanism is a big undertaking, and questions such as how conflicts would be avoided, how decision-makers would be trained, how decisions would be made and so on required more thought, time and funding than was available. However, it was something that was of great interest both to the committees and to the community members. This issue is discussed further below.

ii. Best Practices

- ❖ Council should consider including the following on the Committee:
 - A member of Council;
 - Senior staff of the most relevant departments of the First Nation;
 - Well-known and respected community members to ensure the work is seen as important to the community;
 - A lawyer to take on the task of drafting, and perhaps an external lawyer if the in-house lawyer already has a full work-load;
 - Individuals working in law enforcement and other agencies that will be involved in implementing the MRP Law; and
 - Community members who have a long history in the community and who understand the realities and needs of the First Nation.
- ❖ If there is a regional entity that represents many First Nations, creating a regional committee that prepares a communal draft MRP Law can save a lot of resources and can increase community members’ confidence in the law.
- ❖ Given the committee’s large and difficult task of drafting the MRP Law, all committee members must be committed to meeting at least once per month, to work through difficult issues, and to work with Chief & Council to ensure the community members are aware of and approve of the approach taken in the MRP Law.
- ❖ Before drafting begins, the committee members should be properly trained on FHRMIRA, on the history and status of matrimonial real property rights on reserve, and the types of issues that a MRP Law can address.
- ❖ Training sessions and reference documents from the COEMRP are helpful for committee members. COEMRP should attempt to schedule training sessions so they fit within the timeline of First Nations who are being funded.

- ❖ If a committee considers that the provisional federal rules adequately meet their community's needs, and if the community is comfortable having the federal rules apply, Council may consider avoiding the expenditure of the significant resources involved in developing an MRP Law and allow the federal provisional rules to apply.
- ❖ The committee should spend adequate time creating their guiding principles for the MRP Law. These principles will guide committee members through difficult discussions, and clarify how to address complicated issues.
- ❖ The COEMRP should consider setting up their call outs and deadlines for funding applications early enough to provide First Nations adequate time to carry-out their funded work.
- ❖ Having a lawyer experienced in drafting laws and with matrimonial real property issues is important to help the committee carry out its work.
- ❖ Although it requires higher legal fees, it is very helpful to have the lawyer attend all committee meetings in order to speed up the legal drafting and ensure the wishes of the committee are properly reflected in the draft law. Ultimately this is more cost effective for the First Nation.
- ❖ Using the COEMRP template as a starting-point for discussions and drafting is helpful for both the committee and the lawyer.
- ❖ Chief & Council should demonstrate their support for the MRP Law by clearly setting time aside at Council meetings, at least monthly, to review and give feedback on the Law and to adopt the necessary band council resolutions to advance the process.
- ❖ At least one year should be allocated in order to allow the committee to: a) come to a consensus on all the issues that will be addressed by the law; b) properly review the draft with Council; c) consult fully with community members; and d) carry out a referendum.
- ❖ Committee members should be ready to allot sufficient time to discuss more difficult topics, such as the rights allotted to non-member residents, the definition of a common law relationship, and what kind of alternative dispute mechanism could be implemented.

4) Community Involvement in Law-Development

This section of the report reviews the most effective ways to inform and involve community members about the proposed MRP Law– a key step in the creation of a law that will work in a community and be accepted by its members.

i. Overview of Experiences

Attendance:

Community engagement is key to ensuring an MRP Law will be acceptable to the First Nation, and will get the necessary support to be approved in a referendum. Community members' busy

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schedules make it difficult to get people interested enough to come out and attend consultation sessions. Therefore, it is important to properly plan this essential step.

First, many First Nations found it essential to have the Chief attend the community sessions in order to send the message that the Chief & Council consider the issues addressed as significant. It is also important to have several sessions, to give people various opportunities to attend. Most commonly, three or four sessions were held. It was noted that if, on the other hand, there are too many sessions, they could start to lose their impact. If these sessions are planned during winter months, it was common for bad weather to result in cancelled sessions. Therefore, extra time was needed to make ensure sufficient sessions were held.

Many First Nations also found it useful and appropriate to have group-focused consultation sessions. For example, meetings only for youth, elders or women groups allowed each session to be smaller and tailored. The smaller group size also made individuals feel more comfortable and more likely to ask questions and contribute comments. Some First Nations also decided to set up meetings with individual families in the community, which helped to ensure the various family lines in the community understood and were supportive of the draft law.

Some First Nations have a significant portion of members living off-reserve. In order to engage these members, some First Nations held consultation sessions in nearby urban centres where they knew many members resided.

Many people interviewed noted that even though the topics addressed in the MRP Laws are serious, it is important to have fun if you wanted people to come out and engage in the sessions. In this regard, offering a free meal, offering door prizes, or 50/50 draws were a great success.

One community found it was particularly helpful to live-stream the community sessions, or to put them on YouTube so that those off-reserve, or those who could not attend the community sessions, could watch the presentation from home.

Explaining the draft law:

Once the committee successfully managed to get a good audience for their sessions on the draft MRP Law, the next challenge was to explain the proposal so that people comprehended what would change if the law was adopted and how it could impact them and others in the community. Again and again those interviewed repeated that proper, clear communication is essential if the MRP Law is to pass referendum.

One person noted that it worked well to have a complete draft to present, and that a 'blank slate' approach in which you ask for suggestions is too open-ended to get meaningful feedback.

Repetition and consistency was important during the community sessions, so that the same message filtered through the community as to why it is implementing an MRP Law, what issues are at stake, and how they are addressed in the law. This is especially important for complicated issues. Therefore, the First Nations that focused on simple, clear messages repeated in all written and oral correspondence found that community members grasped the issues well.

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It was also important for the committees to take their time and to go through each area of the MRP Law to ensure it was understood. People respond well and retain information told through stories, and so many committees reviewed different possible fact scenarios and explained how the proposed MRP Law would apply in those circumstances. Using possible scenarios helped make the law more understandable to community members. Community members were then able to give useful feed-back on how such a situation should be addressed. It was also helpful for the committee to talk about the history of the community, what problems have come up in the past and why there is a need for the MRP Law. Sometimes these discussions brought up difficult questions or comments that the committee found hard to respond to, and the committee had to be cautious not to veer into giving legal advice, or responding to individual cases. Still, these discussions were key to getting to the heart of the issues and the potential difficulties that could arise.

Documentation:

As mentioned above, the committees found it important to keep the messages in all communications consistent. Brochures and information packets were generally made available at all consultation sessions, at the band offices and were sent out to all community members – on and off-reserve. Community members found brochures with a question/answer format, or with a simple list of main points, easy to understand.

Frequent comments from community sessions:

Although there was a wide range of comments brought up during community sessions, there were certain issues that were raised repeatedly:

- ❖ First, as discussed above, various communities did not have sufficient time to implement their own dispute resolution mechanism, however many community members were not happy with this. They did not feel comfortable with such deeply local and personal issues leaving the community and being decided by Canadian courts.
- ❖ Many community members felt uncomfortable with a cohabitation period of one year as sufficient for couples to be considered “common law” and to benefit from the protections under the MRP Law. Unless there were children involved, community members preferred a period of somewhere between two and seven years.
- ❖ There were issues raised that committee members felt were impossible to address or fix through an MRP Law, such as a deep mistrust of the court or child welfare systems.
- ❖ Some people interviewed noted that there would always be reluctance from community members to fully support a new law when it is being considered. However, most community members did not want more federal rules to apply on reserve, and recognized that a properly drafted MRP Law could be an important tool to protecting rights, and particularly women and children’s rights. Therefore, overall, most community members noted their support for the law.

ii. Best Practices

- ❖ The Chief should attend the community sessions if possible, to send a message that the Chief & Council consider the issues addressed to be significant.
- ❖ Numerous community sessions should be planned to give people various opportunities to attend (3 or 4 sessions is suggested).
- ❖ A time buffer should be built into the consultation schedule in case certain sessions need to be rescheduled due to bad weather.
- ❖ Focused consultation sessions, such as for youth, elders or women, are useful as individuals may feel more comfortable contributing and asking questions.
- ❖ Depending on community dynamics, it may be useful to set up meetings with individual families in the community.
- ❖ If there are a large number of band members in specific urban centres, off-reserve community sessions can be helpful to get the support of off-reserve members.
- ❖ Making the consultation sessions fun is critical to having a high turn-out, such as by offering a free meal, door prizes, or 50/50 draws.
- ❖ Chief & Council should consider live-streaming the community sessions, or putting them on YouTube so that those off-reserve or those who could not attend the community sessions can watch the presentation from home.
- ❖ Repetition and consistency in the communications with community members are critical during the community sessions, and in all written material, so that community members grasp the issues.
- ❖ The committee should not rush their explanation of the MRP Law. It should take each issue and ensure that the community members understand how the law would address such an issue.
- ❖ Reviewing possible fact scenarios and explaining how the proposed MRP Law would apply is useful to ensure the proposed law is understood and to elicit useful feedback on the positive and potentially negative aspects of the approaches provided for in the MRP Law.
- ❖ Brochures and information packets should be made available at all consultation sessions and at the band offices, and should be sent out to all community members – on and off-reserve.
- ❖ Brochures with a question/answer format, or with a simple list of main points, make the main issues easy to understand for members.

5) Ratification Process

In this section of the report, we review how to best ensure that, after all the hard work discussed above, a First Nation successfully ratifies their MRP law. Certain First Nations did their best to draft

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a well-written MRP Law, but then failed because the referendum did not reach the required elector threshold. This was incredibly frustrating for all involved. One First Nation had three referendums before they it sufficient turnout. This underlines the importance of placing sufficient emphasis on the referendum.

i. Overview of Experiences

Funding:

As discussed above, funding is a huge issue for many communities. A referendum requires a lot of human and financial capital, and so it is not surprising that a lack of funding for the referendum-phase made things difficult for many First Nations. Without adequate funding, many First Nations faced insufficient staff, and insufficient training for electoral officers. Some people interviewed said that even finding money to prepare the ballots and send out the information packages was a struggle. Certain committee members noted that the intense work leading up to a referendum without extra resources meant that they essentially had two full-time jobs that spilled over into almost every evening and weekend.

Mail-outs:

Most communities sent out ballots as well as information packages to all off-reserve members. Keeping its list of addresses up-to-date helped First Nations to ensure that as many off-reserve members were reached as possible. It was useful to ask local members to inform the band if their off-reserve family members had changed their addresses. A few communities had difficulties sending return envelopes for ballots to off-reserve members in the United States because you had to physically be in the United States to buy American stamps, meaning someone had to make a last-minute trip across the border. It was recommended that if this was considered further in advance, the committee could find a community member making a trip and ask him or her to bring back stamps.

Voter Turnout:

In order to get 25% of the eligible voters to vote in the referendum, all the First Nations interviewed were clear that it took a lot of work either going directly to the voters, or enticing them to come out to vote. Those who were successful employed many techniques.

First, it was important to have a long voting day to allow those who worked long hours or who had to commute to get to the polling station before it closed or early in the morning before leaving for work or school. Hours of 8am – 8pm seemed to be sufficient. It was also noted that the Council should be on notice that it ought to be ready to adopt a resolution to extend the polling hours, should the electoral officer have felt that the threshold may not be met. This gave the committee time to employ some last-minute efforts to get voters to vote.

It was critical to have all Councilors actively encouraging people to vote, both before the vote and on voting day, either through social media or out in the community. Social media was a key tool used by the committee, to encourage people to vote and to inform them of door prizes offered and free meals available at the polling station. One committee felt the numbers were still low during the

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afternoon of voting day and so ordered in fast food and informed the community on Facebook. This was surprisingly successful in getting people out to vote. Like the consultation sessions, it was important to have a fun, celebratory atmosphere to make people want to come out to the polling station.

In several cases, the committee organized a group of volunteers, including numerous Council members, who were available to drive people to the polling station. People were made aware of this by radio, social media and word-of-mouth.

In some communities, door-to-door voting was also offered. If no one was home when the electoral officer passed by, it was helpful to leave a card with instructions on how to vote. It was also helpful to provide those who went door-to-door with a clear script to follow, to make sure everyone received the same information.

It was noted several times that the date for the vote must be carefully chosen. Wintertime could be difficult because of the high chance of bad weather. Summertime, or just before a festival, pot luck or other special event of the First Nation worked particularly well, because there were better chances that a lot of people were in the community, including a large number of off-reserve members.

Finally, one First Nation chose to hold their referendum on the same day as the general election for Chief & Council. Although there were separate ballots and booths, electors could vote for both in the same place during the same visit. This was extremely successful – the First Nation easily met their threshold without having to employ various other techniques described above.

Electronic Voting:

At least two First Nations interviewed used electronic voting (or e-voting) to great satisfaction. It cost between approximately \$20,000 and \$40,000. This meant that off-reserve members could vote easily from their own computers by providing their band number. It also made it easy to provide door-to-door e-voting with tablets provided by the electoral officer. Tablets could also be used for voting at the polling station itself, and made the tabulation of votes automatic. E-voting was live so the software automatically noted when an eligible voter cast her or his vote so that she or he could not do so a second time, thereby limiting the potential for voter fraud. E-voting was so successful that some First Nations noted that they intended to continue with e-voting for their next general election.

Off-Reserve:

Some First Nations have large off-reserve populations. In these cases in particular, it is essential to find ways to facilitate and encourage voting by off-reserve members. It is common for the addresses that a First Nation has for many off-reserve members to be outdated, so committee members and Council found it useful to encourage residents to communicate with their off-reserve family members and encourage them to update their addresses, as noted above, so they would receive all mail-outs and information on how to vote. Of course, e-voting made it easier for off-reserve members to vote. Otherwise, communities generally sent out forms and ballots that could be filled out and sent back to the electoral officer in a pre-stamped envelope. As mentioned above, if many

off-reserve members come home for an annual festival, then coordinating the vote with the date of the festival was also beneficial.

ii. Best Practices

- ❖ Funding should be secured for the referendum to ensure there is sufficient resources to train the electoral officers, to send proper mail-outs, perhaps hire a consultant to offer e-voting, offer door-to-door voting and provide incentives like free meals and door prizes to increase voter turnout.
- ❖ Ensure the addresses that the First Nation has for its off-reserve members are as up-to-date as possible, by reaching out to family members on-reserve.
- ❖ Ensure voting packages sent to off-reserve members include pre-stamped return envelopes (with American stamps for members in the United States).
- ❖ A long voting day is important, and ideally will be 8am – 8pm. Council should be ready to extend the voting hours if it appears that the 25% voter threshold may not be met.
- ❖ Council members should actively encourage voting before and on the day of the vote, both in the community and on social media.
- ❖ Consider providing door-prizes and free meals at the polling station to encourage voter turnout.
- ❖ Use social media and radio throughout the day to encourage voting.
- ❖ Put together a group of volunteers (including committee members and Council members) to drive people to the polling station, if requested. This could be announced on social media and on the radio.
- ❖ Door-to-door voting should be used to increase voter turnout. Electoral officers should follow a clear script and should leave a card with voting instructions if there is no one home.
- ❖ The best time for the vote is during the summer, or just before or after an important event in the community so that many off-reserve members will likely be in the community.
- ❖ Holding the referendum on the same day as a general council election, if possible, makes it considerably easier to get people out and to meet the 25% threshold.
- ❖ Electronic voting is a great option to facilitate voting from home, door-to-door voting and voting by off-reserve members. It also offers protection against voter-fraud and facilitates the vote counting.

6) Implementation Phase

Below we discuss which processes and financial or administrative supports a First Nation should consider putting in place to fully implement an MRP Law. This section also discusses which types of policies may have to be developed, and what other policies or community laws may have to be

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amended to align with the MRP Law. Unfortunately, the MRP Laws have not been in place for very long in the First Nations interviewed and so there has been very little experience putting most aspects of the Law into practice. As well, a lack of funding has resulted in little training and community education initiatives being put in place. Therefore, most of the information provided in the rest of this report is based on limited experience, or is based on what the First Nations plan or foresee or is based on the author's experiences working to implement laws in First Nation communities.

i. Overview of Experiences

Implementation:

As mentioned, those interviewed said that most aspects of the MRP Laws have not yet been used. For example, no one knew of an exclusive occupation order or emergency protection order issued by a competent court. One community noted that as soon as it was informed of a marital breakdown, it informed the department of vital statistics, who put a hold on the property and informed Indigenous and Northern Affairs Canada. One community also noted that it provided for family mediation, which was used numerous times and was successful in avoiding the need for any court orders.

None of those interviewed had hired any new staff to help implement aspects of the Law. Existing staff had been given the responsibility to ensure the administrative aspects of the Law are carried-out. Most First Nations have received no funding to help with any implementation, training or education initiatives following approval of the MRP Law. However, many First Nations have received numerous calls with questions on the MRP Law, to which staff felt ill-equipped to respond.

Community members will often consult a local lawyer when they are initiating a divorce or separation involving children. They may also talk to local police, the Chief, a Council member, or a member of the First Nation's staff. However, if the person consulted is not properly aware of the MRP Law, which is often the case, then those individuals will not be informed of their rights and the processes in which they can engage.

Funding:

A lack of funding was the most commonly cited reason for a lack of implementation of the MRP Law (followed closely by a lack of time, a lack of awareness of the Law by community members, local lawyers, etc., and a lack of factual scenarios that necessitated using the Law). At the time of its interview, one regional First Nation organization was working on its fifth funding proposal to pay for education initiatives for the MRP Law; all four previous funding proposals had been rejected. Obviously this wastes a lot of staff time, and prevents the Law from being implemented.

Forms:

A significant portion of an MRP Law requires proper administrative processing of forms and documents. For example, various forms and documents must be properly completed and registered in relation to the following:

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- the requirements for spousal consent for the sale, disposal, or encumbrance of the family home,
- a court order relating to the division of matrimonial real property between member spouses or common-law partners,
- the administration of an estate,
- exclusive occupation orders, and
- emergency protection orders.

Given lack of funding, communities often did not have the resources to create their own forms, and so now rely on the forms provided by Indigenous and Northern Affairs Canada and by local courts. Several individuals noted their dissatisfaction with these forms, as being complex or not including important information. There has also been a marked lack of training of staff on which forms to use, and when and how to process them. Only one First Nation was in the process of creating their own forms to respect its MRP Law as well as its internal dispute resolution process, however to save resources it was using an intern to develop the forms. Lack of proper training in the administrative side of the MRP Law was cited as a significant limitation to the MRP Laws being fully used.

Policies:

All First Nations interviewed discussed the need for its other laws and policies to be reviewed and amended to ensure consistency with the MRP Law. In a couple of instances, interviewees noted the need to amend the MRP Law to conform with more recent community laws. The most commonly cited laws and policies that required amendments were:

- housing,
- land,
- property transfer,
- social programs and services,
- residency,
- membership, and
- local court or dispute resolution processes.

Unfortunately, perhaps because of a lack of funding or time or a decreased priority, in many instances these changes have not been reviewed or implemented. Most changes were in relation to definitions (i.e. the definition of a spouse), specific rights of non-members, dispute resolution processes, and administrative processes.

ii. Best Practices

- ❖ The First Nation should review and update all forms and documents required to administer the MRP Law.
- ❖ It should clarify internal procedures and create a guide so that there is a proper process for administering all aspects of the MRP Law.

- ❖ The First Nation should train staff so that employees understand the forms and the proper administrative steps to carry out the procedural aspects of the MRP Law.
- ❖ It should review other community laws and policies to ensure their definitions and other provisions and administrative processes comply with the MRP Law. In particular, the First Nation should review any laws or policies that relate to:
 - housing,
 - land and property rights,
 - social programs and services,
 - residency,
 - membership, and
 - local court or dispute resolution processes.

7) Forms of Dispute Resolution

Below we review which types of dispute resolution mechanisms are being used under local MRP laws and which ones are likely to be successful.

i. Overview of Experiences

Existence of Dispute Resolution Mechanisms:

As noted above, several First Nations unfortunately did not have time during the drafting phase to create an internal dispute resolution process. As a result, the local courts are responsible for making any decision relating to a matrimonial real property dispute or provide mediation support. Some communities did set-up dispute resolution mechanisms but they have not, as of yet, been used for the purposes of the MRP Law. One First Nation, however, created a mediation process, which has been used several times to great success, thus avoiding the need for any court order. This First Nation also runs its own court for dispute resolution, but it has not yet been used for disputes under their MRP Law.

However, even in those communities where there is not yet a dispute resolution process in place, there is great interest on this topic. Several communities intend to create a process and amend their law to provide for that process. The First Nation that successfully used its dispute resolution system (a mix of a mandated mediation process followed by an internal court process), was emphatic that the only way an MRP Law could be successful is with an internal court process, given that provincial courts do not understand the realities and values of First Nations.

Conflicts of Interest:

A chief concern raised by most First Nations was difficulty managing conflicts of interests. Given that the property, family and estate issues dealt with in MRP Laws are so personal, many felt that it would be difficult to have an internal mechanism in small communities where impartiality and fairness could always be ensured. Several times the importance of not having Chief & Council involved in these types of disputes was brought up – as they thought Chief & Council should neither make the initial decision nor hear any appeals.

Regional Dispute Resolution Mechanisms:

In many cases, those interviewed said their First Nation was considering the idea of working together with other communities who were part of the same Indigenous Nation to create a system whereby mediators or decision-makers only heard cases from neighbouring communities. This would act as a way to create increased confidence among community members that the internal process will be impartial and fair. Similarly, there were discussions of having a larger roster of Indigenous lawyers, justices of the peace, trained elders and others from across the larger Nation who could be chosen to sit for each case in a way that would ensure there is no conflict. Even the one First Nation that already had a functioning court and mediation process discussed its plans to create a regional tribunal to ensure the services were available over a larger region, and in a way that would ensure fairness and impartiality. Another First Nation talked about a regional body to hear appeals only.

One First Nation already had a regional dispute mechanism already in place. A pool of trained mediators established. In the event of a dispute, a mediator from another community would hear the case. If the individuals were not satisfied with the mediation, then it would go to a tribunal put together by the regional association of First Nations. Once again, this separation between the decision-maker and the parties was seen as integral to ensuring fairness and to avoid conflicts of interest.

Funding:

As has been discussed repeatedly in this report, a major limiting factor to the creating regional dispute resolution mechanisms is a lack of resources. Resources would be required to create a regional committee to work on defining the exact structure and functioning of such a body. It would also require a lawyer to draft the amendments or to draft a new community law, and then there would be significant work to find and properly train the judges or mediators. Once created, there would also be significant resources required to pay for the judges/mediators' time and to cover costs of travel and to provide administrative support for the tribunal's work. Despite the work and resources required, the concept of these regional bodies is seen to have the potential to significantly increase the extent to which the MRP Laws respond to the needs of community members.

ii. Best Practices

- ❖ Offer local mediation to community members as it is quite valuable to community members and prevents most conflicts from ending up before the courts.
- ❖ Offer both mediation as well as a local court process, as this can be even more beneficial, and will ensure that decisions are made with a full understanding of the First Nation's circumstances and culture.
- ❖ Secure funding to support the process of creating a dispute resolution mechanism as this is essential for most communities given the resources required to create and then implement and run such a mechanism.

- ❖ To avoid conflicts, do not allow Chief & Council to be involved in decisions or appeals under their MRP Law.
- ❖ To further ensure mediators or decision-makers are impartial, particularly for small communities, create a regional dispute resolution body that provides dispute resolution services in First Nations who are part of a larger Nation.
- ❖ Provide proper training to ensure mediators or decision-makers can be fair and impartial in making decisions under the MRP Laws.

8) Mechanisms to Appraise the Value of Property

Below we discuss the results of our review of which types of appraisal mechanisms would operate well and would recognize varied interests.

i. Overview of Experiences

Those interviewed for this report had limited feedback on which types of mechanisms best appraise the value of matrimonial real property on reserve and how to recognize varied interests. It seems that most committees did not give this aspect of the law significant thought during the drafting phase. Similar to the process of off-reserve, most individuals simply hire an appraiser to evaluate the fair market value of any real property at issue during a marital breakdown or when settling an estate.

Of course, the chosen appraiser must understand the realities of on-reserve property given that the prices of real property on-reserve often differ greatly from nearby off-reserve property, due to limits on how such property can be sold or transferred. At least one First Nation interviewed imposes property taxes so their Lands and Taxation Department already maintains a database of current values for all on-reserve property. This amount is then used for any valuation required under their MRP Law. It was also noted that any other valuation system (for example, one which can off-set property value by taking into consideration other circumstances) may be inappropriate. The court already has the discretion to take into consideration other circumstances, such as income levels, when determining alimony or child support payments. It was noted that this is the appropriate place for making those determinations – not at the level of determining the value of the real property for the purposes of the MRP Law.

ii. Best Practices

- ❖ Hire a certified appraiser who understands the market and legal structure of on-reserve property as this is the best way to determine the value of matrimonial real property for the purposes of an MRP Law.
- ❖ Consider whether a First Nation already maintains an up-to-date database of property values for the purpose of imposing property taxes; if so, this is likely a simple and fair method of determining property values.

9) Communicating with Third Parties Involved in Implementing an MRP Law

Here we review various communication strategies that a First Nation may undertake to ensure that all entities responsible for upholding an MRP Law are properly informed and have the necessary tools to implement the law.

i. Overview of Experiences

Above we discussed the need for proper education and training for the internal staff of a First Nation who are required to administer the MRP Law. However, MRP Laws also require local law enforcement, courts, lawyers and others to be similarly well-versed in the rights and processes laid out in an MRP Law.

Law enforcement:

Most communities sent copies of their approved MRP Laws to local police, whether it was the First Nation's local police force, the RCMP or the provincial police force. In one case, the First Nation's own police force developed its own training. Other than that one case, however, it was felt that the police likely did not have the proper awareness of the rights that residents might have under the Law, such as the rights of non-members upon the death of their spouse or a relationship breakdown. They also may not be aware of the types of orders that may be granted under the Law. This could be problematic for a number of reasons: for example, community members will often ask local officers what types of rights they might have in a given context. If the officer is unaware of the rights granted to certain individuals, or the types of emergency or exclusive occupation orders that are available, then those individuals will not be able to avail themselves of these rights.

Courts:

Except for the First Nation whose internal court exercises all powers provided for under their MRP Law, most other First Nations reached out to local courts and to the provincial attorney general to inform them of their MRP Law. Unfortunately, in most cases the First Nations were disappointed with the complete lack of feedback. In a few cases the First Nations offered to provide or discuss training sessions, but they received no response.

It is not surprising that most First Nations noted disappointment that no judge had been appointed in their province, so as to prevent the possibility of an issuance of emergency protection orders. This omission has the effect of rendering a very important part of the MRP Laws – the power to protect families in cases of violence – useless. There was also confusion as to why FHRMIRA was drafted such as to require a designation of a specific judge for this purpose.

Lawyers:

Some communities made an effort to communicate with local lawyers that practise family law so that they would be able to properly advise their clients of the rights laid out in the MRP Law. They also communicated with legal aid clinics. However, a lack of funding resulted in no or inadequate

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follow-up. There were discussions on offering professional development sessions through the law society so that high-quality training on the Laws could be easily available.

Others government agencies:

Other local government agencies, such as regional tribal councils, departments of corrections, and child and family services, were also informed of the MRP Laws. Communities hope to offer more training in the future so that they can work with the staff and clientele of these government agencies to ensure everyone has the knowledge and tools to avail themselves of the rights created under the MRP Law.

ii. Best Practices

- ❖ Notify local courts of the MRP Law and provide training.
- ❖ Put pressure on the Chief Justice of the province in order to designate a judge who can issue emergency protection orders.
- ❖ Make an effort to reach out to local lawyers practising in family law, as well as legal aid clinics, to ensure they are aware of the rights created under the MRP Law.
- ❖ Have the community work with the provincial law society to create a professional development training session on the MRP Law, to increase general awareness and understanding of the MRP Law and to ensure training is easily accessible for family law practitioners.
- ❖ Notify other governmental agencies, such as corrections and child and family services, of the MRP Law, and offer training if possible.

10) **Communicating with Community Members regarding their Rights under the Law**

This final section of the report reviews communication strategies for First Nations to ensure community members understand their rights under the MRP Law, so that they can avail themselves of these rights, should the need arise.

i. Overview of Experiences

Despite having held community consultation sessions and a referendum, several people interviewed see their most significant problem being the lack of awareness of the MRP Law and the rights thereunder. Obviously individuals cannot avail themselves of the protections of the Law if they are not aware of it.

It was lamented that those community members who are aware that the MRP Law exists, too often feel that Council has not followed-up after the Law's adoption Law to ensure its implementation. Community members are not sure where to get information, and when they call the First Nation, there is no one who can properly answer their questions. Some First Nations have the Law easily

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accessible on their website, but others don't have a fully functioning website. Often due to a lack of funding, minimal written material has been developed and distributed, and no communities have implemented education sessions or education campaigns. However, pending having adequate time and funding, several communities have plans to develop brochures and guides, and to offer education sessions. These communities think it will be useful to create different guides that address different circumstances – such as one guide on wills & estates, one on emergency protection orders, and one on the rights and processes to follow in the event of a breakdown of a relationship.

Some interviewees suggested that a full-time staff person is required to provide information on the MRP Law. This staff person would work with community members, other internal staff, and external entities (such as police, courts, law societies, social workers, etc.) to ensure the Law is understood and being followed, develop the written brochures, on-line material and other social media communications required to communicate information about the Law, and to develop radio awareness campaigns. This person could also be the contact person for those who call with questions, because currently most First Nations do not feel comfortable answering questions directly on the Law.

ii. Best Practices

1. Carry out education campaigns, in which information is made available both on-line and in written form (for example, as brochures or guides).
2. Share information through radio and social media as well.
3. Offer education sessions to community members and to community groups who may have a greater interest in the Law.
4. Develop guides on topics that will respond to various circumstances, such as what to do when a spouse passes away, what to do when a relationship breaks-down, and what kinds of protections can be offered in the case of family violence, etc.
5. Hire a staff person who is responsible for all education and training initiatives (such as working with community members, staff, and external entities – such as police, courts, law societies, social workers, etc. – and to develop the written brochures, on-line material and other social media communications, as well as radio awareness campaigns). This person could also be the contact person for people who call with questions, because currently most First Nations do not feel comfortable answering questions directly on the Law.

11) Summary of Best Practices and Recommendations

Law Development Process:

1. Council should consider including the following on the Committee:
 - A member of Council;
 - Senior staff of the most relevant departments of the First Nation;

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- Well-known and respected community members to ensure the work is seen as important to the community;
 - A lawyer to take on the task of drafting, and perhaps an external lawyer if the in-house lawyer already has a full work-load;
 - Individuals working in law enforcement and other agencies that will be involved in implementing the MRP Law; and
 - Community members who have a long history in the community and who understand the realities and needs of the First Nation.
2. If there is a regional entity that represents many First Nations, creating a regional committee that prepares a communal draft MRP Law can save a lot of resources and can increase community members' confidence in the law.
 3. Given the committee's large and difficult task of drafting the MRP Law, all committee members must be committed to meeting at least once per month, to work through difficult issues, and to work with Chief & Council to ensure the community members are aware of and approve of the approach taken in the MRP Law.
 4. Before drafting begins, the committee members should be properly trained on FHRMIRA, on the history and status of matrimonial real property rights on reserve, and the types of issues that a MRP Law can address.
 5. Training sessions and reference documents from the COEMRP are helpful for committee members. COEMRP should attempt to schedule training sessions so they fit within the timeline of First Nations who are being funded.
 6. If a committee considers that the provisional federal rules adequately meet their community's needs, and if the community is comfortable having the federal rules apply, Council may consider avoiding the expenditure of the significant resources involved in developing an MRP Law and allow the federal provisional rules to apply.
 7. The committee should spend adequate time creating their guiding principles for the MRP Law. These principles will guide committee members through difficult discussions, and clarify how to address complicated issues.
 8. The COEMRP should consider setting up their call outs and deadlines for funding applications early enough to provide First Nations adequate time to carry-out their funded work.
 9. Having a lawyer experienced in drafting laws and with matrimonial real property issues is important to help the committee carry out its work.
 10. Although it requires higher legal fees, it is very helpful to have the lawyer attend all committee meeting in order to speed up the legal drafting and ensure the wishes of the committee are properly reflected in the draft law.

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11. Using the COEMRP template as a starting-point for discussions and drafting is helpful for both the committee and the lawyer.
12. Chief & Council should demonstrate their support for the MRP Law by clearly setting time aside at Council meetings, at least monthly, to review and give feedback on the Law and to adopt the necessary band council resolutions to advance the process.
13. At least one year should be allocated in order to allow the committee to: come to a consensus on all the issues that will be addressed by the law; properly review the draft with Council; consult fully with community members; and carry out a referendum.
14. Committee members should be ready to allot sufficient time to discuss more difficult topics, such as the rights allotted to non-member residents, the definition of a common law relationship, and what kind of alternative dispute mechanism could be implemented.

Community Involvement in Law-Development:

15. The Chief should attend the community sessions if possible, to send a message that the Chief & Council consider the issues addressed to be significant.
16. Numerous community sessions should be planned to give people various opportunities to attend (3 or 4 sessions is suggested).
17. A time buffer should be built into the consultation schedule in case certain sessions need to be rescheduled due to bad weather.
18. Focused consultation sessions, such as for youth, elders or women, are useful as individuals may feel more comfortable contributing and asking questions.
19. Depending on community dynamics, it may be useful to set up meetings with individual families in the community.
20. If there are a large number of band members in specific urban centres, off-reserve community sessions can be helpful to get the support of off-reserve members.
21. Making the consultation sessions fun is critical to having a high turn-out, such as by offering a free meal, door prizes, or 50/50 draws.
22. Chief & Council should consider live-streaming the community sessions, or putting them on YouTube so that those off-reserve or those who could not attend the community sessions can watch the presentation from home.
23. Repetition and consistency in the communications with community members are critical during the community sessions, and in all written material, so that community members grasp the issues.
24. The committee should not rush their explanation of the MRP Law. It should take each issue and ensure that the community members understand how the law would address such an issue.

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25. Reviewing possible fact scenarios and explaining how the proposed MRP Law would apply is useful to ensure the proposed law is understood and to elicit useful feedback on the positive and potentially negative aspects of the approaches provided for in the MRP Law.
26. Brochures and information packets should be made available at all consultation sessions and at the band offices, and should be sent out to all community members – on and off-reserve.
27. Brochures with a question/answer format, or with a simple list of main points, make the main issues easy to understand for members.

Ratification:

28. Funding should be secured for the referendum to ensure there is sufficient resources to train the electoral officers, to send proper mail-outs, perhaps hire a consultant to offer e-voting, offer door-to-door voting and provide incentives like free meals and door prizes to increase voter turnout.
29. Ensure the addresses that the First Nation has for its off-reserve members are as up-to-date as possible, by reaching out to family members on-reserve.
30. Ensure voting packages sent to off-reserve members include pre-stamped return envelopes (with American stamps for members in the United States).
31. A long voting day is important, and ideally will be 8am – 8pm. Council should be ready to extend the voting hours if it appears that the 25% voter threshold may not be met.
32. Council members should actively encourage voting before and on the day of the vote, both in the community and on social media.
33. Consider providing door-prizes and free meals at the polling station to encourage voter turnout.
34. Use social media and radio throughout the day to encourage voting.
35. Put together a group of volunteers (including committee members and Council members) to drive people to the polling station, if requested. This could be announced on social media and on the radio.
36. Door-to-door voting should be used to increase voter turnout. Electoral officers should follow a clear script and should leave a card with voting instructions if there is no one home.
37. The best time for the vote is during the summer, or just before or after an important event in the community so that many off-reserve members will likely be in the community.
38. Holding the referendum on the same day as a general council election, if possible, makes it considerably easier to get people out and to meet the 25% threshold.
39. Electronic voting is a great option to facilitate voting from home, door-to-door voting and voting by off-reserve members. It also offers protection against voter-fraud and facilitates the vote counting.

Implementation:

40. The First Nation should review and update all forms and documents required to administer the MRP Law.
41. It should clarify internal procedures and create a guide so that there is a proper process for administering all aspects of the MRP Law.
42. The First Nation should train staff so that employees understand the forms and the proper administrative steps to carry out the procedural aspects of the MRP Law.
43. It should review other community laws and policies to ensure their definitions and other provisions and administrative processes comply with the MRP Law. In particular, the First Nation should review any laws or policies that relate to:
 - housing,
 - land and property rights,
 - social programs and services,
 - residency,
 - membership, and
 - local court or dispute resolution processes.

Dispute Resolution Mechanisms:

44. Offer local mediation to community members as it is quite valuable to community members and prevents most conflicts from ending up before the courts.
45. Offer both mediation as well as a local court process, as this can be even more beneficial, and will ensure that decisions are made with a full understanding of the First Nation's circumstances and culture.
46. Secure funding to support the process of creating a dispute resolution mechanism as this is essential for most communities given the resources required to create and then implement and run such a mechanism.
47. To avoid conflicts, do not allow Chief & Council to be involved in decisions or appeals under their MRP Law.
48. To further ensure mediators or decision-makers are impartial, particularly for small communities, create a regional dispute resolution body that provides dispute resolution services in First Nations who are part of a larger Nation.
49. Provide proper training to ensure mediators or decision-makers can be fair and impartial in making decisions under the MRP Laws.

Mechanisms to Appraise the Value of Real Property:

50. Hire a certified appraiser who understands the market and legal structure of on-reserve property as this is the best way to determine the value of matrimonial real property for the purposes of an MRP Law.

51. Consider whether a First Nation already maintains an up-to-date database of property values for the purpose of imposing property taxes; if so, this is likely a simple and fair method of determining property values.

Communicating with Third Parties Involved in Implementing an MRP Law:

52. Notify local courts of the MRP Law and provide training.
53. Put pressure on the Chief Justice of the province in order to designate a judge who can issue emergency protection orders.
54. Make an effort to reach out to local lawyers practicing in family law, as well as legal aid clinics, to ensure they are aware of the rights created under the MRP Law.
55. Have the community work with the provincial law society to create a professional development training session on the MRP Law, to increase general awareness and understanding of the MRP Law and to ensure training is easily accessible for family law practitioners.
56. Notify other governmental agencies, such as corrections and child and family services, of the MRP Law, and offer training if possible.

Communicating with Community Members regarding their Rights under the Law

57. Carry out education campaigns, in which information is made available both on-line and in written form (for example, as brochures or guides).
58. Share information through radio and social media as well.
59. Offer education sessions to community members and to community groups who may have a greater interest in the Law.
60. Develop guides on topics that will respond to various circumstances, such as what to do when a spouse passes away, what to do when a relationship breaks-down, and what kinds of protections can be offered in the case of family violence, etc.
61. Hire a staff person who is responsible for all education and training initiatives (such as working with community members, staff, and external entities – such as police, courts, law societies, social workers, etc. – and to develop the written brochures, on-line material and other social media communications, as well as radio awareness campaigns). This person could also be the contact person for people who call with questions, because currently most First Nations do not feel comfortable answering questions directly on the Law.

12) Conclusion

After speaking with numerous First Nations for the purposes of this report, and considering the substantial work already completed by the COEMRP, it is clear that most First Nations have a sense of what is required to develop a law, properly engage community members, and hold successful

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referendums. For those cases where capacity is lacking in the law-development process, there are numerous resources and support staff available through the COEMRP.

Where capacity and support are reduced is in relation to implementation, training, education and enforcement. Given the scope of this report, which was to speak with First Nations over a four-month period to understand their experiences and to glean best practices from these experiences, it was unable to address all that is required to properly implement an MRP Law. Indeed, the scope of issues canvassed in this report is quite vast, and the level of review that could be carried out for each issue was limited by time. Each section of this report, particularly sections 6 (implementation), 7 (dispute resolution mechanisms), 9 (communicating with 3rd parties) and 10 (communicating with community members), could be the subject of more in-depth study. Further study could explore possible options or solutions for First Nations to address the issues discussed during the various interviews. From this forward-looking perspective, the final section of this report suggests various areas for further research by the COEMRP:

- ❖ It would be beneficial to carry out a more detailed review of the various forms used under the MRP Laws, including how to make them user-friendly for community members and staff, and how to best process them. This would support the First Nation's staff responsible for administering the MRP Law.
- ❖ There could be further study of the concept of creating regional dispute resolution bodies made up of communities of larger Indigenous Nations. This could include a step-by-step overview of how such bodies could be created, the issues that would likely come up, what kind of training and prerequisites would be required for the mediators or decision-makers, the scope of their decision-making authority, etc.
- ❖ Also in relation to dispute resolution mechanisms, creating a training program for mediators and decision-makers would likely be enormously valuable for First Nations, as proper training will be a key component to these dispute resolutions bodies functioning properly.
- ❖ It could also be beneficial to First Nations if the COEMRP prepared template brochures and guides designed for community members that could be easily individualized for each MRP Law and each community.
- ❖ Similarly, a model training session for lawyers and judges on FHRMIRA and the basic content of most MRP Laws would allow provincial law societies and judicial benches to more easily offer training. Presently, at least the Manitoba Law Society offers an on-line PowerPoint presentation that was prepared by INAC. However, a video component would have made the training more understandable and easy to follow.
- ❖ Finally, the COEMRP could consider how it could lobby the judiciary of each province to designate a judge under FHRMIRA.

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This review of First Nations' experiences developing and implementing MRP Laws demonstrated successes and lessons learned in relation to the process – both for the First Nations involved as well as the COEMRP. We trust this will be of assistance as the COEMRP continues to develop resources to support First Nations.