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# MATRIMONIAL REAL PROPERTY DISPUTE RESOLUTION MODELS – DESIGNING A DISPUTE RESOLUTION MECHANISM

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CENTRE OF EXCELLENCE FOR  
MATRIMONIAL REAL PROPERTY

2019

# TRAINING OVERVIEW

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THIS TRAINING WILL ASSIST IN:

- ❖ Developing a dispute resolution mechanism for your First Nation.
- ❖ Using exercises to walk through questions on the use, customization and implementation of the dispute resolution mechanism.



# TRAINING MATERIALS

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## THIS TRAINING WILL USE:

- On-Reserve Matrimonial Real Property Dispute Resolution Models.
- MRP Dispute Resolution Workbook.
- On-Reserve Matrimonial Real Property Dispute Resolution Models: Training Exercises.
- Your First Nation's Matrimonial Real Property Law or the Family Homes on Reserve and Matrimonial Interests or Rights Act (FHRMIRA) and Provisional Federal Rules (if applicable).

# TRAINING FORMAT

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THIS TRAINING WILL USE

- Individual and group exercises.
- Questions that promote discussion and consideration.

THIS TRAINING WILL TAKE APPROXIMATELY 5 HOURS TO COMPLETE.

# EXERCISE #1

## OVERVIEW

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### PLANNING AND DEVELOPMENT:

#### Objective:

Work through questions to assist in planning, developing, and approving the dispute resolution mechanism.

#### Process:

Answer individually or as a group if from the same First Nation.

#### Time:

1 hour

#### Hand-Out:

Exercise #1

# EXERCISE #1

## QUESTIONS

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1. Who will be responsible for developing the dispute resolution mechanism for your First Nation? Who else may need to be involved? What will be their responsibilities?
2. What process will be used to develop the dispute resolution mechanism? Will it be the same process used to develop your First Nation's matrimonial real property law (if applicable)? Or is it a different process already established by the First Nation for how to develop policies and laws?

# EXERCISE #1

## QUESTIONS

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3. What steps are required to develop the dispute resolution mechanism (i.e.: Committee responsible for drafting the policy, presenting the policy to Council and the members, approving the policy)?
4. How long will the process take to develop the dispute resolution mechanism?
5. How will the dispute resolution mechanism be approved
6. Are there any other factors to consider in the planning and development process? If so, please explain.

# EXERCISE #2

## OVERVIEW

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### STRUCTURE

#### Objective:

Work through questions to determine the structure of the dispute resolution mechanism.

#### Process:

Answer individually or as a group if from the same First Nation.

#### Time:

1 hour 30 minutes

#### Hand-Out:

Exercise #2



# EXERCISE #2

## QUESTIONS

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1. What does your First Nation's matrimonial real property law say about the dispute resolution mechanism that will be used to resolve disputes under that law (if applicable)? Does it specifically set out what the dispute resolution mechanism will look like? Or does it state generally that the First Nation will develop the dispute resolution mechanism?
2. Does your First Nation have an existing dispute resolution mechanism that it uses to resolve other types of disputes that arise in the First Nation (i.e.: Elders Council, Grievance Committee, court system, etc.)? If so, please explain what the process is and the types of disputes it resolves.

# EXERCISE #2

## QUESTIONS

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3. If your First Nation has an existing dispute resolution mechanism that it uses to resolve other types of disputes that arise in the First Nation, could that dispute resolution mechanism be used to resolve disputes under your matrimonial real property law (if applicable)? If yes, what changes may be required to do so? If no, why not
4. Are there any foreseeable challenges that your First Nation may encounter in developing its own dispute resolution mechanism (i.e.: it has a very small population)? If so, what are the challenges? How might the challenges be addressed in designing the structure (i.e.: working with other First Nations to design and deliver dispute resolution services)?

# EXERCISE #2

## QUESTIONS

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5. Would the three main stages process set out in the Dispute Resolution Model work for your First Nation to resolve matrimonial real property disputes? Yes, no, or not sure. Please explain your response.
6. What changes may be required for your First Nation to use Stage One: Circle Process?
  - No changes required, use as is.
  - Some changes required.
  - Would not use this stage.

**If you checked 'Some changes required,' please explain what changes would be required. If you checked 'Would not use this stage,' please explain why not.**

# EXERCISE #2

## QUESTIONS

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7. What changes may be required for your First Nation to use Stage Two: Mediation Process?
- No changes required, use as is.
  - Some changes required.
  - Would not use this stage.

**If you checked 'Some changes required,' please explain what changes would be required. If you checked 'Would not use this stage,' please explain why not.**

# EXERCISE #2

## QUESTIONS

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8. What changes may be required for your First Nation to use Stage Three: Hearing Process?
- No changes required, use as is.
  - Some changes required.
  - Would not use this stage.

**If you checked 'Some changes required,' please explain what changes would be required. If you checked 'Would not use this stage,' please explain why.**

# EXERCISE #2

## QUESTIONS

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9. If your First Nation would use Stage Three: Hearing Process, are any changes required in section 41 that sets out the types of decisions that the Hearing Panel can make? If so, what changes? Are these types of decisions consistent with what is in your First Nation's matrimonial real property law?
  
10. If your First Nation would not include Stage Three: Hearing Process, who would make the types of decisions set out in section 41 (i.e.: determining what the matrimonial real property is and its value, determining occupancy, awarding costs, etc.)?

# EXERCISE #2

## QUESTIONS

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11. Would your First Nation develop any additional stages? If so, please explain what they would be.
12. Does your First Nation want decisions of the Hearing Panel (if applicable) to be final and not appealed? Or would decisions be appealed to a court of competent jurisdiction?
13. Does your First Nation want decisions of the Hearing Panel (if applicable) to not be subject to judicial review? Or would decisions be subject to judicial review?

# EXERCISE #2

## QUESTIONS

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14. How will your First Nation customize the dispute resolution model structure to make it reflect your customs, traditions and laws?
  
15. Are there other factors to consider in developing the structure for your First Nation's dispute resolution mechanism? If so, please explain.



# EXERCISE #3

## OVERVIEW

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### USING THE SERVICES

#### Objective:

Work through questions to assist in determining the process and requirements for using the dispute resolution mechanism.

#### Process:

Answer individually or as a group if from the same First Nation.

#### Time:

30 minutes

#### Hand-Out:

Exercise #3

# EXERCISE #3

## QUESTIONS

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1. The model requires that a person submit a written application to the Dispute Resolution Tribunal to use its services. Will this work for your First Nation? If not, what changes may be required?
2. The model does not include any set timeframes for applying to use the services, reviewing application requests, or scheduling of services. Please list any timeframes that your First Nation may want to include.

# EXERCISE #3

## QUESTIONS

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3. The model includes guiding principles that the Dispute Resolution Tribunal will follow. Please list any changes to these guiding principles that your First Nation may want to include.
4. The model includes ground rules and procedures that will be followed at the start of the dispute resolution process. Please list any changes to these ground rules and procedures that your First Nation may want to include.
5. Are there any other factors to consider in the process for requesting services and the format of the dispute resolution mechanism? If so, please explain.

# EXERCISE #3

## QUESTIONS

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6. The model allows for representatives, support persons, witnesses, Council, and interested persons or interveners to attend the dispute resolution services if they fulfill the necessary requirements. Will these requirements work for your First Nation? If not, please list any changes that your First Nation requires.
7. If applicable to your First Nation, the Customary and Traditional Model allows for directly affected persons to apply to and participate in the dispute resolution process. Will the process allowing for directly affected persons to participate work for your First Nation? If not, please list any changes that your First Nation requires.

# EXERCISE #3

## QUESTIONS

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8. Are there any other factors to consider in the process and requirements for people to use and appear before the dispute resolution mechanism? If so, please explain.

# EXERCISE #4

## OVERVIEW

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### FINANCIAL RESOURCES

#### Objective:

Work through questions to assist in determining what financial resources are available and will be required to develop, use and implement the dispute resolution mechanism.

#### Process:

Answer individually or as a group if from the same First Nation, or as a large group exercise.

#### Time:

45 minutes

#### Hand-Out:

Exercise #4

# EXERCISE #4

## QUESTIONS

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1. What financial resources does your First Nation have to allocate towards a dispute resolution mechanism?
2. How much will it cost to develop the dispute resolution mechanism?
3. How much will it cost to maintain the dispute resolution mechanism each year?

# EXERCISE #4

## QUESTIONS

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4. How will your First Nation fund the dispute resolution mechanism?
  - a. Will it apply for funding? If so, from where?
  - b. Will your First Nation pay for it? If so, from what budget?
  - c. Will people be charged a fee to use it? If so how much?
  - d. If people are charged a fee, will they have the resources to pay for it?



# EXERCISE #4

## QUESTIONS

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5. What start up costs might be required? How much might they cost?
  - a. Costs to develop the dispute resolution mechanism policy?
  - b. Legal costs to review the dispute resolution mechanism policy?
  - c. Costs to approve the dispute resolution mechanism policy?
  - d. Development costs (i.e.: infrastructure, training, educational resources, other costs)?

# EXERCISE #4

## QUESTIONS

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6. Will the Dispute Resolution Tribunal members be paid or volunteers? If they are paid, how much?
7. Are there other financial considerations that need to be taken into account? If so, please explain.

# EXERCISE #5

## QUESTIONS

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### HUMAN RESOURCES

#### Objective:

Work through questions to assist in determining what human resources are available and will be required to develop, use and implement the dispute resolution mechanism.

#### Process:

Answer individually or as a group if from the same First Nation, or as a large group exercise.

#### Time:

45 minutes

#### Hand-Out:

Exercise #5

# EXERCISE #5

## QUESTIONS

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1. Do you foresee any human resource challenges that your First Nation may have in developing and offering a dispute resolution mechanism (i.e.: your First Nation has a small population and may not have people that would be interested in being a Dispute Resolution Tribunal member)? If so, how can these challenges be addressed?
2. Does your First Nation have members that would be interested in being a Dispute Resolution Tribunal member?

# EXERCISE #5

## QUESTIONS

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3. What challenges may be encountered in recruiting and keeping Dispute Resolution Tribunal members?
4. Will the Dispute Resolution Tribunal members be paid or volunteers? If they are volunteers, will this cause any challenges to recruit and keep them?
5. Will the Dispute Resolution Tribunal members be full-time, part-time, or as needed?

# EXERCISE #5

## QUESTIONS

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6. Does the definition of conflict of interest on page 8 of the Dispute Resolution Model address the potential types of conflict of interest that might arise in your First Nation in using the dispute resolution mechanism? If not, what might need to be changed or included?
  
7. The model states that the Dispute Resolution Tribunal will have a roster of at least seven Tribunal members and strive to have a balance between genders and will strive to have on-reserve and off-reserve members. Will this proposed composition work for your First Nation? Why or why not? What will your First Nation need to change?

# EXERCISE #5

## QUESTIONS

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8. The model sets out the qualifications that a person must have to be a Dispute Resolution Tribunal member. Please list any other qualifications that your First Nation would like to include.
  
9. The model states that the selection process for members of the Dispute Resolution Tribunal will be by an application process and overseen by the Council. Will this work for your First Nation? Why or why not? If not, what will your First Nation need to change?
  
10. Are there other human resource considerations that need to be taken into account? If so, please explain.

# EXERCISE #6

## OVERVIEW

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### CAPACITY AND TRAINING

#### Objective:

Work through questions to assist in determining what capacity and training requirements are necessary to develop, use and implement the dispute resolution mechanism.

#### Process:

Answer as a large group exercise.

#### Time:

45 minutes

#### Hand-Out:

Exercise #6



# EXERCISE #6

## QUESTIONS

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1. What initial training will the Dispute Resolution Tribunal members require (i.e.: structure and process, the First Nation's matrimonial real property law (if applicable), decision making and writing, ceremonial and traditional, etc.)?
2. What ongoing training will be required for the Dispute Resolution Tribunal members?
3. How often will training be required?
4. Who would provide the training?

# EXERCISE #6

## QUESTIONS

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5. What training and education will be required for the First Nation and members to understand and use the dispute resolution mechanism?
6. How will the services of the Dispute Resolution Tribunal be promoted and communicated to people?
7. Is there other capacity and training considerations that need to be taken into account? If so, please explain.