



MATRIMONIAL REAL PROPERTY DISPUTE RESOLUTION MODELS – OVERVIEW

CENTRE OF EXCELLENCE FOR
MATRIMONIAL REAL PROPERTY

2019

TRAINING OVERVIEW



THIS TRAINING WILL COVER:

- ❖ Why the Matrimonial Real Property Dispute Resolution Models were developed.
- ❖ Key sections of the Matrimonial Real Property Dispute Resolution Models.



WHY THE MODELS WERE DEVELOPED

MRP DISPUTE RESOLUTION MODELS DEVELOPED TO:

- Assist First Nations in developing dispute resolution mechanisms either in accordance with their Matrimonial Real Property law or under the *Family Homes on Reserve and Matrimonial Interests or Rights Act* (FHRMIRA) and the Provisional Federal Rules.
- Alternative options to family court proceedings.
- Models can be modified and adapted to reflect the customs, values and laws of the First Nation.



TWO MODELS

- On-Reserve Matrimonial Real Property Dispute Resolution Model (For Use Where Real Property is Held in Accordance with the *Indian Act* or a Land Code).
 - For use where First Nations have certificates of possession or other formal ways of holding real property.
- On-Reserve Matrimonial Real Property Dispute Resolution Model (For Use Where Real Property is Held in Accordance with Customary or Traditional Land Holdings).
 - For use where First Nations have customary or traditional land holdings only.

WORKBOOKS

PURPOSE:

To accompany the two models to aid First Nations in developing dispute resolution mechanisms.

- Hands-on workbooks
- Presents the models section by section
- Raises policy issues and questions
- Checkbox to keep proposed wording
- Space to change wording
- Space to explain reasons for changes in wording
- Space to develop additional sections





USING THE MODELS AND WORKBOOKS

IMPORTANT TO NOTE:

- Developed for convenience only.
- Not intended as legal advice and are not to be relied on as legal advice.
- First Nations should contact a lawyer regarding drafting their dispute resolution mechanism and any questions.

MODELS — MAIN CONTENT



BOTH MODELS INCLUDE:

- Preamble
- Definitions and Interpretation
- Purpose and Mandate
- Dispute Resolution Process
- Requesting Services and Format
- Representatives, Witnesses and Others
- Tribunal Membership and Administration
- Approval, Amendments, Coming Into Force



PREAMBLE

PURPOSE:

Makes general statements of principle and are not binding statements of law.

EXAMPLES OF PREAMBLE WORDING:

- WHEREAS we, the First Nation, enacted our matrimonial real property law on January 1, 2019 which is a law centered in our culture, traditions and practices that govern how on-reserve matrimonial real property issues on separation or survivorship will be resolved.
- WHEREAS, we, the First Nation, require issues that arise on-reserve concerning matrimonial real property are resolved in accordance with our matrimonial real property law through a dispute resolution process that is fair, transparent, accessible, and respectful of our culture, traditions and practices.



DEFINITIONS & INTERPRETATION

PURPOSE:

Explains terms used and how the model will be interpreted.

NOTE:

The two models have slight differences in definitions as some definitions apply to one model and not the other.

BENEFITS OF DEFINITIONS AND INTERPRETATION WORDING:

- Avoids confusion in understanding what a term means or how the model is interpreted.
- Ensures consistency in terms used throughout the models.



DEFINITIONS & INTERPRETATION

EXAMPLES OF DEFINITIONS WORDING:

- “**customary or traditional land holdings**” means a land interest granted to a member in accordance with a customary or traditional practice of the First Nation.*
- “**certificate of possession**” means a permanent land interest granted to a member in accordance with the [*Indian Act* or Land Code, whichever is applicable] and “**certificate of entitlement**” has the same meaning.*
- “**mediation process**” is a stage in the dispute resolution process that is a voluntary facilitated process where the Dispute Resolution Tribunal assists the parties to resolve the dispute.

* Definition is not applicable to both models.



DEFINITIONS & INTERPRETATION

EXAMPLES OF INTERPRETATION WORDING:

- Unless otherwise provided in this Policy, the terms used in this Policy have the same meaning as defined in the matrimonial real property law. (s.2)
- In the event of an inconsistency or conflict between this Policy and the matrimonial real property law, the matrimonial real property law will prevail to the extent of the inconsistency or conflict. (s.7)



PURPOSE & MANDATE

PURPOSE:

Establishes a dispute resolution process and explains its mandate, jurisdiction, procedural powers.

EXAMPLE OF PURPOSE WORDING:

- This Dispute Resolution Policy establishes the dispute resolution process that will be used to assist in resolving on-reserve matrimonial real property issues on separation or survivorship within the First Nation in accordance with the matrimonial real property law. (s.10)



PURPOSE & MANDATE

EXAMPLE OF MANDATE WORDING:

- The Dispute Resolution Tribunal is mandated to provide the dispute resolution process in a manner that:
 - Is respectful of our culture, traditions and practices;
 - Is fair, just, timely, transparent, and accessible;
 - Is economical, informal and flexible;
 - Allows the parties to participate effectively, whether or not they are self-represented or represented;
 - Applies principles of law and fairness; and
 - Recognizes that relationships between the parties and/or the First Nation may continue after the dispute resolution process is concluded. (s.12)



PURPOSE & MANDATE

EXAMPLE OF PROCEDURAL POWERS WORDING:

- The Dispute Resolution Tribunal may exercise the following procedural powers to provide for a fair, just, and timely dispute resolution process:
 - Lengthen or shorten any time limit in this Policy;
 - Add or remove a party;
 - Allow for the parties to amend their documents;
 - Direct that a party receive a notice of a proceeding, including the Council. (s.14)



DISPUTE RESOLUTION PROCESS

PURPOSE:

Develops three main stages of dispute resolution and sets out the process and powers of each stage.

NOTE:

First Nations may select to use some or all of these stages in designing their dispute resolution process.



Dispute Resolution Process

- **STAGE ONE: CIRCLE PROCESS**

A **voluntary informal process** where the parties come together with the assistance of one or more members of the Dispute Resolution Tribunal to work towards resolving the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. Any agreement reached through the circle process to resolve the dispute **is made by the parties.**



DISPUTE RESOLUTION PROCESS

- **Stage Two: Mediation Process**

A **voluntary facilitated process** where the parties make their best efforts to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship with the assistance of one member of the Dispute Resolution Tribunal. Any agreement reached through the mediation process to resolve the dispute is **made by the parties**.



DISPUTE RESOLUTION PROCESS

- **Stage Three: Hearing Process**

A **mandatory formal process** where the parties present their evidence and submissions to a panel of three members of the Dispute Resolution Tribunal to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. The Dispute Resolution Tribunal may make either a **non-binding or a binding decision** that will resolve the dispute. (s. 20)



DISPUTE RESOLUTION PROCESS





DISPUTE RESOLUTION PROCESS

- Stages proceed in order unless: there is agreement not to do so, contractual agreement or the MRP law requires it be resolved through a specific stage, or the dispute is resolved. (s. 21)
- Selection process of Dispute Resolution Tribunal member for each stage ensures they are not an immediate family member, are not in a conflict, and can't provide services if already did at a previous stage.
- Timeframe and format is agreed to by all parties and the Dispute Resolution Tribunal.



DISPUTE RESOLUTION PROCESS

- **STAGE ONE:**

Circle Process – parties agree on resolution.

- **STAGE TWO:**

Mediation Process – parties agree on resolution.

- **STAGE THREE:**

Hearing Process – Dispute Resolution Tribunal makes either non-binding or binding decision.

Have specific powers to make their decisions such as determining what the matrimonial real property is and its value, considering the best interests and welfare of a child in making its decision, determining occupancy, etc. (s.41)



DISPUTE RESOLUTION PROCESS

Hearing Panel can also:

- Reject disputes where the dispute is not in its mandate, are frivolous, vexatious or an abuse of process, or where there is improper influence.
- Proceed with the hearing in the absence of a party that fails or refuses to attend.

First Nations can determine if decisions of the Hearing Panel are or are not subject to appeal and/or judicial review.



REQUESTING SERVICES & FORMAT

PURPOSE:

Explains how dispute resolution services are requested and conducted.

Example wording on Requesting Services:

- A party that wishes to request to use the dispute resolution process must submit a written application to the Dispute Resolution Tribunal. The application must include information regarding who the parties are, what the dispute is about, the dispute resolution that is being requested, and any other information that is relevant concerning the on-reserve matrimonial real property dispute on separation or survivorship. (s.47)



REQUESTING SERVICES & FORMAT

Example wording on Duty of Fairness:

- Be treated fairly by the Dispute Resolution Tribunal;
- Be advised of their right to use the dispute resolution process in a timely manner and provided with sufficient information to reasonably determine whether to use the dispute resolution process;
- Be provided an opportunity to present their evidence and submissions in a timely manner;
- Be provide with a fair and impartial dispute resolution process in a timely manner; and
- Where applicable, provided with a written decision of the Dispute Resolution Tribunal in a timely manner. (s.54)

Example wording on Guiding Principles:

- The Dispute Resolution Tribunal shall be guided by the principles of wisdom, love, respect, bravery, honesty, humility, and truth. (s.55)



REQUESTING SERVICES & FORMAT

INCLUDES PROCESSES ON:

- Accommodation requirements
- Language the services are conducted in
- Interpreter requirements
- Location of services
- Format and structure
- Proceedings not recorded
- Written notes
- Proceedings are closed
- Confidentiality
- Fees for service
- Non compellable
- Not produced as evidence

REPRESENTATIVES, WITNESSES & OTHERS



PURPOSE:

Explains the process for legal counsel, support persons, witnesses, Council, and interested persons attending and participating.

PARTIES MAY:

- Be self-represented or may be represented by legal counsel. (s.71, s. 72)
- Have a support person attend who can assist by providing support or advocacy for the party. (s.73)
- Call witnesses. (s.74)

Interested persons or interveners may apply to participate.

REPRESENTATIVES, WITNESSES & OTHERS



COUNCIL IS ENTITLED TO:

- Receive a copy of every application submitted to the Dispute Resolution Tribunal;
- Make representations to the Dispute Resolution Tribunal on an application at its own costs; and
- To receive a copy of any order made under the matrimonial real property law and in accordance with this Policy. (s.75)

The Customary & Traditional Model includes the right for a person directly affected by the dispute to receive notice and to apply to participate. (s.76)

TRIBUNAL MEMBERSHIP & ADMINISTRATION



PURPOSE:

Explains the qualifications and selection process for members of the Dispute Resolution Tribunal.

SETS OUT THE:

- Number of members
- Qualifications of members
- How members are selected
- Term of members
- Training and evaluation
- Remuneration

TRIBUNAL MEMBERSHIP & ADMINISTRATION



Example wording for Qualifications of the Dispute Resolution Tribunal:

- Be a member of the First Nation;
- Be a minimum of eighteen years of age;
- Be knowledgeable of the customs, traditions, and practices of the First Nation;
- Demonstrate knowledge and understanding of dispute resolution;
- Not hold elected office in the capacity of Chief or Councillor; and
- Not be the Band Manger of the First Nation.(s.78)

NOTE:

First Nations can add any qualifications they deem important.

Approval, Amendments, Coming Into Force



Purpose:

Explains that additional policies may be made, the process to approve and amend the policy, and when the policy comes into effect.

EXAMPLES OF ADDITIONAL POLICIES WORDING:

- Rules of practices and procedure for the Dispute Resolution Tribunal;
- Types of disputes that are included and excluded from the jurisdiction of the Dispute Resolution Tribunal;
- Types of decisions and orders that the Dispute Resolution Tribunal can and cannot make;
- Maximum amounts of monetary awards that the Dispute Resolution Tribunal can award;
- Time limits to apply for judicial review of a final decision of the Dispute Resolution Tribunal, if applicable. (s.86)

Approval, Amendments, Coming Into Force



SETS OUT:

- Process for approving the policy
 - This should be consistent with how the First Nation approves its policies and laws.
- Process to amend the policy
 - This should be consistent with how the First Nation amends its policies and laws.
- Date in which the policy comes into effect



FINAL CONSIDERATIONS

THE TWO MODELS:

- Are to assist First Nations in developing their dispute resolution process.
- Are not prescriptive. Can be modified to reflect the customs, traditions and laws of the First Nation.
- Must be consistent with the First Nation's MRP law or the FHRMIRA (if applicable).
- Are not legal advice and are not to be relied on as legal advice.