

SAWRIDGE FIRST NATION

*RESIDENCY AND MATRIMONIAL  
PROPERTY ACT*

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## SAWRIDGE FIRST NATION

### RESIDENCY AND MATRIMONIAL PROPERTY ACT

Preamble

WHEREAS the Sawridge First Nation has, as is recognized in Treaty No. 8, the inherent right to govern itself and its internal affairs;

WHEREAS the Sawridge First Nation, pursuant to Treaty, reserved certain lands for the exclusive use and benefit of itself and its Members;

WHEREAS the United Nations Declaration on the Rights of Indigenous Peoples reaffirms the right of indigenous peoples to self-determination, the exercise of which includes the right to autonomy and self-government in matters relating to internal and local affairs;

WHEREAS the Declaration reaffirms the right of indigenous peoples to determine the responsibilities of individuals to their communities;

WHEREAS the United Nations Declaration of the Rights of the Child notes that wherever possible, a child shall grow up in the care and under the responsibility of parents and in any case in an atmosphere of affection and of moral and material security;

WHEREAS the Sawridge Constitution provides jurisdiction to the Sawridge Assembly in relation to subject matters including (i) protection of minors and dependent adults and their property; (ii) marriage, divorce, separation and matrimonial property, (iii) wills and estates,

WHEREAS in 1985 the Sawridge Indian Band passed a bylaw pursuant to the Canadian Parliament's *Indian Act*, R.S.C. 1970, as amended, which recognized that the council of a band may make bylaws with respect to the residence of band members and other persons on the reserve, said bylaw subsequently being approved by the Minister of Indian Affairs;

WHEREAS the Constitution of the Sawridge First Nation provides in Article 20(3) that the bylaws of the Sawridge Indian Band which were in place on the day that the Constitution was ratified are hereby adopted as Laws of the First Nation until such time as they are amended or repealed by the General Assembly in accordance with its lawmaking powers as set out herein;

WHEREAS the Sawridge First Nation's Constitution declares as being among the Nation's truths that family is the foundation of the Sawridge community, that its family-based community is valued and will be protected; that the community will be governed so as to be safe, supportive, prosperous, friendly, and caring, and which will always be here for our grandchildren and descendants;

WHEREAS the values of the Sawridge First Nation require it to take into account the best interests of children, including the interest of any child who is a member of the Sawridge First Nation to maintain a living connection with the First Nation;

WHEREAS decisions relating to questions of residency and matrimonial property must be informed by and take into account the cultural, social, spiritual, philosophical and legal context of the Sawridge First Nation and especially its rights to govern its internal affairs on its own lands;

WHEREAS Sawridge First Nation's traditional values require that families have the first opportunity to resolve their matrimonial property issues and that the First Nation's government, legislature and judiciary should become involved and exercise their responsibilities only if families are unable to resolve these issues;

WHEREAS Spouses have the right to determine their affairs by agreement, with the support of their families and community, as to the disposition of any ownership the couple had upon the breakdown of their marital relationship so long as the agreement respects the laws of the First Nation;

WHEREAS Spouses, families and children are encouraged to use the First Nation's dispute resolution processes, including the Elders Commission, to reach lawful agreements when such resources would be of assistance;

WHEREAS in the absence of agreement, Spouses should have access to a Court of Competent Jurisdiction to resolve their property rights, entitlements and obligations upon the breakdown of their marital relationship;

WHEREAS the Nation's children represent the Nation's future and have their rights to live in security and in a community in which they can learn and practice their customs, traditions, and practices;

WHEREAS the institutions of the First Nation have the responsibility to ensure that the Nation's customs, traditions and practices are respected in practice;

WHEREAS our principles of resolving disputes require the Nation to look upon all relationships, including those of individual and community, in a holistic manner so as to restore and maintain harmony and balance;

WHEREAS our values hold that a child of Spouses ending their marital relationship has a right to live in the child's family home until the child is able to establish his or her own home or until other arrangements have been made in the best interests of the child;

the Sawridge General Assembly enacts as follows:

*Title*

1. This Act may be cited as "the Residency and Matrimonial Property Act".

*Definitions*

2. (1) In this Act, the following terms are defined as they are defined in the Sawridge Constitution:

"Council" means the governing body of the First Nation as selected in accordance with this Constitution and is composed of the Chief and Councilors;

"Elders Commission" means the Commission established by Article V of the Constitution;

"First Nation" means the Sawridge First Nation which is recognized and governed by this Constitution; for greater clarity, the Sawridge First Nation was formerly known as the Sawridge Indian Band which has governed itself since time immemorial and which was an original signatory to Treaty #8 which was signed on June 21, 1899;

"Member" means a member of the First Nation in accordance with the Membership Code of the First Nation;

“Membership Code of the First Nation” means the rules for the First Nation’s membership system established by the Constitution;

“Membership Rules” are those rules adopted by the Sawridge Band to govern its membership system prior to the establishment of the Constitution;

“Sawridge Lands” means those lands which at the time of adoption of the Constitution were reserved for the use and benefit of the Sawridge Indian Band as well as those lands which in the future become lands reserved for the use and benefit of the Sawridge First Nation;

(2) In this Act, the terms below are defined as follows:

“Child” includes

a child of either Spouse, whether born when the Spouse is in a legally recognized relationship with the mother or father of the child or not, as the case may be, who is under the age of 21 and includes a child adopted by either spouse by law or a customary adoption recognized by the Assembly,;

each child of a Member;

each child to whom a Member stands *in loco parentis*, who at the time of application for residence was either under the age of twenty-one years or twenty-one years of age or over who is under the charge of a Member and unable, by reason of illness, disability or other cause to withdraw himself or herself from such charge or to provide himself or herself with the necessaries of life;

"dependent" means any child who resides with the member and, is under the age of 18 years, or a child, parent, sibling or other person for whom the family is responsible who is over the age of 18 years who for reason of illness, disability or other cause is dependent upon the family for care and well-being;

“domestic contract” means:

a) a “spousal agreement/marriage contract” entered into between Spouses who are or intend to be in a marital relationship, made in writing and signed by the parties and witnessed on, before, or after the date that this

Law comes into force and effect , in which they agree on their respective rights and obligations during the marital relationship or on separation;

b) a “separation agreement” entered into between Spouses who are living or intend to live separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations on separation;

“family home” means a residence situated on Sawridge Lands where Spouses, or Spouses with their dependent children, have been habitually residing;

"family meeting" means a meeting convened with family member(s) of the Spouses chosen by either Spouse or by the children of one or both Spouses for the purpose of assisting in the resolution of issues brought to the meeting by either Spouse or by the children;

“family member” includes, for a particular family, spouses, the child of one or both spouses, the parents of either spouse, the sibling of a spouse, a legal guardian of a child.

“First Nation interest” means

property which is wholly or partially owned by one or both Spouses which has been used to secure a loan or other financial obligation with the First Nation;

that portion of the interest in the value of a home or other property which has been paid for by First Nation’s monies, loans for which the First Nation is responsible, grants or other income to the First Nation;

lands upon which any property on Sawridge Lands lies;

the unpaid value of property owned by the First Nation and which is being occupied by one or both Spouses and their children, if any, and which is under an agreement specifying that when the Member(s) has fully paid off the house, the First Nation will transfer ownership and possession of the home to the Member(s), and

the full value of a property owned by the First Nation or a First Nation institution and in which one or both Spouses and their children, if any, are

permitted by the First Nation to live, including the value of improvements unless an agreement has been entered into with the First Nation that improvements or the value of improvements are to be the property of the persons permitted to live in the property.

“interest or right” means a right to possession which has been recognized by this Act or in some other manner by the Sawridge Council;

“life estate” means a right to use and enjoy land and or structures on land only for the life of the life tenant;

“matrimonial interests or rights” means interests or rights located on Sawridge Lands other than interests or rights in or to the family home and held by at least one of the Spouses, said interests or rights having been acquired during the marital relationship; were acquired before the marital relationship but in specific contemplation of the relationship, or that appreciated during the relationship regardless of when or how acquired, excluding interests or rights received or derived from a person as a gift or legacy;

“peace keeper” means a person appointed as a peace keeper pursuant to Sawridge legislation or designated as a “peace keeper” by the Sawridge Council;

"residence" means the place which has always been, or which has been adopted by a person as, the principal place of his or her true, fixed and permanent home and place of habitation whereto, when absent or away therefrom, not including absences for normal vacations, temporary work assignments, study or training, always without intention to establish a domicile at some other place, he or she intends to return;

“resolution committee” means a body established according to the First Nation’s customs, traditions and practices for the objective of assisting Spouses, children, or any combination thereof resolve issues brought to it, including agreements for reconciliation, a separation agreement, or a dissolution of relationship agreement;

“Sawridge Housing Commission” means that Commission established by law or resolution of the Sawridge Assembly with a mandate to administer matters arising from this Act;

“Sawridge Lands Resident” means a Member whose residence is on Sawridge Lands;

"spouse" means

- (a) a person who, through a publicly witnessed ceremony, agreed to enter into a marital relationship with another person and that this relationship has not been formally and legally dissolved, or
- (b) a person who has been or was living with a member in a marital relationship for at least twelve continuous months and where both parties have described their relationship as ‘being married’ or have introduced the other as being his or her Spouse, regardless as to whether the person is a former Spouse; or
- c) a person who has entered into a domestic agreement with another person and who is asserting rights or obligations under this Act so long as an application by a former spouse is commenced within one year of the date of breakdown in the marital relationship.

(3) Every part of this Act shall be construed so as to uphold existing First Nation, Aboriginal and treaty rights and freedoms and not to abrogate or derogate from them.

#### Purpose and Application

3. The purpose of this Act is to provide for rules and procedures for the determination of rights of residency on Sawridge Lands, and to provide for rules and procedures that apply to a marital relationship when that relationship breaks down or upon the death of a Spouse, regarding the use, occupation, possession or division of the value of any interests in family homes on Sawridge Lands.
4. This Law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it, pursuant to any other law that is applicable upon the breakdown of marriage with respect to any other property other than interests on Sawridge First Nation Lands.



5. It is the intention of this Law that, subject to its terms, all rights and entitlements and obligations of Spouses are dealt with equitably on the basis of all their respective circumstances, including rights, entitlements and obligations in respect of Interests on Sawridge Lands, including the Family Home.
6. For greater certainty, a Spouse does not have an election under this Law, on the death of the other Spouse, to claim, take or pursue an Interest in First Nation land held by the other Spouse under this Law. His or her Interest will be determined by the will or administration of the estate of the other Spouse.

### **Existing Rights**

Members and Persons Living On Sawridge Lands on Date of Enactment

7. (1) Any Sawridge Member who has his or her residence on Sawridge Lands on the date this Act comes into force is entitled to remain in residence thereon permanently with his or her Spouse and dependent child or dependent children, subject to the provisions of this Act.  
  
(2) Any person who, not being a Member is the child or Spouse of a Member who is a resident on Sawridge Lands on the date this Act comes into force may at any time apply to Council for a residence permit and be authorized by Council to remain in residence for the term specified in the permit. The decision of Council may be appealed by the applicant or by any Member resident on Sawridge Lands in the same manner as is set out in ss. 21-34 of the *Dispute Resolution Act*
8. (1) Upon passage of this Act, the Council shall make a list
  - (i) of all Members residing on Sawridge Lands,
  - (ii) a list of all persons (including Spouse and children) residing with each Member,
  - (iii) a list of any other persons residing on Sawridge Lands;
  - (iv) a list of all Members not residing on Sawridge Lands.  
(2) A copy of the Lists made by Council shall be sent to each Member with the Notice of the first Assembly to be held 30 or more days after the passage of this Act

after any change to the Lists with an Official Notice of Residency Lists inviting any Member who is not in agreement with any name on the Lists or with the omission of any name from the Lists to file a written appeal with the Council.

(3) The Council shall reconsider any omission or failure to include a Member or a person on the correct List, and may revise a List at their discretion, providing notice to the Clerk of the Assembly of any change.

(4) If a Member or a person is not satisfied with the manner in which Council has dealt with the disagreement, the Member or person may, within 30 days of the date of Notice of that decision file an appeal with the Elders' Commission and the process set out in ss. 21-35 of the *Dispute Resolution Act* shall be followed.

(5) When all appeals have been resolved, the Residency Lists, as amended as a result of the Appeals, shall be appended to the Assembly's official copy of this Act by the Clerk of the Assembly and thereafter no further appeals will be heard.

#### Members Not Living on Sawridge Lands on Date of Enactment

9. Any Member who is on the List of Members not living on Sawridge Lands on the date of enactment, or any Member who has abandoned his or her residency may become "a Member residing on Sawridge Lands" by providing notice of intention to the Council and then takes up residence.

#### Loss of entitlement

10. Any Member who was residing on Sawridge Lands at the time of enactment of this Act shall no longer be deemed to be a Sawridge Lands Resident when the member is deceased, ceases to be a Member, abandons his or her residency, or is found pursuant to the laws of the Sawridge First Nation to be temporarily or permanently denied entitlement to be a Sawridge Lands Resident.

#### Application and Entitlement of A Person Who Is Not a Member

11. One year after a Member is no longer deemed to be a Sawridge Lands Resident, any Spouse or dependent child of such Member thereby loses any right that he or she had to reside on the Sawridge Lands unless he or she is also a Member or receives a

Temporary Residency Permit to be a temporary resident subject to such conditions as are applied.

12. Any person who was lawfully residing with a member on Sawridge Lands at the time of enactment of this Act is deemed to no longer be a Sawridge Lands Resident one year after the Member with whom the person was residing ceased to be a Sawridge Lands Resident. During this year such person may apply for a Temporary Residency Permit pursuant to this Act. In the absence of such a permit being granted, the person shall cease to be entitled to reside on Sawridge Lands and shall abandon residency and leave Sawridge Lands.

### *Residency Rights*

13. No Member may have a guest reside in his or her residence for more than 30 days without applying for and receiving a temporary permit from Council. Such permit may be granted at the discretion of Council for any period up to one year, without possibility of further extension, and with whatever conditions Council deems to be appropriate.
14. Any Member who is or intends to be a Sawridge Lands Resident may apply to have a Spouse who is not a Member become a Sawridge Lands Resident for a period not to exceed one year renewable for periods not to exceed five years each, together with whatever conditions Council considers appropriate.
15. In granting a permit to a Spouse of a Member, Council will take into consideration whether the Spouse has applied for membership in the First Nation pursuant to the Membership Code.
16. The right of a “Life Estate” is specifically not established by this Act for non-member Spouses, excepting that through the granting of residency permits or Membership, a non-resident spouse may obtain the rights to enjoy property for their lifetime.

Application to Become a Sawridge Lands Resident

17. When a person other than a Member wishes to reside or continue to reside on Sawridge Lands, he or she shall apply to the Council in such manner as is stipulated by regulation.
18. Upon receipt of an application, the Council shall consider the application within 30 days or at the next Council meeting held after the 30 days and make a provisional decision subject to ratification by the Assembly.
19. For the purposes of making its recommendations as to whether a residency permit should be granted, the term of the permit, and whether a permit should be accompanied by conditions, the Council shall take into consideration the following matters and include in its report its deliberations:
  - (a) whether that person is or will be employed by the First Nation or a First Nation company;
  - (b) the provisions of laws regarding housing, or related matters;
  - (c) the availability of funds to provide any required services;
  - (d) the extent to which that person is prepared to contribute to the welfare and advancement of the First Nation community;
  - (e) whether, in view of the previous conduct and lifestyle of that person, his or her residence on Sawridge Lands would be likely to be compatible with the culture, society and community of Sawridge Lands Residents and the First Nation generally, and beneficial to their welfare;
  - (f) any other consideration that, in the opinion of the Council, is relevant to the health, safety, good order and advancement of the Sawridge First Nation and particularly the Sawridge Lands resident community.
20. If the applicant disagrees with the decision made by Council, he or she may appeal that decision to the Elders' Commission and ss. 21-35 of the *Dispute Resolution Act* shall apply.
21. For the purposes of making its recommendations as to whether an application should be granted, the term of the grant, and whether a grant should be accompanied by conditions, the Elders Commission shall take into consideration

the same matters considered by the Council in s. 12. and include in its report its deliberations on each criterion.

22. If the Council approves the application, it shall report the application and its decision to the next session of the Assembly, and together with any other comments Council wishes to make, introduce a resolution that the Assembly name a Committee to consider the application.
23. The Committee shall hear *in camera* testimony of the applicant , and may hear such witnesses and require and consider such other evidence as it determines to be necessary, providing that any person whose interests or rights are affected are entitled to be heard.
24. The Committee may deal with any two or more related applications separately or together as it shall determine in its discretion.
25. The Committee may determine whether any application may be made on behalf of the applicant alone or on behalf of the applicant and all or any one or more of his or her Spouse's dependent children.
26. In its Report to the Assembly, the Committee may recommend that permission to reside on Sawridge Lands may be granted permanently or for a term of not more than five years and what conditions, if any, may be attached to the permits as the Committee may determine to be reasonable in the circumstances, balancing the right of the applicant with the right of the First Nation to determine who may reside upon Sawridge Lands.
27. In making its recommendations, the Committee shall not discriminate on the basis of sex, gender, race, age, or religious or spiritual beliefs.
28. The Committee shall report at the next Assembly and the Assembly shall hear the report of the Committee and by resolution decide whether the application should be granted, denied, or reviewed on a future occasion. If the Assembly grants an application, with or without conditions, the applicant and any other persons listed in the application shall be thereupon entitled to reside on Sawridge Lands

permanently or for a term, as the case may be, subject to the fulfillment of any conditions specified in the decision of the Assembly.

#### Re-application

29. If the Assembly denies an application, the applicant may reapply for residence to Council on grounds that a change in circumstances could result in a different disposition by the Assembly, the Council shall report the reapplication to the next session of the Assembly together with its recommendations, and the Assembly shall decide whether the application should be reconsidered and referred to a Committee selected for that purpose.

#### Decisions are Final

30. The decision of the Assembly in any case shall be final and not subject to further appeal.

#### List of Sawridge Lands Residents

31. The Council shall maintain a registry of the persons who are entitled to reside on Sawridge Lands pursuant to the foregoing provisions of this Act, noting whether the permission to reside is for a fixed term or permanent, and any conditions which might have been made by the Council or by the Assembly pursuant to this Act.

#### Lawful Residence

32. No person shall be considered to be lawfully resident on Sawridge Lands unless he or she is entitled to reside on Sawridge Lands pursuant to this Act.

#### Prohibition

33. No person shall reside on Sawridge Lands except in accordance with the foregoing provisions of this law.

34. Any person who contravenes the provisions of s. 33 hereof is guilty of an offence and is liable upon summary conviction to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both.

## *The Family Home*

#### Occupation of the Family Home

35. At any time that a Spouse who is not a member holds a valid permit to be a Sawridge

Lands Resident, the Spouse may occupy the family home together with his or her children unless a valid order of a Court has ordered otherwise.

Disposal of Interest

36. No Member nor his or her Spouse who holds an interest or right in or to the family home shall dispose of or encumber that interest or right during the marital relationship without the free and informed consent in writing of the other Spouse and unless the family home has been built and maintained without the use of any monies of the Sawridge First Nation, the consent of the Council is also required.

37. If a Member or his or her Spouse disposes of or encumbers his or her interest or right in or to the family home without the required consent of the other Spouse and the consent of the Council if it is required, any Court with jurisdiction to hear the matter may, on application by the other Spouse or the Council, by order set aside the transaction and impose conditions on any further dispositions or encumbrances.

38. A Spouse who has not given consent to a transaction for which it was required may, without prejudice to any other right, claim damages from the other Spouse and in such a case, the Council may also claim damages.

39. The Spouse who disposed of or encumbered the interest or right in or to the family home has the burden of proving that the other Spouse and, if applicable, the First Nation, consented to the disposition or encumbrance.

40. A Court of competent jurisdiction may, on application by a Spouse who holds an interest or right in the family home, by order, authorize that person, subject to any conditions that the Court considers appropriate, to dispose of or encumber that interest or right without the required consent of the other Spouse if the Court is satisfied that the other Spouse cannot be found, is not capable of consenting, or is unreasonably withholding consent.

## *Emergency Protection Order*

Definition of “family violence”

41. For the purposes of this section, “family violence” means any of the following acts or omissions committed by a Spouse against the other Spouse, any child in the charge of either Spouse or any other person who habitually resides in the family home:
- (a) an intentional application of force without lawful authority or consent, excluding any act committed in self-defence;
  - (b) an intentional or reckless act or omission that causes bodily harm or damage to property;
  - (c) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;
  - (d) sexual assault, sexual abuse or the threat of either;
  - (e) forcible confinement without lawful authority; or
  - (f) criminal harassment.

Order of a Court

42. (1) A Spouse may make an *ex parte* application to a Court of competent jurisdiction, even if that person has been forced to vacate the family home as a result of family violence.
- (2) A peace keeper, Chief or Councillor may also make the application on behalf of the Spouse with that person’s consent, or if that person does not consent, with leave of the Court.
43. A Court of competent jurisdiction to whom an application has been made pursuant to this section may make an order for a period of up to 90 days, if the judge is satisfied that
- (a) family violence has occurred; and
  - (b) the order should be made without delay because of the seriousness or urgency of the situation to ensure the immediate protection of the person who is at risk of harm or property that is at risk of damage.



44. In making the order, the designated judge shall consider, among other things,
- (a) the history and nature of the family violence;
  - (b) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
  - (c) the best interests of any child in the charge of either Spouse;
  - (d) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either Spouse is the caregiver;
  - (e) the fact that a person or the First Nation or both holds an interest or right in or to the family home; and
  - (f) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's Spouse from the family home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions against the applicant, any child in the charge of either Spouse or any other person who habitually resides in the family home.

Content of order

45. The order may contain
- (a) a provision granting the applicant exclusive occupation of the family home and reasonable access to that home;
  - (b) a provision requiring the applicant's Spouse and any specified person who habitually resides in the family home to vacate the family home, immediately or within a specified period, and prohibiting them from re-entering the home;
  - (c) a provision directing a peace keeper, immediately or within a specified period, to remove from the family home the applicant's Spouse and any specified person who habitually resides in the family home.
  - (d) a provision prohibiting any person who is required to vacate the family home from attending near the family home;

(e) a provision directing a peace keeper, within a specified period, to accompany the applicant's Spouse or any specified person to the family home or other location in order to supervise the removal of personal belongings;

(f) by application by any party or any person affected by the application or order or on the Court's own motion, the Court may, if it is satisfied an order of confidentiality is necessary for the safety of a party or witness or the safety or physical or emotional well-being of a child or for the protection of a party, witness or child from an undue hardship or adverse effect that could be caused by making information to members of the public outweighs the public's right to the information, make an order that contains one or more of the following provisions and that is subject to any condition that the Court specifies:

(i) a provision excluding members of the public, other than the parties, from all or part of a rehearing or appeal or further proceedings;

(ii) a provision prohibiting the publication or broadcasting of any information from the rehearing or hearing, including the name of a party, witness or child in the charge of either party or any information likely to identify any of those persons; and

(iii) a provision prohibiting disclosure to the public of any information in a Court document or record related to a proceeding related to the application; and

(g) any other provision that the Court considers necessary for the immediate protection of any person who is at risk of harm or property that is at risk of damage.

Notice of order

46. (1) A peace keeper shall serve a copy of the order of the court on the persons specified in the order, and shall inform the applicant as soon as each service is effected.

(2) Any person against whom the order is made and any person specified in the order are bound by the order on receiving notice of it.

No personal liability

47. No action or other proceeding shall be instituted against a peace keeper for any act or omission done in good faith in the execution or intended execution of the peace keeper's duties under this Act.

Order sent to Sawridge Court

48. (1) Immediately after making an emergency order, the court making the order shall forward a copy of the order and all supporting materials to the competent Court of the Sawridge First Nation which after receiving the emergency order will become seized of the matter.

Application to vary or revoke order

49. (1) Any person in whose favour or against whom an order is made or any person specified in the order may apply to the Sawridge Court to have the order varied or revoked

(a) within 21 days after the day on which notice of the order made under or within any further time that the Court allows; and

(b) at any time if there has been a material change in circumstances.

(2) The Court shall give notice to the parties and any person specified in the emergency order and of any consequent procedures.

(3) On an application to vary or revoke an order, the Court may, by order, confirm, vary or revoke the emergency order but may only extend the duration of the emergency order for up to 90 days beyond the date of the order.

### *Exclusive Occupation Order*

Court Order

50. (1) The Sawridge Court of Competent Jurisdiction may, on application by a Spouse order that the applicant be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies, providing that the order shall be valid only if the applicant is a Member or, if the applicant has a temporary resident permit, for the duration of the permit or subsequent permits.

(2) The court may, on application by either Spouse, make an interim order to the same effect and subject to the same proviso pending the determination of the application under subsection (1).

(3) In making an order under this section, the court shall consider, among other things,

(a) the best interests of any children who habitually reside in the family home;

(b) the terms of any agreement between the Spouses;

(c) the financial situation and the medical condition of the Spouses;

(d) the availability of other suitable accommodation that is situated on Sawridge Lands;

(e) any existing order made on a matter related to the consequences of the breakdown of the marital relationship;

(f) the history of family violence, if any;

(g) any acts or omissions by one of the Spouses that reasonably constitute psychological abuse against the other Spouse, any child in the charge of either Spouse, or any other family member who habitually resides in the family home;

(h) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's Spouse from the family home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions that constitute family violence, or reasonably constitute psychological abuse, against the

applicant, any child in the charge of either Spouse or any other family member who habitually resides in the family home;

(i) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either Spouse is the caregiver;

(j) the fact that the First Nation or a person other than the Spouses, holds an interest or right in or to the family home; and

(k) the views of any person who received a copy of the application, presented to the court in any form that the court allows.

(4) An order made under this section may contain provisions such as

(a) a provision requiring the applicant's Spouse to vacate the family home, immediately or within a specified period, and prohibiting them from re-entering the home;

(b) a provision requiring the applicant's Spouse to preserve the condition of the family home until that person vacates it;

(c) a provision directing the applicant to make payments to the other Spouse toward the cost of other accommodation; and

(d) a provision requiring either Spouse to pay for all or part of the repair and maintenance of the family home and of other liabilities arising in respect of the family home, or to make payments to the other Spouse for those purposes.

(5) An existing order in favour of or against one of the Spouses is revoked when the court makes an order under this section, except to the extent specified in that order.

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

(7) An applicant for an order under this section shall, without delay, send a copy of the application to any person who is of the age of majority or over, whom the

applicant is seeking to have the court order to vacate the family home, and to any person who holds an interest or right in or to the family home.

#### Death and Estates

51. (1) Upon the death of a Spouse, or in case of the death of both Spouses, the surviving Spouse or the children of one or both Spouses as represented by their guardian may make application for an order that the applicant be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies, providing that the order shall be valid only if the applicant is a Member, holds a permanent residency permit or, if the applicant has a temporary resident permit, for the duration of the permit or subsequent permits.
- (2) The court may make, on application by the survivor, an interim order to the same effect, pending the determination of the application under subsection (1).
- (3) In making an order under this section, the court shall consider, among other things,
- (a) the best interests of any children who habitually reside in the family home,
  - (b) the terms of the will;
  - (c) the terms of any agreement between the Spouses;
  - (d) the medical condition of the survivor;
  - (e) the period during which the survivor has habitually resided on Sawridge Lands;
  - (f) whether the family home is the only property of significant value in the estate;
  - (g) the interests of the First Nation and any person who holds or will hold an interest or right in or to the family home;
  - (h) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom the survivor is the caregiver;
  - (i) the existence of exceptional circumstances that necessitate the removal of a person from the family home in order to give effect to the granting to the survivor of exclusive occupation of that home, including the fact that the person

has committed acts or omissions that constitute family violence, or reasonably constitute psychological abuse, against the survivor, any child in the charge of the survivor, or any other family member who habitually resides in the family home; and

(j) the views of any person who received a copy of the application, presented to the court in any form that the court allows.

(4) An order made under this section may contain provisions such as

(a) a provision requiring the survivor to preserve the condition of the family home;

(b) a provision requiring any specified person, whether or not that person holds an interest or right in or to the family home, to vacate it immediately or within a specified period, and prohibiting them from re-entering the home; and

(c) a provision requiring the executor of the will, the administrator of the estate or the holder of an interest or right in or to the family home to pay for all or part of the repair and maintenance of the family home and of other liabilities arising in respect of it.

(5) The survivor shall, without delay, give notice of an order made under this section to those who received a copy of the application or alternatively, the court may order that a peace keeper shall serve a copy of the order on those persons as the court might direct.

(6) The survivor, the executor of the will or the administrator of the estate, any person specified in an order made under subsection (1) or the holder of an interest or right in or to the family home may apply to the court to have that order varied or revoked if there has been a material change in circumstances. By order, the court may confirm, vary or revoke the order.

(7) An applicant for an order under this section shall, without delay, send a copy of the application to the executor of the will or the administrator of the estate, if the applicant knows who those persons are, to any person who is of the age of majority or over, whom the applicant is seeking to have the court order to vacate the family home, to any person who holds an interest or right in or to the family

home and to any other person specified in the rules regulating the practice and procedure in the court.

### *Other Provisions*

#### Family violence

52. For greater certainty, for the purposes of this Act, a court of competent jurisdiction may find that family violence has occurred whether or not, in respect of the act or omission in question, a charge has been laid, dismissed or withdrawn or a conviction has been or could be obtained.

#### Interest or right not affected

53. For greater certainty, an order made under section 43, 49 or 50 does not change who holds an interest or right in or to the family home nor does it prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy, or a court from ordering the transfer of such an interest or right.

#### Contiguous property

54. For the purposes of this Act, if the Sawridge Lands on which the family home is situated are the object of an interest or right referred to, then exclusive occupation of the family home includes exclusive occupation of the portion of that land that is contiguous to the family home and that is necessary for the use and enjoyment of the family home or such land as may be allocated by the First Nation with the family home.

#### Notice

55. The Court shall order that a peace keeper shall serve a copy of the order on any person against whom an order is made and any person specified in the order.

#### Leases

56. When an order made under this Act grants exclusive occupation of the family home to a Spouse who is not a lessee under the lease for the family home, the Spouse is bound by the lease during the period of the order.



Offence

57. Any person who contravenes an order made under this Act is guilty of an offence punishable on summary conviction and liable
- (a) in the case of a first offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding three months, or to both; or
  - (b) in the case of a subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year, or to both.

***Dispute Resolution Process  
For Potential or Actual Breakdown of a Marital Relationship***

Convening a Family Meeting

58. When one or both spouses decide there is danger that their marital relationship will break down, or when the marital relationship has broken down, either or both spouses may convene a Family Meeting to consider the matter and what further steps should be taken.

Domestic Contract Assisted By A Family Meeting

59. If at the Family Meeting or subsequently one or both spouses decide there should be a separation, the Family Meeting may, with the agreement of the Spouses, assist in concluding a separation agreement.
60. Where the First Nation has an interest in the Family Home or in any other property subject of the separation agreement, the Spouses must within 30 days of the signing of a separation agreement provide the Council with a copy of that portion of the agreement which deals with the property in which the First Nation has an interest.
61. If in the opinion of the Council the portion of the separation agreement dealing with property is not consistent with the Principles set out in the Preamble or is inconsistent with this Act, the Council may ask for a meeting with the Spouses to deal with the inconsistencies.

62. When the Council accepts the separation agreement as consistent with the Preamble and this Act, the Council shall register the separation agreement and shall abide by the agreement.
63. In addition to the provisions for a Family Meeting, it is the intent of this Act that Spouses may have access to a Dispute Resolution Process provided by the First Nation before or after a breakdown in the marital relationship for the purpose of achieving reconciliation or where reconciliation cannot be achieved, to develop an orderly and effective separation agreement, particularly where the First Nation has any interests in any property of one or both Spouses.

#### Formation of Support Group Meeting

64. (1) Each spouse may form a support group of not more than four persons whose role is to offer support to the spouse while at the same time engaging with the support group of the other spouse in devising a reconciliation plan and/or a separation agreement.  
  
(2) If the other spouse does not form a support group he or she may meet with his or her spouse's support group or not meet at all.  
  
(3) If the spouses are unable to agree to a plan to reconcile or to a separation agreement, either party is free to propose his or her own plan.

#### Assistance of Elders Commission

65. Either or both spouses with or without their family or support group may seek the assistance of the Elders Commission in working toward either reconciliation or a separation agreement or a unilateral position which is in accord with the Principles set out in the Preamble to this Act.
66. For greater certainty, nothing in this Act is intended to limit the right of either or both Spouses to seek other or further alternative dispute resolution at any time or in relation to any matter.

Involvement of the Sawridge Housing Commission

67. No agreement by spouses which will affect the First Nation's interest in a structure or property is valid until it has been approved by the Sawridge Housing Commission and placed in the Commission's Housing Registry.
68. At any time, one or both spouses, families, or support groups may consult with the First Nation's Housing Commission as to any proposed agreement which might affect the First Nation's interest in a property or to ask the Commission for assistance in developing such an arrangement.
69. Decisions of the Commission with regard to any agreement are limited only to those matters which affect the First Nation's interest in the property which is subject of or to the agreement.
70. The Commission may offer its own services to facilitate the spouses arriving at an agreement which is acceptable to the Commission.
71. The Commission may hold hearings on the subject of the property involved and proposed arrangements or agreements, including hearing from witnesses, including children of one or both spouses, other persons or other family members living in the home.
72. If either spouse declines to attend a hearing of the Commission, the Commission may make whatever rulings it considers to be appropriate without hearing from that spouse and the spouse shall be bound by the decision of the Commission.
73. The Commission shall proceed expeditiously and use best efforts to resolve any issues with respect to Interests in First Nation land and possession of the Family Home, including making any interim or temporary order of possession of the Family Home which is required to protect the First Nation's interests therein.
74. Where the Commission is satisfied that an arrangement developed by the spouses, a family meeting, or one or more support groups satisfactorily protects the First

Nation's interests in a property, the Commission will utilize that arrangement rather than one of its own making in making any further arrangement or order.

75. (1) After the Commission has provided its opinion that an arrangement satisfactorily protects the interests of the First Nation, the Commission shall assist in the drafting of an agreement that shall expressly set out the agreed upon terms.
- (2) Where both spouses are in agreement with the arrangement the Commission has approved,
- (i) the Commission shall have each Spouse, witnessed by two persons, sign the agreement;
  - (ii) a Chair of the Commission or a Commissioner delegated by the Commission shall also sign the agreement stipulating that it is satisfied that the First Nation's interests have been protected by the agreement, and
- (3) a copy of the agreement shall be given to each Spouse and a copy shall be retained and registered in the Commission's files.
76. Where the Commission proceeding is unsuccessful in reaching an agreement satisfactory to both Spouses, the Commission shall make a final and binding decision and/or Order with respect to the interests of each Spouse and the First Nation and the manner in which the First Nation's interests in the lands are to be protected, including any or all of the following:
- (a) an order that an Interest in First Nation land, including the Family Home, be transferred to a Spouse absolutely, where permitted under this Act;
  - (b) an order that either or both Spouses be relocated to other housing accommodations if the arrangements with the Commission regarding the Family Home permit such relocation;
  - (c) an order that an Interest in the property and use of First Nation land including the Family Home be subject to a lease by one Spouse to the other for a term of years subject to such terms and conditions as the Commission deems just in all the circumstances and is not in contravention to other provisions of this Act or any other Act;

(d) an order that an Interest in property, including the Family Home, held by both Spouses be partitioned or partitioned and sold if there is no other satisfactory way to protect the First Nation's interest in the property.

77. (1) Any decision or order of the Commission is appealable to the Assembly if Notice of Appeal is provided in writing within 30 days from the date that the Commission renders its order or final decision and gives notice thereof.

(2) An appeal to the Assembly does not stay the operation of the order or final decision in respect of which the appeal is made.

(3) The Assembly shall set a date for hearing the Appeal no later than 60 days after receiving the notice of appeal, and in setting the date, shall stipulate the process which the Assembly will utilize for the hearing of the Appeal.

78. Either or both Spouses have the option prior to approaching the Commission first to pursue interim or temporary orders of a Court of Competent Jurisdiction, but only if the Commission is made a party to the proceedings where the First Nation has an interest in any property involved.

79. Where a proceeding has been commenced before the Commission and either Spouse dies before all issues relating to Interest in First Nation land have been disposed of by the Committee, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.

#### Offences

80. (1) If a Spouse is found by the Commission to be in contravention of an order or decision of the Commission pursuant to this Law, he or she will be found guilty of an offence and liable to a fine not to exceed \$5,000.

(2) A fine payable under this section shall be remitted to the First Nation and paid over to the other Spouse if the other Spouse is the offended party.

#### *Division of the Value of Matrimonial Interests or Rights*

81. (1) When a marital relationship breaks down, each Spouse is entitled, on application, to an amount equal to one half of the value, or such other proportion of

the value as is equitable in the circumstances, on the valuation date, of the interest or right that is held by at least one of them in or to the family home and to the amounts referred to in subsection (2).

#### Determination of value

(2) For the purposes of subsection (1), the value of the interests or rights is the difference between

- (a) the amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and
- (b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands that are the object of the interests or rights.

#### Agreement by parties

(3) Despite subsection (2), on agreement by the Spouses, the value of the interests or rights may be determined on any other basis.

#### Definition of "valuation date"

(4) For the purposes of this section, "valuation date" means the earliest of

- (i) the day on which the Spouses separated with no reasonable prospect of reconciliation,
- (ii) the day on which one of the Spouses clearly manifested the intention not to continue the marital relationship,
- (iii) the day on which one of the Spouses made an application related to the consequences of the breakdown of the marital relationship,
- (iv) the day on which the judgment granting their divorce was rendered,
- (v) the day on which the marriage was declared a nullity,
- (vi) the day on which one of the Spouses made an application related to the consequences of the breakdown of the marriage, or
- (vii) the day on which one of the Spouses made an application to restrain improvident depletion of the interest or right in or to the family home and of the matrimonial interests or rights that is subsequently granted.

Variation of amount

82. On application by a Spouse, a court may, by order, vary the amount owed to or by the applicant under section 81 if that amount would be unconscionable, having regard to, among other things,

- (a) the applicant's financial responsibility related to the care and upbringing of the children in the applicant's charge;
- b) the amount of debts or other liabilities referred to in that section incurred by each Spouse;
- (c) any significant change in the value of the interests or rights in question between the valuation date and the day on which the order is made, inclusive;
- (d) the fact that one of the Spouses may obtain exclusive occupation of the family home on agreement or under an order made pursuant to this Act;
- (e) the availability of accommodation that is comparable to the family home and that is situated on the Sawridge Lands as the family home;
- (f) the duration of the marital relationship;
- (g) the terms of any agreement between the Spouses;
- (h) the reduction of the value of the interests or rights in question as a result of acts or omissions by the applicant's Spouse including the disposition of any such interest or right for less than its fair value, the improvident depletion of any such interest or right, the disposition or encumbrance of the interest or right in or to the family home without the applicant's required consent, and the encumbrance of that interest or right after the valuation date as defined in section 81; or
- (i) other determinations that the court may make on any matters related to the consequences of the breakdown of the marital relationship.

Amount payable

83. (1) On application by one of the Spouses made within three years after the day on which they ceased to live in the marital relationship, a court may, by order, determine any matter in respect of each Spouse's entitlement under section 81 including

- (a) determining the amount payable by one Spouse partner to the other; and
- (b) providing that the amount payable be settled by
  - (i) payment of the amount in a lump sum,
  - (ii) payment of the amount by installments,
  - (iii) the transfer of an interest or right under an order pursuant to this Act,
  - (iv) the set-off or compensation of any amounts owed by one Spouse to the other, or
  - (v) any combination of the methods referred to in subparagraphs (i) to (iv).

Extension of time

(2) On application by a Spouse, a court may, by order, extend the period of three years by any amount of time that it considers appropriate, if the court is satisfied that the applicant failed to make an application within that period for either of the following reasons:

- (a) circumstances existed that were beyond the control of the applicant; or
- (b) only after the period expired did the applicant become aware of any interests or rights referred to in section 81.

Order to transfer interests or rights

84. (1) When a marital relationship breaks down, a court may, on application by a Spouse who is a First Nation member, order that an interest or right, in or to any structure or land situated on Sawridge Lands be transferred to the applicant if the court is satisfied that

- (a) the Spouses agreed in writing to the transfer of the interest or right, the consent of both parties was free and informed and the agreement is not unconscionable, having regard to, among other things, the factors listed herein;
- (b) the applicant had previously held the interest or right before the cessation of cohabitation; or



c) the transfer is appropriate in the circumstances because the Spouses hold more than one such interest or right in or to structures and lands situated on Sawridge Lands.

#### Improvident depletion

85. On application by a Spouse, a court may make any order that it considers necessary to restrain the improvident depletion of the interest or right in or to the family home and of the matrimonial interests or rights for the purpose of protecting

(a) the right that might be granted to the applicant in an order made under this Act or any interest or right that might be transferred to the applicant in an order made under this Act or

(b) the value of the interests or rights that will be used to determine the amount that might be payable to the applicant in an order made under section 81.

#### *Death of a Spouse*

86. If a survivor and the executor of the Will or the administrator of the estate enter into a written agreement that sets out the amount to which the survivor is entitled and how to settle the amount payable by one or both of the methods referred to, a court may, on application by one of them, make an order to enforce that agreement if the court is satisfied that the consent of the survivor to the agreement was free and informed and that the agreement is not unconscionable.

#### *Where Spouses Address Interests and Rights By Domestic Contract*

87. It is the purpose and intent of this Law to respect agreements of Spouses which have been made as to the use, possession, occupancy, disposition or partition of an Interest on First Nation land, including an interest that is the Matrimonial Home, so long as the agreement is consistent with the Principles set out in the Preamble and which are not in contravention of this Law.

88. For the purpose of this Part, Council may prescribe by regulation

a) rules and procedures applicable to the implementation of these processes, including the delegation of its authority under this Law;

- b) forms and other documents; and
  - c) fees and costs related to the implementation of Domestic Contracts.
89. (1) A provision in a Domestic Contract that reflects the agreement of the Spouses with respect to an Interest on First Nation land, including an interest in the Family Home, is valid, binding and enforceable.
- (2) Only that provision of the Domestic Contract which sets out the agreement between the Spouses with respect to an Interest on First Nation land, including an interest in the Family Home, would need to be provided to the Council upon the breakdown of the relationship to ensure the agreement is implemented pursuant to the laws and policies applicable to the First Nation.
90. A Domestic Contract, or an amendment to or rescission of a Domestic Contract, is enforceable under this Law if it is in writing, signed by both Spouses and witnessed by two or more other persons.
91. Notwithstanding sections 89 and 90 a provision in a Domestic Contract that would give, award or acknowledge or create an Interest in or on First Nation land in favor of a Spouse or Child who is not a Member, that is greater than the Interest set out in this Law is void.
92. Subject to this Law, a Court of Competent Jurisdiction may, on application by a Spouse, set aside a provision of a Domestic Contract with respect to an Interest on First Nation land:
- (a) where a Spouse failed to disclose to the other party all of his or her Interests on First Nation land, or any material information in respect of those Interests; or
  - (b) where a Spouse did not understand the nature or consequences of the provision and the application of the provision would be unfair or inequitable.

## *Offences, Regulations, Amendments, Repeal, Coming Into Force*

### Regulations

93. The Council may make regulations that the Council considers necessary for carrying out the purposes and provisions of the Act.

### Manner and Form of Amending This Act

94. No Bills to make amendments or to repeal this Act may be considered or passed by any Special or General Assembly unless the Bills have been proposed by the Council or a petition signed by at least one-third of the Electors of the First Nation.

### Repeal

95. If any residency laws, codes, customs, rules or bylaws are inconsistent with this Act, then this act shall prevail.

### Maintaining Rule of Law

96. If at any time in the future this Act is invalidated or made inoperative, the bylaw which it displaced will be relied upon until such time as this Act is revalidated or another Act on this subject matter is passed.

### Severance of Invalid Provisions

97. If any part, subpart, section or subsection of this Act is for any reason held by a Court of Competent Jurisdiction to be invalid, the invalid section shall be severed from the Act and the remaining provisions of the Act shall read so as not to be affected by the removal of the invalid section.

### Coming into Force

98. This Act shall come into force on the date it is passed by the Assembly.