

There are two requests for clarification stemming from the Community Decision Making Process Kahnawà:ke Family Homes Law hearing of May 27th that must be addressed.

MCK Legal Services submits that these requests for clarification pertain to the eventual implementation and interpretation of the draft law, but that it is not necessary or desirable to amend the law in order to respond to these requests.

Request for Clarification 1: “Reword or clarify value or interests held in virtue of a residential lease”

Clarification: The draft law provides for the inclusion of the value of a residential lease to be calculated as an interest held by the Spouses (see definitions of “Interests”, “Matrimonial Interests”, “Lease” and Section 12.15 of the draft law). This may mean that the Spouse that is permitted to stay in the leased Family Home may have to pay compensation to the other Spouse for the value of the lease as determined by the judge. For example, if the lease is particularly advantageous (i.e. low rent, large property, etc...), the judge may determine that compensation is due to the Spouse that must move and rent a more expensive or less advantageous property. That being said, it is not anticipated that this situation will occur very often as it will likely be difficult for one party to establish a significant value for the leasehold interest.

Request for Clarification 2: “Reword or clarify, other forms of compensation”

Clarification: The law provides that “other forms of compensation”, other than the “Matrimonial Interests” defined in the law, can be considered in the calculation of the division of the Matrimonial Interests. More specifically, Section 12.8 provides that the separation of other property included in the Family Patrimony (as outlined in the Quebec Civil Code) can be used to determine the division of the Matrimonial Interests, this includes the family vehicle and the value of the pension/RRSP’s accumulated during a marriage. Section 12.13 provides that monetary payment and other forms of compensation can also be used to complete the partition of the Matrimonial Interests. While no specific examples are provided in Section 12.13, this could include moveable property (furniture, jewelry, stocks, etc...) and immovable property (for example, land that is not used for the primary or secondary residence). The law allows for the consideration of a broad range of forms of compensation in order allow for flexibility and facilitate the quick and efficient separation of assets.