

Kahnawà:ke Family Homes and Matrimonial Interests Law

Simple Name: Kahnawà:ke Family Homes Law, (KFHL)

Executive Summary

Background

The federal government's *Family Homes on Reserves and Matrimonial Interests or Rights Act* will come into force, in full, on December 16, 2014. This Act establishes rules for the division and possession of property on reserve and gives the Provincial Courts jurisdiction to hear disputes. The Act complicates matters as it recognizes property rights for common-law partners after only one year of cohabitation which is contrary to the status quo in Kahnawà:ke (and actually throughout Quebec). The Act also recognizes non-member spouses or common-law partners' interest in property and a potential right to occupy property.

The Mohawk Council of Kahnawà:ke views the Act as a violation of Kahnawà:ke's jurisdiction and threat to Kahnawà:ke Lands. The MCK has expressed its opposition to this Act through various forums. In the spring and summer of 2013 a project team was formed with the objective of not having this Act apply in Kahnawà:ke. On September 25th 2013, a CDMP hearing was held, a mandate from the community of Kahnawà:ke was received to begin drafting of a Kahnawà:ke law that would displace the Federal Act.

The project team, with representation from Chief and Council, Social Development Unit, Lands Unit, Office of the Council of Chiefs and Legal Services, worked in the development of a Draft Kahnawà:ke Family Homes and Matrimonial Interests Law. Consultations were held with internal stakeholders, KSCS, Kahnawà:ke Peacekeepers, Justice and included consultations with other Iroquoian communities.

KFHL Highlights

- I. The Law will establish rules and mechanisms for the division and possession of Matrimonial Interests in Kahnawà:ke lands in the event of death of a spouse or the breakdown of a Marriage or Common-law relationship.
- II. This Law will only apply when Spouses cannot reach their own agreements pertaining to the division and possession of Matrimonial Interests.
- III. "Matrimonial Interest" shall include any interest in Kahnawà:ke Lands including Family home acquired by the spouses.
- IV. "Family Home" shall include a structure situated on Kahnawà:ke Lands where spouses habitually resided. This definition includes only the portion of the structure that is used for residential purposes.
- V. Unlike the federal law, Applications will be heard at the Court of Kahnawà:ke.
- VI. Unlike the federal law, Jurisdiction of this Law is based on our Inherent, Aboriginal and Treaty rights, not delegated jurisdiction by the Federal government.
- VII. Decisions made under this Law will be determined with paramount consideration given to the best interest of any Children.
- VIII. The Law defines a common-law relationship as it relates to the Family Home and Matrimonial Interests. The definition: a conjugal relationship, not solemnized by a Marriage ceremony, Law or custom, between two persons that have lived together and that have been publicly represented as Spouses for 5 years.
- IX. Unlike the federal law, the Law will not consider applications for Emergency protection orders. Kahnawà:ke has developed institutions (PeaceKeepers and KSCS) that perform related duties.
- X. The Law will provide mechanisms for individuals to create their own domestic agreements to determine how division and possession of Matrimonial Interests should be determined.
- XI. The Law provides for mediation following the breakdown of a relationship.
- XII. The Law was developed to work in conjunction with divorce-separation processes, but does not deal with the declaration of a divorce judgment; the issue of child support; child custody or ownership of personal property.
- XIII. The Law required using very technical language and is expected to be interpreted and used by legally trained professionals.