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**MATRIMONIAL REAL PROPERTY LAW, 2015**

PART 1 .....	7
SHORT TITLE .....	7
Short Title .....	7
PART 2 .....	7
DEFINITIONS, INTERPRETATION AND APPLICATION.....	7
Interpretation.....	9
Application.....	10
PART 3 .....	10
FAMILY HOME .....	10
Occupation During Conjugal Relationship.....	10
Occupation After Death .....	11
Disposal of Family Home without Consent.....	11
Application for Damages .....	11
Burden to Prove Consent .....	11
Order Allowing Disposal of Family Home Without Consent .....	12
PART 4 .....	12
EMERGENCY PROTECTION ORDERS .....	12
Application for Emergency Protection Order .....	12
Emergency Protection Order.....	12
Considerations.....	13
Emergency Protection Order Binding.....	14
Notice of Emergency Protection Order.....	14
Application to Vary or Revoke Emergency Protection Order .....	14
Confirm, Vary or Revoke Order .....	15
Evidence at Hearing.....	15
Order Binding .....	15
Notice of Emergency Protection Order.....	15
Exclusion of Public from Emergency Protection Order Hearing .....	16
PART 5 .....	16
EXCLUSIVE OCCUPATION ORDER .....	16
(AT BREAKDOWN OF CONJUGAL RELATIONSHIP).....	16
Application for Exclusive Occupation Order .....	16
Copy of an Application.....	17
Exclusive Occupation Order .....	17

Content of Exclusive Occupation Order .....	17
Considerations.....	17
Emergency Protection Order Revoked .....	19
Notice of Exclusive Occupation Order .....	19
Application to Vary or Revoke Exclusive Occupation Order .....	19
Notice of Application.....	20
Court Order .....	20
Evidence at Hearing.....	20
Notice of Order .....	20
PART 6 .....	21
EXCLUSIVE OCCUPATION ORDER.....	21
(AFTER DEATH OF A SPOUSE OR COMMON LAW PARTNER) .....	21
Application for an Exclusive Occupation Order After Death of a Spouse or Common Law Partner .....	21
Notice of Application.....	21
Court Order .....	21
Content of Order .....	22
Considerations.....	22
Notice of Order .....	23
Application to Vary or Revoke Exclusive Occupation Order After Death of a Spouse or Common Law Partner.....	23
Copy of an Application.....	24
Court Order .....	24
Evidence at Hearing.....	24
Notice of Order .....	24
PART 7 .....	25
DIVISION OF THE VALUE OF A FAMILY HOME .....	25
(UPON BREAKDOWN OF CONJUGAL RELATIONSHIP) .....	25
Notice of Applications Made Under This Part .....	25
Application by Spouse or Common-Law Partner .....	25
Court Order .....	25
Valuation Date .....	25
Division of Value on Breakdown of Conjugal Relationship .....	26
Assessing Value .....	26

Interim Order to Protect and Preserve an Interest.....	27
Enforcement of Interspousal Contracts.....	28
PART 8 .....	28
DIVISION OF THE VALUE OF A FAMILY HOME .....	28
(ON DEATH OF A SPOUSE OR COMMON-LAW PARTNER).....	28
Notice of Application Made Under This Part.....	28
Notice to Beneficiaries.....	28
Application by Survivor.....	29
Court Order .....	29
Valuation Date .....	29
Entitlement of Survivor.....	30
Assessing Value .....	30
Variation of Order.....	30
Variation of Trust.....	31
Distribution of Estate .....	31
Two Survivors.....	31
Interim Order to Protect and Preserve an Interest.....	32
Enforcement of Agreements .....	32
PART 9 .....	32
GENERAL.....	32
Representations by Council .....	32
Notice of Order to Council .....	32
Interest or Right Not Affected .....	33
PART 10 .....	34
JURISDICTION OF COURTS .....	34
Divorce Proceeding Pending.....	34
Other Family Proceedings Pending .....	34
No Pending Family Proceedings.....	34
Proceedings on Death Pending .....	34
No Proceedings on Death Pending .....	34
Possibility of Joinder.....	34
Right of Appeal — Divorce Proceeding.....	35
Right of Appeal — Other Proceeding.....	35
PART 11 .....	35

RULES OF PRACTICE AND PROCEDURE .....	35
Definitions.....	35
Rules .....	35
Exercise of Power to Make Rules .....	36
Provincial Laws of Evidence .....	36
Continuation of Proceedings on Death of Party .....	36
Continuation of Application by Survivor After Death of Party.....	36
Continuation of Application by Executor or Administrator After Death of Party .....	36
Council Power to Make Regulations .....	36
Regulations Prevail .....	37

WHEREAS pursuant to the *Framework Agreement on First Nations Land Management*, the *First Nations Land Management Act* and the *Individual Agreement on First Nation Land Management* between ᑭᐱᑭᐱᑭ and Her Majesty the Queen in right of Canada, the ᑭᐱᑭᐱᑭ has enacted the *St. Mary's Indian Band Land Code, 2014*;

AND WHEREAS pursuant to section 38.1 of the *St. Mary's Indian Band Land Code, 2014* the Council of the ᑭᐱᑭᐱᑭ must enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage of a member to the use, occupancy and possession of an interest in ᑭᐱᑭᐱᑭ lands held by the member, and the division of interests in those lands;

AND WHEREAS pursuant to subsection 6(1)(c) of the *First Nations Land Management Act* a First Nation that wishes to establish a land management regime under that Act must adopt a land code applicable to all land in a reserve of the First Nation, which land code must include the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or right in First Nation land;

AND WHEREAS pursuant to subsections 6.1(b), (c) and (d) of the *St. Mary's Indian Band Land Code, 2014* the Council of ᑭᐱᑭᐱᑭ may enact laws in relation to interests in and licences to use ᑭᐱᑭᐱᑭ lands, any matter necessary to give effect to the *St. Mary's Indian Band Land Code, 2014*, and any matter necessary or ancillary to a law in relation to ᑭᐱᑭᐱᑭ lands;

AND WHEREAS pursuant to subsection 6.4(c) of the *ᑭᐱᑭᐱᑭ Land Code, 2014* the Council of ᑭᐱᑭᐱᑭ may enact laws in relation to the creation, disposition, regulation and prohibition of interests and licences;

AND WHEREAS pursuant to section 38.3 of the *ᑭᐱᑭᐱᑭ Land Code, 2014* the ᑭᐱᑭᐱᑭ intends to respect the following general principles with respect to the use, occupancy and possession of matrimonial real property on ᑭᐱᑭᐱᑭ lands, and the division of interests in that land, on the breakdown of a marriage:

A. our children and our lands are not to be fought over, they are a gift from the creator;

B. our children should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of our children;

C. the best interests our children are paramount;

D. each spouse should have an equal right to possession of the matrimonial home;

E. the rules and procedures shall not discriminate on the basis of sex;

F. a mortgage or lease of spousal property shall not be set aside if the mortgagee acquired it for value and in good faith; and



“ᑭᐱᑭᐱᑭ-owned” means registered in the name of the ᑭᐱᑭᐱᑭ or having a mortgage that name the ᑭᐱᑭᐱᑭ as a guarantor;

“child” means a child of the conjugal relationship who is under 19 years of age and who was born in or out of wedlock, is a legally adopted child or a child adopted in accordance with ᑭᐱᑭᐱᑭ custom;

“common-law partners” means two persons not married to each other:

- (a) who have lived together in a marriage-like relationship for a period of not less than five (5) years;
- (b) who live together in a marriage-like relationship and have a child together; or
- (c) who live together in a marriage-like relationship where one of the partners has a child and the other partner regularly cares for the child and stands in the place of a parent for the child;

“conjugal relationship” means a relationship between spouses or common-law partners;

“Council” means the Chief and Councillors of ᑭᐱᑭᐱᑭ or any successor elected government of ᑭᐱᑭᐱᑭ;

“court” means a court that has jurisdiction under Part 10 of this Law;

“family home” means a structure — that need not be affixed but that must be situated on ᑭᐱᑭᐱᑭ lands — where the spouses or common-law partners habitually reside or, if they have ceased to cohabit or one of them has died, where they habitually resided on the day on which they ceased to cohabit or the death occurred. If the structure is normally used for a purpose in addition to a residential purpose, this definition includes only the portion of the structure that may reasonably be regarded as necessary for the residential purpose;

“family violence” means any of the following acts or omissions committed by a spouse or common-law partner against the other spouse or common-law partner, any child in the charge of either spouse or common-law partner, 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;

“member” means a person whose name appears on the ᑭᐱᑭᐱᑭ membership list;

“interspousal contract” means:

- (a) a written agreement entered into between spouses, two persons who intend to marry, or common-law partners that is signed by the parties and witnessed, setting out their respective rights and obligations under the marriage or relationship, or on separation, with respect to the possession or division of a family home or matrimonial interests; or
- (b) a written agreement entered into between spouses who are living separate and apart, that is signed by the parties and witnessed, setting out their respective rights and obligations under the separation, with respect to the possession or division of a family home or matrimonial interests;

“matrimonial interest” means an interest, other than an interest in or to the family home, held by at least one spouse or common-law partner and that is acquired:

- (a) during the conjugal relationship;
- (b) before the conjugal relationship but in specific contemplation of it; or
- (c) before the conjugal relationship but not in specific contemplation of it and that appreciated during the conjugal relationship.

Any interest that is received from a person as a gift or legacy or on devise or descent, and any interest that can be traced to that interest, is not a matrimonial interest;

“member” means a person whose name appears on the ᑭᐱᑭᐱᐱ membership list;

“Minister” means the Minister of Aboriginal Affairs and Northern Development Canada;

“peace officer” means a person referred to in paragraph (c) of the definition “peace officer” in section 2 of the *Criminal Code*;

“spouse” means a person who:

- (a) is married to another person, whether by a traditional, religious or civil ceremony; or,
- (b) has entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right under this Law; and

“survivor” means the person who is still alive after the death of their spouse or common-law partner.

## **Interpretation**

### **3. In this Law:**

- (a) the use of the word “must” denotes an obligation that, unless this Law provides to the contrary, must be carried out as soon as practicable after this Law comes into effect or the event that gives rise to the obligation;

## Application

**6. This Law only applies to ʔaḡam lands.**

**8.** This Law does not limit or preclude any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a conjugal relationship with respect to property other than the family home, matrimonial interests, or other entitlements or obligations of spouses or common-law partners.

**10.** If any provision of this Law is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Law.

### Occupation During Conjugal Relationship

**11.** Each spouse or common-law partner has a right to occupy the family home during the conjugal relationship, whether or not that person is a member subject to any laws of the ᑭᐱᑦᐱᐱ regulating the use and occupation of ᑭᐱᑦᐱᐱ lands.

### **Occupation After Death**

**12.** When a spouse or common-law partner dies, a survivor who does not hold an interest in or to the family home has a right to occupy the family home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a member.

### **Consent Required for Disposal of Family Home**

**13.** A spouse or common-law partner who holds an interest in or to a family home must not dispose of or encumber that interest during their conjugal relationship without the free and informed written consent of their spouse or common-law partner whether or not that person is a member.

### **Disposal of Family Home without Consent**

**14.** (1) If a spouse or common-law partner disposes of or encumbers their interest in or to a family home without the free and informed written consent of their spouse or common-law partner a court may, on application by the spouse or common-law partner who did not provide consent, grant an order:

- (a) setting aside the transaction; and
- (b) setting conditions on any future disposition or encumbrance of that interest by the spouse or common-law partner to whom the interest reverts.

(2) The court may not set aside a disposition or encumbrance if the other contracting party to that disposition or encumbrance acquired it for value and acted in good faith.

### **Application for Damages**

**15.** A spouse or common-law partner who has not provided free and informed written consent to a transaction for which such consent is required may, without prejudice to any other right, claim damages from the other spouse or common-law partner.

### **Burden to Prove Consent**

**16.** A spouse or common-law partner who disposes of or encumbers the interest in or to a family home has the burden of proving that the other spouse or common-law partner provided free and informed written consent to the disposition or encumbrance.

### **Order Allowing Disposal of Family Home Without Consent**

**17.** (1) A court may, on application by a spouse or common-law partner who holds an interest in or to a family home, grant an order authorizing that person to dispose of or encumber the family home without the required consent of their spouse or common-law partner, subject to any conditions the court considers appropriate.

(2) A court may only make an order under subsection (1) if it is satisfied that the other spouse or common-law partner:

- (a) cannot be found;
- (b) is not capable of consenting; or
- (c) is unreasonably withholding consent.

## **PART 4 EMERGENCY PROTECTION ORDERS**

### **Application for Emergency Protection Order**

**18.** A spouse or common-law partner may make an *ex parte* application for an emergency protection order and may do so even if that person has been forced to vacate the family home as a result of family violence.

**19.** A peace officer or other person may apply for an emergency protection order on behalf of a spouse or common-law partner with that person's consent, or if that person does not consent, with leave of the court.

### **Emergency Protection Order**

**20.** A court may make an emergency protection order for a period of up to 90 days if the court 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.

**21.** An emergency protection order made under section 20 may include any of the following conditions:

- (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 or common-law partner and any specified person who habitually resides in the family home — whether or not they are

members — 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 officer, immediately or within a specified period, to remove the applicant's spouse or common-law partner and any specified person who habitually resides in the family home — whether or not they are members — from the family home;

(d) a provision prohibiting any person who is required to vacate the family home under a provision referred to in paragraph (b) from attending near the family home;

(e) a provision directing a peace officer, within a specified period, to accompany the applicant's spouse or common-law partner or any specified person to the family home or other location in order to supervise the removal of personal belongings; and

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

## **Considerations**

**22.** (1) In making an order under section 20, the best interests of any child of the conjugal relationship and who may be affected by the order must be the paramount consideration.

(2) To determine what is in the best interests of a child, all of the child's rights, needs and circumstances must be considered, including the following:

(a) the child's health and emotional well-being;

(b) the child's views, unless it would be inappropriate to consider them;

(c) the nature and strength of the relationships between the child and significant persons in the child's life;

(d) the history of the child's care;

(e) the child's right to stability, given the child's age and stage of development;

(f) the child's right to reside on ᑭᐱᐱᐱ lands and not to be removed or relocated from ᑭᐱᐱᐱ lands without their free, prior and informed consent;

(g) the impact of any family violence on the child's right to safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs; and

(i) the child's right to recover, use, enjoy, preserve and pass on to future generations ᑭᐱᐱᐱ histories and language, oral traditions and culture.

(2) In making an order under section 20, the court must also consider:

- (a) the best interests of any child who is not a child of the conjugal relationship but who is in the charge of either spouse or common-law partner;
- (b) the history and nature of the family violence;
- (c) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
- (d) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either spouse or common-law partner is the caregiver;
- (e) the fact that a person, other than the spouses or common-law partners, holds an interest in or to the family home;
- (f) the period during which the applicant has habitually resided on ᑭᐱᓄᓐ ᓄᐱᓐ; and
- (g) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse or common-law partner 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 family violence against the applicant, any child in the charge of either spouse or common-law partner, or any other person who habitually resides in the family home.

### **Emergency Protection Order Binding**

**23.** Any person against whom an order is made under section 20 and any person specified in an order made under section 20 are bound by it on receiving notice of it.

### **Notice of Emergency Protection Order**

**24.** (1) A peace officer must serve a copy of an order made under section 20 on the person against whom the order is made and any other person named in the order.

(2) Service under subsection (1) must be by personal service unless the court authorizes service in another manner.

(3) The peace officer who serves a notice under subsection (1) must, without delay, after such service is effected inform the person in whose favour the emergency protection order is made that the person against whom the order is made, and any other person named in the order, has been served.

### **Application to Vary or Revoke Emergency Protection Order**

**25.** Any person in whose favour, or against whom, an order is made under section 20, or any person specified in an order under section 20 may apply to the court to have the order varied or revoked:

- (a) within 21 days after the day on which notice under section 24 is served or with leave of the court; and
- (b) only if there has been a material change in circumstances.

### **Notice of Application**

**26.** (1) An applicant under section 25 must, without delay, serve a copy of the application:

- (a) if the applicant is a person in whose favor the order under section 20 is made, to the person against whom the order is made and any other person named in the order; and
- (b) if the applicant is a person against whom the order under section 20 is made, to the person in whose favor the order is made and any other person named in the order.

(2) Any person who is entitled to be served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

### **Confirm, Vary or Revoke Order**

**27.** The court may confirm, vary or revoke an order made under section 20 and may extend the duration of the order beyond the period of 90 days.

### **Evidence at Hearing**

**28.** In confirming, varying or revoking an order made under section 20, the court must consider:

- (a) all evidence that was relied on at the hearing in which the order was made under section 20;
- (b) all evidence regarding a change in material circumstances; and
- (c) the considerations set out in section 22.

### **Order Binding**

**29.** Any person against whom an order under section 27 is made, and any person named in an order under section 27, is bound by it on receiving notice of it.

### **Notice of Emergency Protection Order**

**30.** (1) If a person against whom an order under section 27 is made, or another person named in an order under section 27, is not present at the hearing, a peace officer must serve a copy of the order made under section 27 on that person.

(2) Service under subsection (1) must be by personal service unless the court authorizes service in another manner.

(3) The peace officer who serves a notice under subsection (1) must, without delay, after such service is effected inform the person in whose favour the order is made that the person against whom the order is made, and any person who is affected by the order, has been served.

### **Exclusion of Public from Emergency Protection Order Hearing**

**31.** (1) Subject to subsection (2), on application by the parties or on its own motion, a court may make one or more of the following orders, subject to any conditions that the court specifies:

(a) an order excluding members of the public, other than the parties, from all or part of a hearing to grant an order under sections 20 or 27;

(b) an order prohibiting the publication or broadcasting of any information from a hearing to grant an order under sections 20 or 27, 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; or

(c) an order prohibiting disclosure to the public of any information in a court document or record related to a hearing to grant an order under sections 20 or 27.

(2) The court may only make an order under subsection (1) if it is satisfied that:

(a) the order is necessary for the safety of a party or witness;

(b) the order is necessary for the safety, physical or emotional well-being of a child; or

(c) protecting a party, witness or child from an undue hardship or adverse effect that could be caused by making the information public outweighs the public's right to the information.

## **PART 5 EXCLUSIVE OCCUPATION ORDER (AT BREAKDOWN OF CONJUGAL RELATIONSHIP)**

### **Application for Exclusive Occupation Order**

**32.** A spouse or common-law partner may apply to the court for an order granting that person exclusive occupation of a family home that is not ᐃᓕᓕᓐ-owned, whether or not that person is a member.

### **Copy of an Application**

**33.** (1) An applicant under section 32 must, without delay, serve a copy of the application on:

- (a) Council;
- (b) any person who is of the age of majority or over, whom the applicant is seeking to have vacated from the family home; and
- (c) any person who holds an interest in or to the family home.

(2) Any person who has been served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

### **Exclusive Occupation Order**

**34.** (1) A court may make an order that grants the applicant exclusive occupation of a family home that is not ᑭᐱᑭᐱᐱ-owned, and reasonable access to that home, subject to any conditions set out in section 35, and for any period of time that the court determines is reasonable in the circumstances.

(2) Pending the determination of an application under subsection (1), the court may make an interim order to the same effect as an order under subsection (1).

### **Content of Exclusive Occupation Order**

**35.** An order under section 34 may contain a provision requiring any or all of the following:

- (a) the applicant's spouse or common-law partner and any specified person — whether or not they are members — to vacate the family home, immediately or within a specified period of time, and prohibiting them from re-entering the home;
- (b) the applicant's spouse or common-law partner to preserve the condition of the family home until that person vacates it;
- (c) the applicant to make payments to their spouse or common-law partner toward the cost of other accommodation; or
- (d) either spouse or common-law partner 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 or common-law partner for those purposes.

### **Considerations**

**36.** (1) In making an exclusive occupation order under section 34, the best interests of any child

**37.** who may be affected by the order must be the paramount consideration.

(2) To determine what is in the best interests of a child, all of the child's rights, needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's right to stability, given the child's age and stage of development;
- (f) the child's right to reside on ᑭᐱᐱᐱ lands and not to be removed or relocated from ᑭᐱᐱᐱ lands without their free, prior and informed consent;
- (g) the impact of any family violence on the child's right to safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs; and
- (i) the child's right to recover, use, enjoy, preserve and pass on to future generations ᑭᐱᐱᐱ histories and language, oral traditions and culture.

(2) In making an emergency protection order, the court must also consider:

- (a) the best interests of any child is not a child of the conjugal relationship but who is in the charge of either spouse or common-law partner;
- (b) the terms of any interspousal contract;
- (c) the collective interests of members in their ᑭᐱᐱᐱ lands;
- (d) any representations made by Council with respect to the cultural, social and legal context that pertains to the application;
- (e) the period during which the applicant has habitually resided on ᑭᐱᐱᐱ lands;
- (f) the financial situations and the medical conditions of the spouses or common-law partners;
- (g) the availability of other suitable accommodation that is situated on ᑭᐱᐱᐱ lands;
- (h) any existing order made on a matter related to the consequences of the breakdown of the conjugal relationship;
- (i) any family violence;

- (j) any acts or omissions by one of the spouses or common-law partners that reasonably constitute psychological abuse against the other spouse or common-law partner, any child in the charge of either spouse or common-law partner, or any other family member who habitually resides in the family home;
- (k) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse or common-law partner 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 common-law partner, or any other family member who habitually resides in the family home;
- (l) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom either spouse or common-law partner is the caregiver;
- (m) the fact that a person, other than the spouses or common-law partners, holds an interest in or to the family home; and
- (n) the views of any person who received a copy of the application, presented to the court in any form that the court allows.

### **Emergency Protection Order Revoked**

**38.** An existing emergency protection order in favour of or against one of the spouses or common-law partners is revoked when the court makes an order under section 34, except to the extent specified by the court in either order.

### **Notice of Exclusive Occupation Order**

**39.** (1) Subject to subsection (2), a person who is granted an order under section 34 must, without delay serve a copy of the order on those persons who are entitled to receive a copy of the application.

(2) If directed by the court, a peace officer must serve a copy of an order made under section 34 on those persons who are entitled to receive a copy of the application.

### **Application to Vary or Revoke Exclusive Occupation Order**

**40.** If there has been a material change in circumstances, any of the following persons may apply to a court to have an order made under section 34 varied or revoked:

- (a) any person in whose favour or against whom an order made under section 34 is made;

- (b) any person specified in order made under section 34; or
- (c) the holder of an interest in or to the family home to which an order made under section 34 relates.

### **Notice of Application**

**41.** (1) An applicant under section 39 must, without delay, send a copy of the application to:

- (a) Council;
- (b) if the applicant is a person in whose favour an order made under section 34 was made, to the person against whom the order was made;
- (c) if the applicant is a person against whom an order made under section 34 was made, to the person in whose favour the order was made;
- (d) any person who is named in the order made under section 34; and
- (e) any person who holds an interest in or to the family home to which the order made under section 34 relates.

(2) Any person who is entitled to be served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

### **Court Order**

**42.** The court may, by order, confirm, vary or revoke an order made under section 34.

### **Evidence at Hearing**

**43.** In confirming, varying or revoking an order made under section 34, the court must consider:

- (a) all evidence that was relied on at the hearing in which the order was made under section 34;
- (b) all evidence regarding a change in material circumstances; and
- (c) the considerations set out in section 36.

### **Notice of Order**

**44.** (1) Subject to subsection (2), a person who is granted an order under section 41 must, without delay serve a copy of the order on those persons who are entitled to receive a copy of the application.

(2) If directed by the court, a peace officer must serve a copy of an order made under section 41 on those persons who are entitled to receive a copy of the application.

**PART 6**  
**EXCLUSIVE OCCUPATION ORDER**  
**(AFTER DEATH OF A SPOUSE OR COMMON LAW PARTNER)**

**Application for an Exclusive Occupation Order After Death of a Spouse or Common Law Partner**

**45.** A survivor may apply to the court for an order granting the survivor exclusive occupation of a family home that is not ᑭᐱᑭᐱᐱ-owned, whether or not that person is a member.

**Notice of Application**

**46.** (1) An applicant under section 44 must, without delay serve a copy of the application on:

- (a) Council;
- (b) the executor of the will or the administrator of the estate, if the applicant knows who those persons are;
- (c) the Minister;
- (d) 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
- (e) any person who holds an interest in or to the family home.

(2) Any person who has a right to be served a copy of the application has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

**Court Order**

**47.** (1) A court may make an order granting a survivor exclusive occupation of a family home that is not ᑭᐱᑭᐱᐱ-owned, and reasonable access to that home, subject to any conditions set out in section 47, and for any period that the court determines is reasonable in the circumstances.

(2) Pending the determination of an application under subsection (1), the court may make an interim order to the same effect as an order under subsection (1).

### **Content of Order**

**48.** An order under section 46 may contain provisions requiring any or all of the following:

- (a) the survivor to preserve the condition of the family home;
- (b) any specified person, whether or not that person holds an interest in or to the family home to vacate it immediately, or within a specified period, and prohibiting them from re-entering the home;
- (c) the executor of the will, the administrator of the estate, or the holder of an interest 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; or
- (d) any other condition the court considers is just and appropriate in the circumstances.

### **Considerations**

**49.** (1) In making an order under section 46, the best interests of any child of the conjugal relationship who may be affected by the order must be the paramount consideration.

(2) To determine what is in the best interests of a child, all of the child's rights, needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's right to stability, given the child's age and stage of development;
- (f) the child's right to reside on ʔaᑭam lands and not to be removed or relocated from ʔaᑭam lands without their free, prior and informed consent;
- (g) the impact of any family violence on the child's right to safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs; and

(i) the child's right to recover, use, enjoy, preserve and pass on to future generations ᑭᐱᑭᐱᐱ histories and language, oral traditions and culture;

(3) In making an exclusive occupation order, the court must also consider:

(a) the best interests of any child who is not a child of the conjugal relationship but who is in the charge of either spouse or common-law partner;

(b) the terms of a will;

(c) the terms of an interspousal contract;

(d) the collective interests of members in ᑭᐱᑭᐱᐱ lands;

(e) any representations made by Council with respect to the cultural, social and legal context that pertains to the application;

(f) the financial and medical condition of the survivor;

(g) the period during which the survivor has habitually resided on ᑭᐱᑭᐱᐱ lands;

(h) the fact that the family home is the only property of significant value in the estate;

(i) the interests of any person who holds or may have a right to an interest in or to the family home;

(j) 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;

(k) 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

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

## **Notice of Order**

**50.** (1) Subject to subsection (2), a survivor who is granted an order under section 46 must, without delay, serve notice of the order on those persons who are entitled to receive a copy of the application.

(2) If directed by the court, a peace officer must serve a copy of an order under section 46 on those persons who received a copy of the application.

## **Application to Vary or Revoke Exclusive Occupation Order After Death of a Spouse**

## **or Common Law Partner**

**51.** If there has been a material change in circumstances, the following persons may apply to the court to have an order granted under section 46 varied or revoked:

- (a) the survivor to whom the order under section 46 is granted;
- (b) the executor of the will or administrator of the estate;
- (c) any person specified in an order made under section 46; or
- (d) the holder of an interest in or to the family home.

## **Copy of an Application**

**52.** (1) An applicant under section 50 must, without delay send a copy of the application to every person who is entitled to receive an application under section 45.

(2) Any person who is entitled to be served a copy of the application has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

## **Court Order**

**53.** The court may make an order that confirms, varies or revokes an order made under section 46 and may include in such order any provisions set out in section 47.

## **Evidence at Hearing**

**54.** In confirming, varying or revoking an order made under section 46, the court must consider:

- (a) all evidence that was relied on at the hearing in which the order was made under section 46;
- (b) all evidence regarding a change in material circumstances; and
- (c) the considerations set out in section 48.

## **Notice of Order**

**55.** (1) Subject to subsection (2), a person who is granted an order under section 52 must, without delay serve a copy of the order on those who are entitled to receive a copy of the application.

(2) If directed by the court, a peace officer must serve a copy of an order made under section 52 on those persons who are entitled to receive a copy of the application.

**PART 7**  
**DIVISION OF THE VALUE OF A FAMILY HOME**  
**(UPON BREAKDOWN OF CONJUGAL RELATIONSHIP)**

**Notice of Applications Made Under This Part**

**56.** An applicant under this Part must, without delay, serve a copy of the application they are making on their spouse or common-law partner.

**Application by Spouse or Common-Law Partner**

**57.** A spouse or common-law partner may apply to the court for a determination of each spouse or common-law partner's entitlements under sections 60 to 62.

**58.** An application under section 56 must be made within three (3) years after the day on which the conjugal relationship ended.

**Court Order**

**59.** A court may make an order to determine any matter in respect of each spouse's or common-law partner's entitlements under sections 60 to 62 including:

- (a) the amount payable by one spouse or common-law partner to the other; and
- (b) 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 set-off or compensation of any amounts owed by one spouse or common-law partner to the other, or
  - (iv) any combination of the methods referred to in subparagraphs (i) to (iii).

**Valuation Date**

**60.** For the purposes of sections 60 to 62, "valuation date" means

- (a) in the case of spouses, the earliest of the following days:

- (i) the day on which they separated with no reasonable prospect of reconciliation,
  - (ii) the day on which a judgment granting their divorce is rendered,
  - (iii) the day on which their marriage is declared a nullity,
  - (iv) the day on which one of the spouses made an application related to the consequences of the breakdown of the marriage, and
  - (v) the day on which one of the spouses is granted an order under section 67; or
- (a) in the case of common-law partners, the earliest of the following days:
- (i) the day on which one of the common-law partners manifested the intention not to continue the conjugal relationship,
  - (ii) the day on which one of the common-law partners made an application related to the consequences of the breakdown of the conjugal relationship, and
  - (iii) the day on which one of the common-law partners is granted an order under section 67.

### **Division of Value on Breakdown of Conjugal Relationship**

**61.** When a conjugal relationship breaks down, each spouse or common-law partner is entitled to an amount equal to one half of the value, on the valuation date, of the appreciation to a family home that is not ᑭᐱᑭᐱᐱ-owned from the date that the spouses or common-law partners became spouses or common-law partners.

### **Assessing Value**

**62.** (1) Subject to subsection (2), an assessment of the value of a family home is the difference between:

- (a) the amount that a buyer would reasonably be expected to pay for a family home that is comparable to the family home in question, and
- (b) the amount of any outstanding debts or other liabilities assumed for acquiring the family home or for improving or maintaining the family home.

(2) Despite subsection (1), the spouses or common-law partners may enter an interspousal contract determining the value of a family home any basis they desire to make such determination.

(3) A party to an interspousal contract made under subsection (2) has a right to register that interspousal contract in the ᑭᐱᑭᐱᐱ Lands Register and the First Nations Land Registry.

## **Variation Order**

**63.** On application by a spouse or common-law partner, a court may, by order, vary the amount owed to or by the applicant under section 58 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 or common-law partner;
- (c) any significant change in the value of the family home in question between the valuation date and the day on which the order is made, inclusive;
- (d) the fact that one of the spouses or common-law partners may obtain exclusive occupation of the family home on agreement or under an order under sections 34 or 41;
- (e) the availability of accommodation that is comparable to the family home and that is situated on the same reserve as the family home;
- (f) the duration of the conjugal relationship;
- (g) the terms of any interspousal contract;
- (h) the reduction of the value of the family home in question as a result of acts or omissions by the applicant's spouse or common-law partner including:
  - (i) the disposition of any such interest for less than its fair value,
  - (ii) the improvident depletion of any such interest,
  - (iii) the disposition or encumbrance of the interest in or to the family home without the applicant's required consent, and
  - (iv) the encumbrance of that interest after the valuation date; or
- (i) any other fact that the court considers is reasonably related to the consequences of the breakdown of the conjugal relationship.

## **Interim Order to Protect and Preserve an Interest**

**64.** On application by a spouse or common-law partner who has initiated an application under this Part, a court may make any order it considers necessary to protect and preserve an interest in or to the family home, or a matrimonial interest, until a final determination is made under this Part.

## **Enforcement of Interspousal Contracts**

**65.** (1) If spouses or common-law partners enter into an interspousal contract after they cease to cohabit that sets out the amount to which each is entitled and how to settle the amount payable by one of the methods referred to in subparagraphs 58(b)(i), (ii) or (iv) or any combination of those methods, a court may, on application by one of them, make an order to enforce that interspousal contract if the court is satisfied that the consent of both parties to the interspousal contract is free and informed, and that the interspousal contract is not unconscionable, having regard to the factors listed in section 64.

(2) A court may on application by a party to an interspousal contract, set aside a provision in an interspousal contract with respect to an interest in ᑭᐱᐱᐱ Land:

- (a) if a party to that contract failed to disclose to the other party all of their interests in ᑭᐱᐱᐱ land, or any material information in respect of those interests;
- (b) if a party did not understand the nature or consequences of the provision; or,
- (c) otherwise in accordance with the law of contract.

(3) A party to an interspousal contract made under subsection (1) has a right to register that interspousal contract in the ᑭᐱᐱᐱ lands Register and the First Nations land Registry.

## **PART 8 DIVISION OF THE VALUE OF A FAMILY HOME (ON DEATH OF A SPOUSE OR COMMON-LAW PARTNER)**

### **Notice of Application Made Under This Part**

**66.** An applicant under this Part must, without delay, serve a copy of the application they are making on the following persons:

- (a) the Minister;
- (b) in the case where the applicant is the survivor, to the executor of the will or the administrator of the estate, if the applicant knows who those persons are; and
- (c) in the case where the applicant is the executor of a will or an administrator of an estate, to the survivor.

### **Notice to Beneficiaries**

**67.** On receipt of the copy of an application under section 65, the executor of the will or the administrator of the estate or, if neither has been appointed, the Minister must, without delay, serve a copy of the application on the named beneficiaries under the will and the beneficiaries on intestacy.

## **Application by Survivor**

**68.** A survivor may apply to the court for a determination of their entitlements under sections 74 to 76.

**69.** (1) An application under section 70 must be made within ten (10) months after the day on which the death of the applicant's spouse or common-law partner occurs.

(2) On application by a survivor, a court may extend the period of ten (10) months by any amount of time that it considers appropriate, if the court is satisfied that the applicant failed to apply within that period for one (1) of the following reasons:

- (a) the survivor did not know of the death of their spouse or common-law partner until after the period expired; or
- (b) circumstances existed that were beyond the control of the survivor.

## **Court Order**

**70.** A court may make an order to determine any matter in respect of a survivor's entitlements under sections 74 to 76 including:

- (a) determining the amount payable to the survivor; and
- (b) providing that the amount payable to the survivor be settled by
  - (i) payment of the amount in a lump sum,
  - (ii) payment of the amount by installments, or
  - (iii) a combination of the methods referred to in subparagraphs (i) and (ii).

## **Valuation Date**

**71.** For the purposes of section 74 to 76, "valuation date" means

- (a) in the case of spouses, the earliest of the following days:
  - (i) the day before the day on which the death occurred,
  - (ii) the day on which the spouses ceased to cohabit as a result of the breakdown of the marriage, and
  - (iii) the day on which the spouse who is now the survivor is granted an order under section 83; or
- (b) in the case of common-law partners, the earlier of the following days:
  - (i) the day before the day on which the death occurred, and

- (ii) the day on which the common-law partner who is now the survivor is granted an order under section 83.

### **Entitlement of Survivor**

**72.** On the death of a spouse or common-law partner, the survivor is entitled is entitled to an amount equal to one half of the value, on the valuation date, of the appreciation to a family home that is not ᑭᐱᐱᐱ-owned from the date that the spouses or common-law partners became spouses or common-law partners.

### **Assessing Value**

**73.** (1) Subject to subsection (2), an assessment of the value of a family home is the difference between:

- (c) the amount that a buyer would reasonably be expected to pay for a family home that is comparable to the family home in question, and
- (d) the amount of any outstanding debts or other liabilities assumed for acquiring the family home or for improving or maintaining the family home.

(2) Despite subsection (1), the spouses or common-law partners may enter an interspousal contract determining the value of a family home any basis they desire to make such determination.

(3) A party to an interspousal contract made under subsection (2) has a right to register that interspousal contract in the First Nations Land Registry.

### **Variation of Order**

**74.** (1) On application by an executor of a will or an administrator of an estate, a court may, by order, vary the amount granted to the survivor under 72 if:

- (a) the spouses or common-law partners had previously resolved the consequences of the breakdown of the conjugal relationship by interspousal contract or judicial decision, or
- (b) that amount would be unconscionable, having regard to, among other things, the fact that any children of the deceased individual would not be adequately provided for.

(2) A party to an interspousal contract made under subsection (1) has a right to register that interspousal contract in the ᑭᐱᐱᐱ lands Register and the First Nations land Registry.

### **Variation of Trust**

**75.** O On application by:

- (a) a survivor;
- (b) an executor of a will; or
- (c) an administrator of an estate,

the court may, by order, vary the terms of a trust that is established under the terms of the deceased individual's will so that the amount that is payable to the survivor may be paid.

### **Final Settlement**

**76.** If a court decides, after the death of a spouse or common-law partner, that an amount is payable to the survivor under section 58 or 72, the spouse, common-law partner, or survivor may not, in respect of the interest in or to the family home and the matrimonial interests, benefit from:

- (a) the deceased individual's will;
- (b) section 48, subsections (50)(1) to (3) of the *Indian Act*, or
- (c) regulations made under section 50.1 of the *Indian Act*.

### **Distribution of Estate**

**77.** (1) Subject to subsection (2), an executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:

- (a) the survivor consents in writing to the proposed distribution;
- (b) the period of 10 months referred to in section 71(1) and any extended period the court may have granted under section 71(2) have expired and no application has been made under section 70 within those periods; or
- (c) an application made under subsection 70 is disposed of.

(2) Subsection (1) does not prohibit reasonable advances to survivors or other dependants of the deceased spouse or common-law partner for their support.

### **Two Survivors**

**78.** When there are two survivors — a common-law partner and a spouse with whom the deceased individual is no longer cohabiting — and an amount is payable to both under an order referred to in section 72, the executor of the will or the administrator of

the estate must pay the survivor who is the common-law partner before paying the survivor who is the spouse.

### **Interim Order to Protect and Preserve an Interest**

**79.** On application by a survivor who has initiated proceedings under section 70, a court may make any order that it considers necessary protect and preserve an interest in or to the family home until a determination is made under section 70.

### **Enforcement of Agreements**

**80.** (1) 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 in subparagraphs 72(b)(i) or (ii), 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 is free and informed and that the agreement is not unconscionable.

(2) A party to an agreement made under subsection (1) has a right to register that agreement in the ᐃᓐᓐᓐ Lands Register and the First Nations Land Registry.

## **PART 9 GENERAL**

### **Representations by Council**

**81.** (1) On the request of Council, the court that is seized of any application must allow the Council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order should be made.

(2) Where Council makes representations under subsection (1), the Court must consider such representations in making an order under this Law.

### **Notice of Order to Council**

**82.** Unless otherwise required by this Law, when the court makes an order under this Law that is not an order under section 31, the person in whose favour the order is made must send, without delay, a copy of the order to the Council.

### **Liability of Peace Officer Limited**

**83.** An action or other proceeding must not be instituted against a peace officer for any act or omission done in good faith in the execution or intended execution of the peace officer's duties under this Law.

### **Interest or Right Not Affected**

**84.** An order made under any of Parts 3 to 6 will not:

- (a) change who holds an interest in or to the family home;
- (b) prevent an executor of a will or an administrator of an estate from transferring an interest in or to the family home to a named beneficiary under the will or to a beneficiary on intestacy; or
- (c) prevent a court from ordering the transfer of such an interest under section 65 or subparagraph 72(b)(iii).

### **Effect of Order on Obligations Under a Lease**

**85.** When an order made under any of Parts 3 to 6 grants exclusive occupation of the family home to a spouse, common-law partner or survivor who is not a lessee under the lease for the family home, the spouse, common-law partner or survivor is bound by the lease during the period of the order and is responsible to the lessor for the obligations under the lease of the lessee.

### **Offence**

**86.** Any person who contravenes one of the following orders is guilty of an offence:

- (a) an emergency protection order made section 20 or 27;
- (b) a provision referred to in paragraph 35(a) contained in an exclusive occupation order made under section 34 or 41; or
- (c) a provision referred to in paragraph 47(b) contained in an order made under section 46 or 52.

**87. (1)** A person who is found guilty of an offence under section 90 is 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.
- (2) A fine imposed under subsection (1) is payable directly to the ᑭᐱᑭᐱᐱ.

## **PART 10 JURISDICTION OF COURTS**

### **Divorce Proceeding Pending**

**88.** When a divorce proceeding — as defined in subsection 2(1) of the *Divorce Act* — between spouses is pending, the court that has jurisdiction to hear and determine the matter has jurisdiction to hear and determine an application by one of the spouses under this Law.

### **Other Family Proceedings Pending**

**89.** When a proceeding, other than a divorce proceeding, related to the consequences of the breakdown of a conjugal relationship is pending, the court that is seized of the matter has jurisdiction to hear and determine an application by the spouse or common-law partner.

### **No Pending Family Proceedings**

**90.** If no divorce proceeding is pending and no court is seized of a matter related to the consequences of the breakdown of a conjugal relationship, the court that has jurisdiction to hear and determine an application by a spouse or common-law partner under this Law is the Supreme Court of British Columbia.

### **Proceedings on Death Pending**

**91.** A court that is seized of a matter related to the distribution of property on the death of a spouse or common-law partner has jurisdiction to hear and determine an application made under this Law by the survivor, the executor of the will or the administrator of the estate.

### **No Proceedings on Death Pending**

**92.** If no court is seized of a matter referred to in section 95, the court that has jurisdiction to hear and determine an application made under this Law by the survivor, the executor of the will or the administrator of the estate is the Supreme Court of British Columbia.

### **Possibility of Joinder**

**93.** An application made under this Law, except under sections 20 or 27, may be heard in the same proceeding as another application related to the consequences of the breakdown of the conjugal relationship or the death of one of the spouses or common-law partners.

#### **Right of Appeal — Divorce Proceeding**

**94.** An order made under this Law in a divorce proceeding as defined in subsection 2(1) of the *Divorce Act* is deemed, for the purposes of section 21 of that Act, to be an order made under that Law.

#### **Right of Appeal — Other Proceeding**

**95.** Any other order made under this Law, except under Parts 3 and 4, may be appealed to the court exercising appellate jurisdiction over the court that made the order.

### **PART 11 RULES OF PRACTICE AND PROCEDURE**

#### **Definitions**

**96.** The following definitions apply in this Part:

“appellate court”, in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal; and

“competent authority” means the body, person or group of persons ordinarily competent under the laws of British Columbia to make rules regulating the practice and procedure in the court that is hearing a proceeding under this Law.

#### **Rules**

**97.** Subject to section 103 to 108, a competent authority may make rules applicable to any proceedings under this Law, including rules:

- (a) regulating the practice and procedure in the court, including the addition of persons as parties to the proceedings;
- (b) respecting the conduct and disposition of any proceedings under this Law without an oral hearing;
- (c) regulating the sittings of the court;

- (d) respecting the fixing and awarding of costs;
- (e) prescribing and regulating the duties of officers of the court;
- (f) respecting the transfer of proceedings under this Law to or from the court; and
- (g) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Law.

### **Exercise of Power to Make Rules**

**98.** The power to make rules conferred by section 101 on a competent authority must be exercised in the like manner and subject to the like terms and conditions, if any, as the power to make rules conferred on that authority by the laws of British Columbia.

### **Provincial Laws of Evidence**

**99.** The laws of evidence of British Columbia, including the laws of proof of service of any document, apply to proceedings under this Law.

### **Continuation of Proceedings on Death of Party**

**100.** When a spouse or common-law partner makes an application under Part 5 or 7, and both spouses or common-law partners or one of them dies before the application is disposed of, the application may be continued by or against the executor of the will or the administrator of the estate of the spouse or common-law partner who dies.

### **Continuation of Application by Survivor After Death of Party**

**101.** When a survivor makes an application under Part 8 and the survivor dies before the application is disposed of, the application may be continued by the executor of the will or the administrator of the estate of the survivor.

### **Continuation of Application by Executor or Administrator After Death of Party**

**102.** When an executor of a will or an administrator of an estate makes an application under Part 8 and the survivor dies before the application is disposed of, the application may be continued against the executor of the will or the administrator of the estate of the survivor.

### **Council Power to Make Regulations**

**103.** The Council may make regulations that the Council considers necessary for carrying out the purposes and provisions of this Law, including regulations making rules that are applicable to any proceedings under this Law and prescribing anything that by this Law is to be prescribed.

### **Regulations Prevail**

**104.** Any regulations that may be made under section 108 to provide for uniformity in the rules made under section 101 prevail over those rules.