



Affaires autochtones
et du Nord Canada

Indigenous and
Northern Affairs Canada

Matrimonial Real Property On-Reserves

Background and Context

KELOWNA

Engagement 2017-2018



Canada

Why are we here today?

- National Engagement on Matrimonial Real Property
- We need **YOUR expertise**
 - What works / what doesn't work
 - Solutions / Ideas
- Set the stage
 - Background
 - Scenarios



Purpose

- Offer background information and context on Matrimonial Real Property pursuant to the *First Nation Land Management Act* and the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Summarize the contents of the acts
- Provide an overview of what we've heard so far





Matrimonial Real Property on reserve – A legislative gap

- Matrimonial Real Property refers to the house or land that a couple lives on or benefits from while they are married or in a common-law relationship.
- In 1986, the Supreme Court of Canada confirmed in *Derrickson v. Derrickson* that when a conjugal relationship breaks down, courts cannot apply provincial/territorial family law if doing so would alter individual interests in matrimonial real property located on reserves, because reserve lands fall under federal jurisdiction. This resulted in a legislative gap on reserve.

Closing the legislative gap

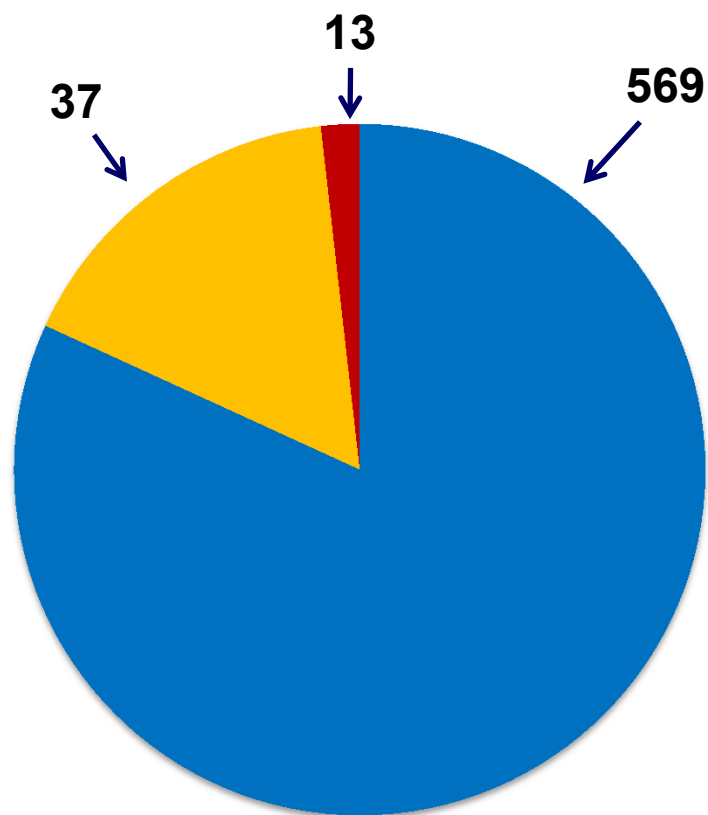
- **Framework Agreement on First Nations Land Management**
 - The Framework Agreement and the *First Nation Land Management Act* were amended to address the issue of matrimonial real.
 - First Nations operating under a land code must establish a community process in its land code to develop rules and procedures applicable upon the breakdown of a marriage, to the use, occupancy and possession of First Nations land and the division of interests in that land within 12 months after the land code comes into force.
- ***Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA)***
 - FHRMIRA came into affect in December 2013. Its provides families living on reserves with immediate protections and rights, similar to those available to other Canadians living off reserve.
 - FHRMIRA has two main components:
 - 1) First Nation Law Making Power
 - 2) Provisional Federal Rules






Matrimonial Real Property Implementation

Indigenous and Northern Affairs Canada	<ul style="list-style-type: none"> • Develops policies and provides strategic direction. • Maintains the published list of First Nations with laws made pursuant to the FHRMIRA. • Manages financial and operational support for Regional offices and external partners (NALMA, LAB/RC, NRCan, DoJ, law societies). • Provides federal training and adapts federal policies (e.g. Land Registry & Housing forms)
First Nation Land Management Resource Centre	<ul style="list-style-type: none"> • Strengthens capacity through models, templates, course curricula, and training programs. • Coordinates the First Nation component of the FNLM developmental process (e.g., development of land codes, community ratification plans, ratification votes).
National Aboriginal Lands Managers Association - Centre of Excellence	<ul style="list-style-type: none"> • Provides training sessions and technical support related to the FHRMIRA • Matrimonial Real Property toolkit and bilingual materials have been developed, distributed and made available online.
Public Safety & Royal Canadian Mounted Police	<ul style="list-style-type: none"> • Develops and provides training to law enforcement and peace officers on the FHRMIRA.

Current Context



How First Nation communities are addressing matrimonial real property

-  Subject to the Provisional Federal Rules (approx. 569)
-  First Nation matrimonial real property law enacted pursuant to the Act (13)
-  Matrimonial real property is addressed under the First Nations Land Management Regime (37)



Matrimonial Real Property

Contents of the Acts – in brief



MRP under the *First Nation Land Management Act*

- Under the Framework Agreement, First Nations have the authority to enact a matrimonial real property law.
- The law is to be enacted following a community-led process.
- First Nations have 12 months after the land code takes effect to enact a matrimonial real property law.
- There is a requirement that the matrimonial real property law be non-discriminatory on the basis of sex.
- Generally, the provisional federal rules of FHRMIRA apply until a First Nation enacts a matrimonial real property law under its land code.



Enact a community-specific law pursuant to FHRMIRA

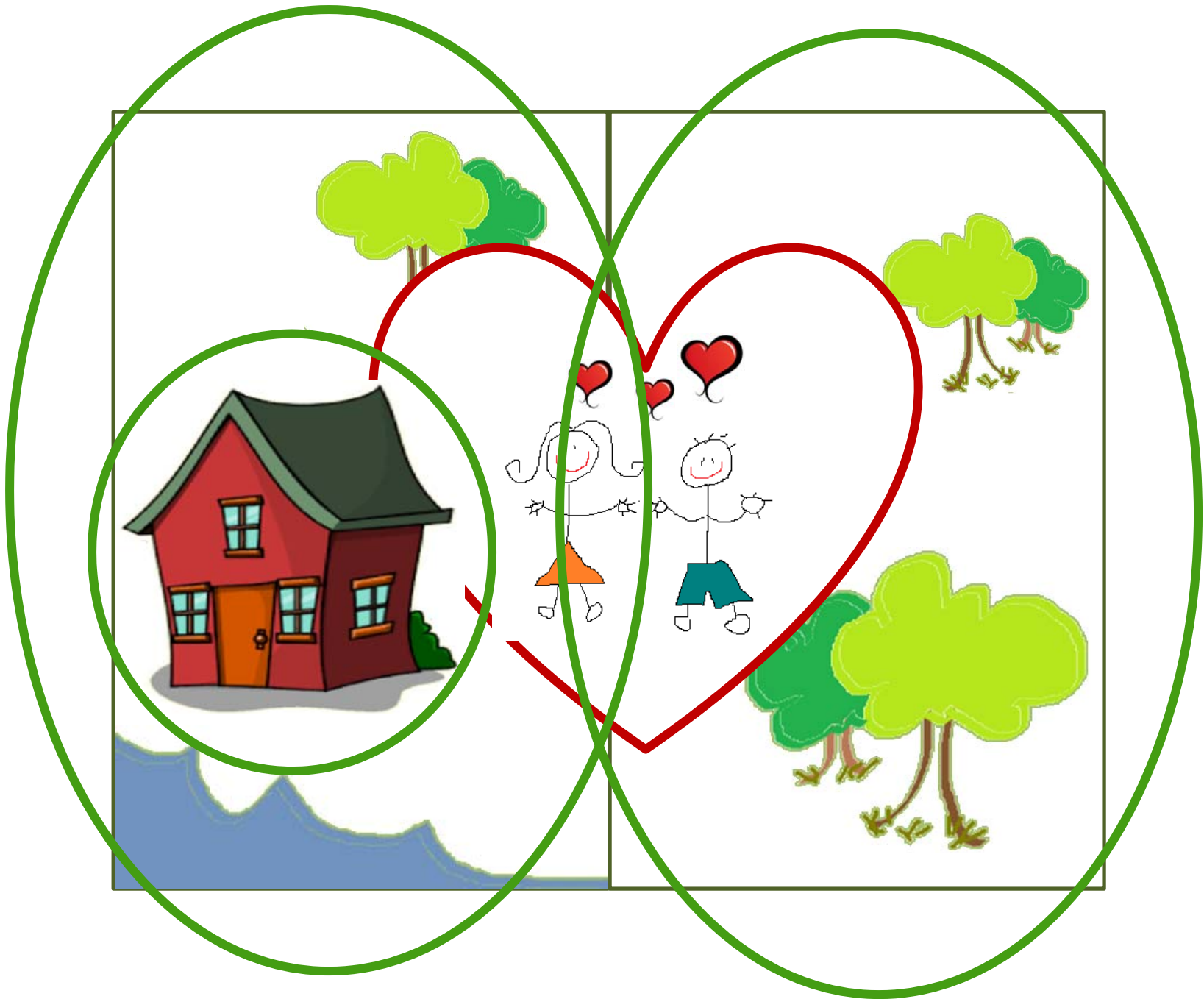
- The content of a community-specific law is determined and approved by the members of the First Nation.
- All community members 18 years of age and older, on and off reserve, must be informed and have the opportunity to vote on the proposed matrimonial real property law.
- A minimum of 25% of the eligible voters must participate in the ratification process for community-specific law to be passed.
- Once the community has approved its law it comes into force on that day, or on a later date designated by the community.

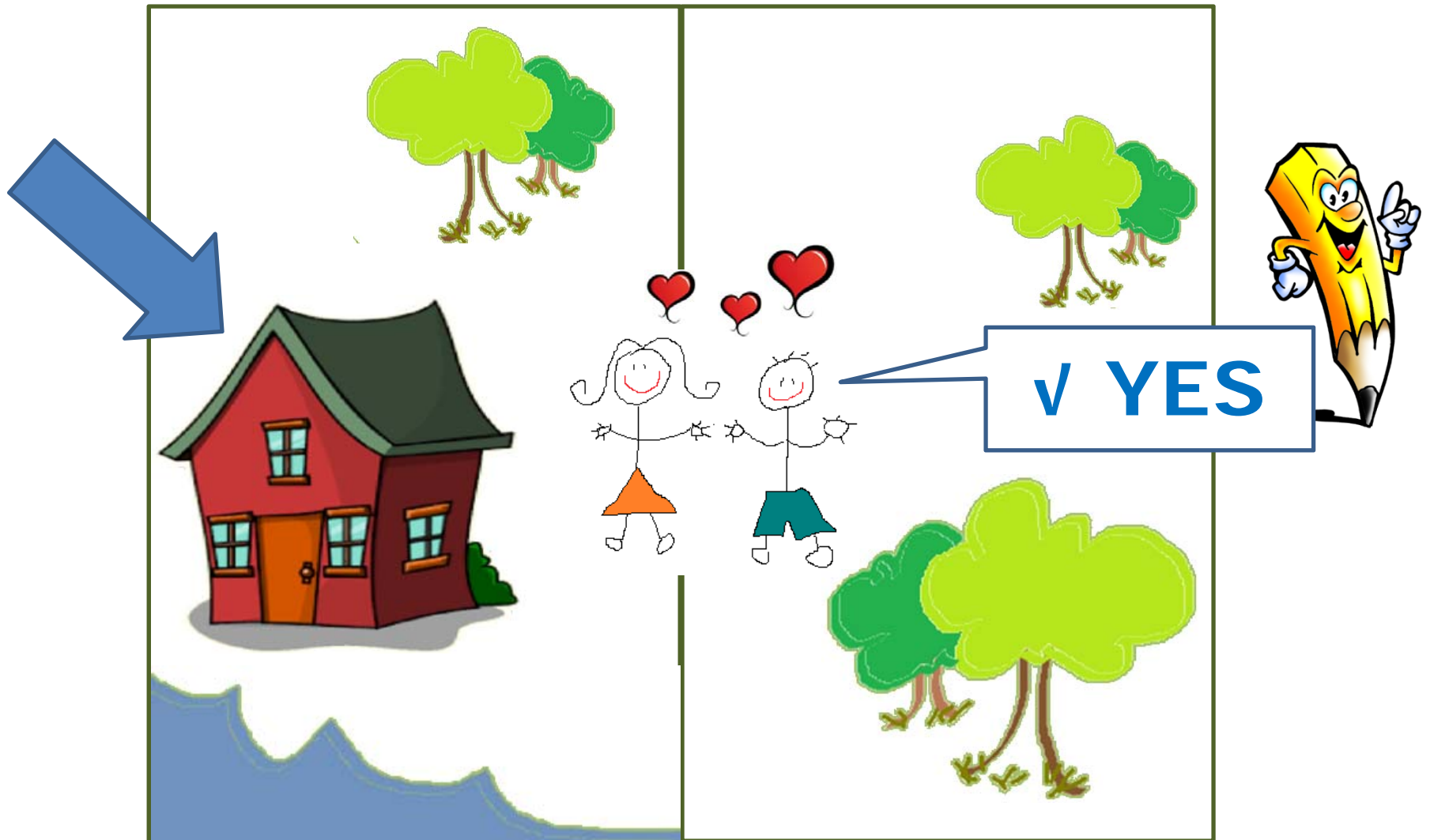
Provisional Federal Rules under FHRMIRA

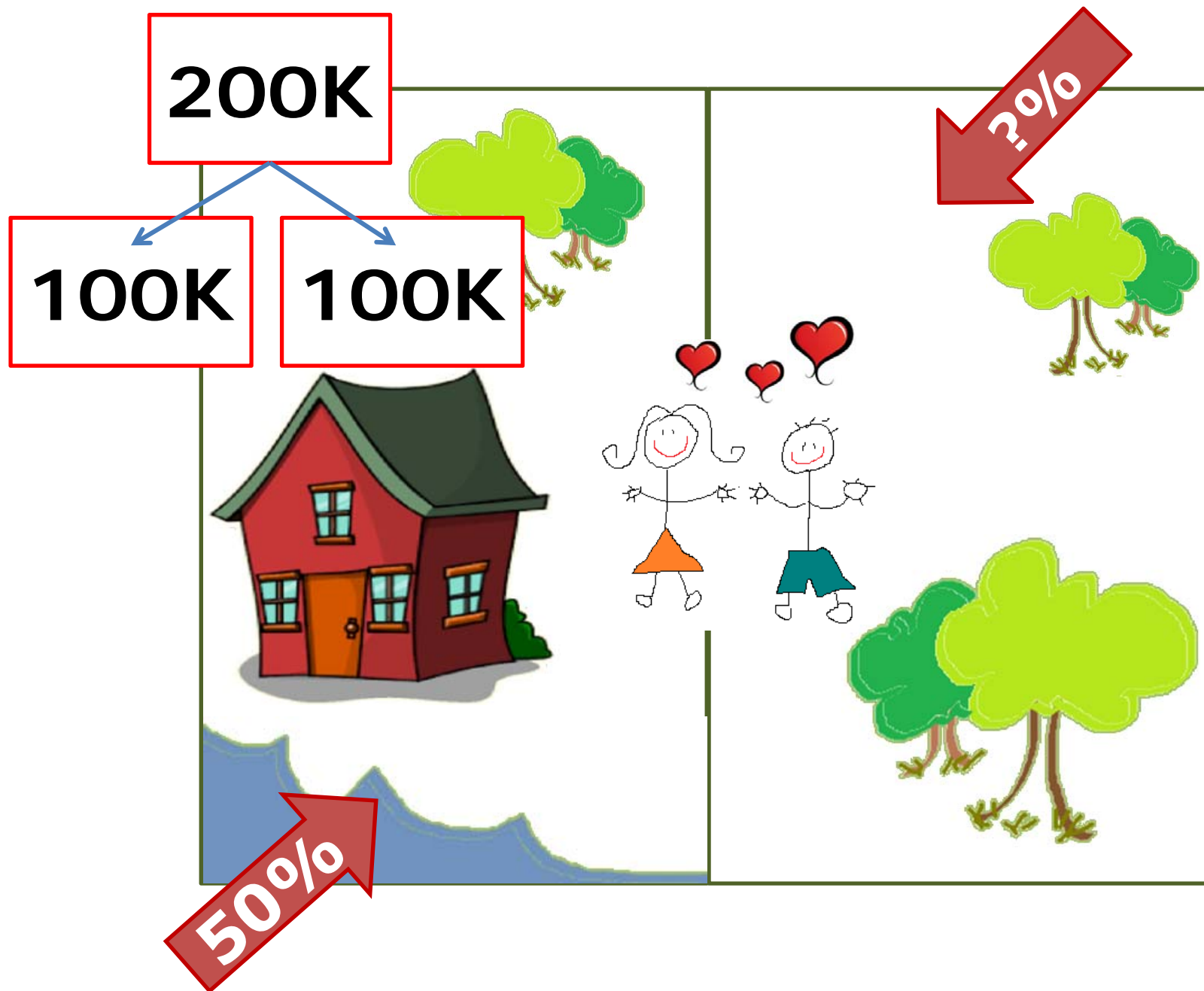
Establishes a clear set of interim rules that provides matrimonial real property rights and protections for residents living on reserves until a First Nation develops and enacts its own law.

- Occupation of the Family Home
- Emergency Protection Order (EPO) issued by provincial / territorial designated judges
- Exclusive Occupation Order (EOO)
- Division of the Value of Matrimonial Interest or Rights
 - Relationship Breakdown Death of a Spouse or a Common-Law Partner, and
 - Distribution of Estate











Why Engage Now?



Four years have passed since the FHRMIRA received Royal Assent and the Matrimonial Real Property Implementation Support Program was put in place. It is time to look back and take stock.

What are the best practices?

What are the lessons learned?

We are seeking your advice and technical expertise, to discuss possible program changes to improve the implementation of the Act.

Engagement Approach

WHAT	<ul style="list-style-type: none"> • New features or measures that could be added the program to support the implementation of FHRMIRA • Needs in term of capacity, funding, implementation, and dispute resolution mechanisms
WHO	<ul style="list-style-type: none"> • Lands managers, councillors, band administrators or other staff responsible for implementing and enforcing the Act • Communities who have developed a community-specific matrimonial real property law • Representatives from technical Indigenous organizations
WHEN	<ul style="list-style-type: none"> • Wendake: October 24 – 25, 2017 • Calgary: November 14 – 15, 2017 • Toronto: December 5 – 6, 2017 • Halifax: January 23 – 24, 2018 • Kelowna: The First Nation Lands Management Resource Centre session – Jan. 30 – 31, 2018 • Saskatoon: February 20 – 21, 2018 • Winnipeg: March 6 – 7, 2018
HOW	<ul style="list-style-type: none"> • Attend a regional engagement session • Read the discussion guide and send your responses by email or mail (mrp-bim@aadnc-aandc.gc.ca)



Matrimonial Real Property

What we've heard so far



Best Practices

The Centre of Excellence commissioned a report that presented a number of best practices that communities have brought forward for developing community-specific matrimonial real property laws.

- Establish a team and have frequent meetings to keep the momentum when developing the law.
- Make sure the community is greatly involved in the law development process.
- Communicate with third parties involved in implementing the MRP law.
- Strategically plan the voting time for the ratification process.
- Work with professionals to determine the market value of properties on reserve.
- Develop dispute resolution mechanisms to solve MRP issues.
- Ensure MRP laws align with other laws or policies.





What we've heard so far

Training and awareness

- Greater awareness among key players, including law enforcement officers, legal practitioners, INAC support staff, frontline workers, First Nation leadership and community members.

Capacity and funding gaps

- Dedicated and ongoing funding to implement the federal law and to enact and administer community-specific laws. First Nations also suggested pulling their resources and working together to achieve economies of scale.

Access to justice and alternative dispute resolution mechanisms

- Better access to Justice, including alternative dispute resolution processes, community-led mediation and arbitration services, First Nation courts, tele-justice. Designation of provincial judges and cultural competency for all workers enforcing the act.

Changes to ratification requirements

- Reduce the 25% voting threshold, respond to inconsistencies between the voting age prescribed in the act and those established in communities. Allow First Nations to ratify their laws according to their custom election codes and constitutions.

We want to hear from you



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