Indigenous Cultural Property
INFORMATION AND INVITATION

BRITISH COLUMBIA | Ministry of Attorney General

We are currently undertaking a multi-phased review of the *Family Law Act* (FLA) with a view to modernizing it and addressing issues that have come to light since it came into force in 2013.

In the summer of 2022, as part of Phase 1 of the of the Family Law Act Modernization Project, we conducted a public consultation about the part of the FLA that deals with the division of property (both real property and personal property) when spouses separate.

We received feedback from some First Nations about how property with Indigenous cultural value or significance is divided between spouses when they separate. Our engagement on this topic is ongoing.

We would like to better understand this issue and would like to know if you or your Nation or Indigenous community would be interested in discussing it with us.

BACKGROUND

As background, the FLA creates two categories of property that spouses may have in a relationship: family property and excluded property.

"**Family property**" is all property that spouses own at the time they separate. It also includes all the debt the spouses have at that time. Family property is generally divided equally between the spouses. Family property can be divided unequally in certain situations if equally dividing the property will lead to significant unfairness.

"**Excluded property**" is property that generally one spouse keeps as their own after the couple separates. Excluded property includes property that one spouse had before the relationship started or after the relationship ended, gifts and inheritances one spouse received from other people (other than their spouse), some settlement or damage awards, some insurance payments, and some kinds of trust property. Excluded property can only be divided between the spouses in a few situations if not dividing the property will lead to significant unfairness.

The FLA applies to all real property and personal property that spouses own at the time they separate, however, it does not apply to the use or possession of family homes or the division of interests in buildings or land on reserves, which is governed by the federal Family Homes on Reserves and Matrimonial Interests or Rights Act.

Determining whether property is family property or excluded property plays a big part in deciding who keeps what at the end of a relationship. However, the FLA currently does not explicitly allow the court to consider the Indigenous cultural value or significance of property spouses may own when dividing property upon separation.

WHAT THE FLA COULD DO

A suggestion has been made that if one spouse is a member of an Indigenous community and another spouse is not, a court should consider whether the property with cultural value or significance should remain with the spouse who is connected to that Indigenous community if the spouses separate. For example, an Indigenous spouse may own ceremonial regalia that has cultural value or significance. Another example is that an Indigenous spouse may have received a benefit, an award of damages or settlement funds that has some Indigenous significance. How should these types of property be divided between spouses?

WHAT DO YOU THINK?

We are interested in hearing your thoughts on this issue including the type of cultural property that might be at issue in these cases, the different ways that spouses may acquire that property, what type of evidence might be appropriate for the court to consider in relation to this cultural property, as well as other associated issues.

If you or your Nation or Indigenous community are interested in discussing these issues with us, please let us know!

You can contact Aurora Beraldin at aurora.beraldin@gov.bc.ca, or Darryl Hrenyk at darryl.hrenyk@gov.bc.ca.

Family Policy Legislation and Transformation Division
Justice Services Branch, Ministry of Attorney General
BRITISH COLUMBIA
Email: JSB.FPLT@gov.bc.ca
Mail: PO Box 9222 Stn Prov Govt
Victoria BC V8W 9J1