



MAUPELTU
TA'N TELSUTEKEK
MEMBERTOU GOVERNANCE

EMERGENCY PROTECTION ORDERS

APPLICATION FOR EMERGENCY PROTECTION ORDER

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 or Membertou-owned or guaranteed home as a result of family violence.

A peace officer or other person may apply for an emergency protection order on behalf of a spouse or common-law partner either:

- with that spouse or common-law partner's consent; or
- if that spouse or common-law partner does not consent, with leave of the court.

EMERGENCY PROTECTION ORDER

A court may make an emergency protection order for a period of up to ninety (90) days if the court is satisfied that:

- family violence has occurred; and
- the order must 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.

CONSIDERATIONS

In making an order under section 38, the best interests of any child or children who may be affected by the order shall be the paramount consideration.

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

- the child's health and emotional well-being;
- the child's views, unless it would be inappropriate to consider them;
- the nature and strength of the relationships between the child and significant persons in the child's life;
- the history of the child's care;
- the child's right to stability, given the child's age and stage of development;
- the child's right to reside on Membertou lands and not to be removed or relocated from
- Membertou lands without their free, prior and informed consent;
- 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;
- 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
- the child's right to recover, use, enjoy, preserve and pass on to future generations Membertou histories and language, oral traditions and culture.



In making an order under section 38, the court shall also consider:

- the history and nature of the family violence;
- the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
- the interests of any elderly person or person with a disability who habitually resides in the family home or Membertou-owned or guaranteed home and for whom either spouse or common-law partner is the caregiver;
- the fact that a person, other than the spouses or common-law partners, holds an interest or right in or to the family home;
- the period during which the applicant has habitually resided on Membertou lands; and
- 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 or Membertou-owned or guaranteed 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 or Membertou-owned or guaranteed home.

For more information on the Membertou Family Homes Law please contact:

Cheryl Knockwood, Governance Coordinator
Phone: 902-564-6466 Ext. 2520
Email: cherylknockwood@membertou.ca

www.membertou-governance.com