

# THE 6<sup>th</sup> FA AMENDMENT

## 2018 amendments to the *Framework Agreement on First Nation Land Management*

### EFFECTS TO FIRST NATION COMMUNITIES

On November 26, 2018 the *Framework Agreement on First Nation Land Management* (FA) Amendments #6 were finalized between the Lands Advisory Board, Operational First Nations and Minister Carolyn Bennett. Canada then brought the provisions of the *First Nations Lands Management Act* into alignment with the amended FA through the passage of Bill C-86, Division 11. Royal Assent of Bill C-86 took place on December 13, 2018.

The following is a brief highlight of Amendment #6.

#### 1. UNDRIP Clause

Introductory clauses stating commitment of both Canada and First Nations to the principles of UNDRIP. These are brief introductory provisions added because the FA was finalized before UNDRIP.

#### 2. Jointly Held Reserves (section 2 of FA)

New provision that clarifies the ability of multiple First Nations to collectively govern jointly held reserve lands.

#### 3. Yukon lands (section 4A of FA)

Making the FA available as an option to Yukon First Nations which have "lands set aside" rather than reserves.

#### 4. Changes to Land Code Requirements and Options (section 5 of FA)

- Adding requirement that land codes will come into force within six months of an affirmative ratification vote;
- Eliminating current obligation to provide for matrimonial real property in land codes;
- In particular broader options regarding matrimonial real property (see also the new matrimonial real property law making power in section 18 of FA described below).

#### 5. Changes to Voting (section 7 and 8 of FA)

Changes include the new "Simple Majority" option to ratification voting on land codes. The revisions to make it easier for new First Nations to opt out of the *Indian Act* include:

- Eliminating the current minimum 25% threshold of yes votes of all eligible voters. The majority of participating voters would decide, consistent with other important votes in Canada;
- For Developmental First Nations, a Verifier is only required to confirm that the land code and voting process comply with the FA, not to monitor the actual vote;
- For Developmental First Nations, option to have their own Ratification Officer conduct and affirm votes (rather than the verifier);
- Option for Individual First Nations to set their own minimum threshold and use the Verifier for the whole voting process.

#### 6. First Nations rather than LAB to publish land codes and amendments (sections 11 and 40 of FA)

First Nations must make available to the public their land codes and laws and can choose to publish on their websites.

#### 7. Additions to Reserve (section 14A of FA)

New provisions to speed up additions to reserve:

- Land can be added to reserve and come under land code authority in a single Ministerial Order instead of an order of council;

- Options for First Nations to accept third party interests and provide for replacement interests before reserves are created;
- An option to impose land use restrictions (eg zoning laws) in advance of reserve creation. There is no obligation to take these measures, but they may speed up reserve creation.

#### 8. Third Party Interests (section 16 of FA)

A new provision that will clarify that First Nations and third parties can agree to leasing arrangements that differ from previous *Indian Act* designation terms and conditions.

#### 9. Matrimonial Real Property Laws (section 18 of FA)

The intention is to provide in the FA for the full range of matrimonial real property authority currently available under Canada's *Family Homes on Reserves and Matrimonial Rights or Interests Act* (FHRMIRA).

- New provisions to expand upon the current authority to deal with "breakdown of marriage" to include "death of a spouse";
- Elimination of the current 12-month period for First Nations to make MRP rules and elimination of dispute resolution with Canada regarding land code provisions;
- A new provision is established to require that provinces (or territories) be notified when proposing to make MRP laws. This is similar to a requirement in FHRMIRA and may possibly help First Nations seeking provincial assistance in enforcing MRP laws.

#### 10. Limitation of Liability & Intergovernmental Agreements (section 18 of FA)

Provisions to limit liability of employees and volunteers working for First Nations, within the limits typical under provincial law of the province within which a First Nation is located.

- Option for First Nations to enter into agreements with other governments regarding the performance of duties by professions such as building inspectors or firefighters.

#### 11. Environment Law Making Powers (section 23 of FA)

An updated list of examples of environmental law-making powers will be added such as contaminants, emergencies, nuisances, waste management and recycling.

#### 12. Liability (section 50 of FA)

A new provision will be added to clarify that Canada is no longer responsible for the management of revenue and capital monies following their transfer to a First Nation.

#### 13. First Nation Lands Register (section 51 of FA)

Elimination of the current requirement that a lands registry has to be operated by Canada. This would pave the way for an agreement to develop regulations for a First Nation Lands Register for those communities with land codes in effect.