Federal & Provincial Environmental Assessment Processes

Course Workbook

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FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Training, Mentorship & Professional Development

Federal & Provincial Environmental Assessment and Processes

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Course link:

Welcome to the Federal and Provincial Environmental Assessment (EA) Processes course.

Upon completion of this course, you may be more familiar with:

1. The importance of the Environmental Assessment (EA) process and why signatory First Nations should develop their own EA process.
2. Federal and Provincial Environmental Assessment Processes

Describe how Federal and Provincial EA processes affect FNs, particularly those that have adopted a Land Code (LC)

Explain why Indian Reserve/First Nation Land may be subject to Canadian Environmental Assessment Act 2012 (CEAA 2012)

Describe how the Framework Agreement requires harmonization of Federal and Provincial Environmental Assessment processes

Big Picture:

First Nations do not need to do what other governments do when it comes to designing their Environmental Assessment Process. The intended purpose of a First Nation's Environmental Assessment process should be to honestly identify environmental effects and mitigation in a streamlined and locally relevant way.

Canadian Environmental Assessment Act

This course serves two purposes:

To identify why CEAA 2012 is an inadequate substitute for a First Nation Environmental Assessment Process and outline the benefits of the First Nation to develop its own Environmental Assessment laws, regime and process

• To summarize the key elements of federal and provincial Environmental Assessment processes, so that Lands Governance Directors (LGD) understand both those government's Environmental Assessment laws, regimes, processes and the requirements of CEAA 2012 and how they can approach harmonization

Framework Agreement

In Section 23.2 of the Framework Agreement, the parties intend that there should be both an Environmental Assessment (EA) and an Environmental Protection (EP) regime for each First Nation. The Framework Agreement also requires Operational First Nations to develop a plan for harmonizing their EA processes with federal and provincial processes.

Under the Framework Agreement, Canada has agreed that where there is overlapping EA jurisdiction with respect to a project on First Nations Land, the First Nation's EA process should be used.

Federal Process

Projects proposed on reserves of developmental and operational First Nations may be subject to CEAA 2012.

Provincial Process

Projects proposed partly on First Nation reserve land and partly on provincially-managed land may be subject to a provincial Environmental Assessment process.

Why Develop an Environmental Assessment Law?

Before we get into more in- depth information on the federal and provincial Environmental Assessment Processes, we would like to answer two very important questions:

1. Why develop a FN EA law if CEAA 2012 continues to apply?
2. Are there clear benefits for developing a First Nation Environmental Assessment law or is it just duplication?

1. Why develop a FN EA law if CEAA 2012 continues to apply?

Introduction:

There are many important reasons why a First Nation should develop its own Environmental Assessment law instead of *Canadian Environmental Assessment* Act (CEAA). For example, each Environmental Assessment law will be unique to that First Nation based on its traditions, culture and spirituality. This alone makes CEAA an inadequate substitute for a First Nation EA process. We will look at other reasons why CEAA is an inadequate substitute.

Large Bureaucracies are Costly:

Canadian Environmental Assessment Act (CEAA) and provincial Environmental Assessment (EA) processes are designed to be run by large bureaucracies and are inappropriate for First Nations that lack the staff or resources to oversee such processes. Also, because of the large bureaucracies, senior government EA processes are slow and costly. EAs often take years and cost millions of dollars to complete.

CEAA and provincial EA processes frequently produce gigantic, multi-volume EAS that are unwieldy and incomprehensible. Recent EAS prepared for hydroelectric dams and mining projects in British Columbia (BC) have exceeded 40 volumes and many thousands of pages. Such gigantic reports are both costly to prepare and are not helpful to understanding project effects.

Influenced by industry:

In recent years, federal and provincial Environmental Assessments have become increasingly influenced by industry. For example, many of the amendments to legislation resulting in *Canadian Environmental Assessment* Act (CEAA) 2012 were made because industry was looking for a way to

expedite the review and approval processes for major new resource development projects.

Additionally, industry-driven EA processes commonly avoid asking difficult questions that project proponents are opposed to answering (e.g.: for a pipeline project, the EA process does not ask what the potential effects of a catastrophic oil spill might be because the odds of that event occurring are not "likely" (i.e., less than 50% probable).

In cases where the difficult questions are answered, the approach to analyzing environmental effects and the criteria used to rate those effects have been designed to avoid ratings of "significant" where a "significant" rating might result in a proposed project being denied approval. These distortions of the EA process produce results that cannot be trusted.

Small Projects Ignored:

Federal and provincial Environmental Assessment (EA) processes often ignore small projects such as those that are more likely to be seen on reserves. One of the criticisms that led to the development of *Canadian Environmental Assessment* Act (CEAA) 2012 was that too many EAS were being prepared for small projects under the previous legislation. With the newly limited number of "designated projects", many smaller initiatives do not trigger a full CEAA review, even though such projects also can result in significant adverse effects. A First Nation-designed EA process can correct this problem by studying the kinds of projects that occur on reserves.

Environmental Assessment Laws Not Controlled by First Nation

Canadian Environmental Assessment Act (CEAA) 2012 and provincial Environmental Assessment laws can be amended at any time. First Nations have little or no influence over such legislative changes. If a First Nation lacks its own Environmental Assessment Law, these external changes to EA legislation could have substantial effects on the process for reviewing and approving development on First Nations' land.

For example, see Bill C-69: An Act to enact the *Impact Assessment Act* and the *Canadian Energy Regulator Act* to amend the Navigation Protection Act and to make consequential amendments to other Acts. Additionally, the content and timing of federal and provincial EAS are controlled by their agencies, not by the First Nations.

What are the Benefits of a First Nation Having Its Own Environmental Assessment Law Process?

Introduction

One of the main purposes of the Framework Agreement is for First Nations to take back control of their lands and resources through governance (e.g. law making) and jurisdiction (e.g. First Nation Land). Therefore, there are many benefits for a First Nation creating and passing its own Environmental Assessment Law, Environmental Assessment regime and Environmental Assessment process.

First Nation Environmental Assessment Law Benefits

A First Nation's Environmental Assessment Law helps to realize the promise of the Framework Agreement, namely that First Nation's will have authority to manage their lands. A First Nation's Environmental Assessment Law helps to assert control over land and resources. Relying on others' Environmental Assessment processes to identify project impacts and mitigation measures diminishes that authority. With an Environmental Assessment Law, the First Nation will be seen as taking environmental management seriously. Such a message will assure members that a First Nation's leadership is concerned about environmental quality and health. A First Nation's Environmental Assessment law can use its Cultural Heritage Resources in their law and policy development. A First Nation defines its Cultural Heritage Resources, not the federal or provincial government EA laws.

First Nation Environmental Assessment Regime Benefits

A First Nation's Environmental Assessment regime signals members, developers, and other governments that the First Nation has a workable Environmental Assessment process.

Such a process can help alleviate others' uncertainty about the development review process on First Nation Land and associated costs, timing, and scope.

First Nation Environmental Assessment Process

The First Nation can control the Environmental Assessment (EA) process and schedule, resulting in EAs that provide information relevant to the First Nation and on a schedule consistent with the timing of proposed development. Undue delays in conducting an Environmental Assessment can be avoided. The results of a First Nation's EA process can be used to satisfy other EA requirements. For example, under Sec. 25.6 of the Framework Agreement, the regulatory parties involved in an EA agree to use their best efforts to use a First Nation's EA process where more than one process applies, so a First Nation's EA may be a substitute for a federal EA. Similarly, a First Nation's EA could be designed to produce information needed to satisfy federal agencies under Sec. 67 of CEAA 2012.

Scope and Cost of Environmental Assessment

Scope and costs can be managed. Costs of Environmental Assessments should be paid by the project proponent. If the proponent is another government or private sector company, it should pay for the EA. A First Nation will need to pay for EAs of its own projects.

A First Nation can ensure that EAs are of manageable size and scope, and that the studies answer questions important to the First Nation.

Communications of Environmental Assessments

An important function of Environmental Assessments is to communicate with potentially affected people. A First Nation's EA process can help to inform the membership about proposed projects, and to obtain community input relevant to the EA.

Improvements of Projects on First Nation Land

A First Nation may be involved in provincial EAs or federal EAs of *Canadian Environmental Assessment* Act (CEAA) 2012 Designated projects. If so, the outcome of a First Nation's Environmental Assessment process could help identify potential project effects on a First Nation's interests. The results could also support negotiations with governments on project effects to First Nation rights and title, or negotiations with a proponent for impact benefits agreements. Perhaps most importantly, a First Nation's Environmental Assessment can be designed to improve the quality of projects on First Nation land. Information from an Environmental Assessment about project effects and mitigation measures can support the process of amending a project's location, construction, or operation to minimize adverse effects and maximize benefits.

Framework Agreement First Nations Environmental Assessment Process

Introduction

Under Section 27 (20) of the Framework Agreement a First Nation will develop and apply an Environmental Assessment regime subject to adequate funding and assistance. Framework Agreement First Nations' deal with Environmental Assessments on their Reserve lands differently depending on whether they are:

- Developmental First Nations
- Operational First Nations without an EA Law under Land Code
- Operational First Nations with an EA Law under their Land Code

Developmental First Nations

For developmental First Nations (before a First Nation's Land Code comes into effect), EAs are conducted in accordance with CEAA 2012. Details on the EA process under *Canadian Environmental Assessment* Act (CEAA) 2012 are presented later in this course.

Operational First Nations without an Environmental Assessment Law Under a Land Code

There will be a time period between when a Land Code is in effect and when a First Nation's EA law is developed and enacted. During that time period, Individual Agreements address how EAs of projects on First Nation Land will be conducted. This is called the First Nation's "Interim Environmental Assessment Process." Most Operational First Nations' Interim EA Processes are set out in Annex "F" of their Individual Agreement, and a review of publicly available Individual Agreements indicates that the processes are similar but not identical among First Nations.

Operational First Nations with an Environmental Assessment Law Under their Land Code

After a First Nation becomes Operational and has passed its own Environmental Assessment law under its Land Code, CEAA 2012 continues to apply to the First Nations' Lands. Because the *Indian Act* provisions requiring federal approval of leases and designations on Reserves no longer apply to First Nations Lands, fewer section 67 reviews will be triggered by CEAA 2012 than would have been

required before adoption of a Land Code. Projects considered "Designated projects" under CEAA 2012 would require a full assessment under the act.

The role of an Operational First Nation in the Environmental Assessment of a project on its First Nations Lands will depend on the provisions of its own Environmental Assessment law and agreements with Canada regarding harmonization of Environmental Assessment processes. Clause 25.6 of the Framework Agreement requires that Canada and a First Nation make best efforts to apply a First Nation's Environmental Assessment process set out in its own Environmental Assessment law if an Environmental Assessment is also required by CEAA.

Clause 25.7 of the Framework Agreement also requires that Canada and the First Nation develop a plan to harmonize their Environmental Assessment harmonization of Environmental Assessment processes. Although these sections of the Framework Agreement have not been tested, it appears that, subject to any agreement regarding harmonization, Operational First Nations may take the lead in conducting EAS of projects on First Nation Reserves. Federal agencies involved in a First Nation's Environmental Assessment will need to determine whether agency obligations under CEAA 2012 are being met.

CEAA 2012- The Federal Environmental Assessment Process

Introduction

CEAA 2012 sets out the federal responsibilities, process and procedures for conducting an EA. The adoption of CEAA 2012 substantially altered the way federal EAS are conducted and the kinds of projects subject to EAs. The federal EA Process outlined in CEAA 2012 came into force on July 6, 2012.

On February 8, 2018, the federal government introduced Bill C-69: An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts. If passed, Bill C- 69 will result in significant changes to the way federal EAS are conducted, by replacing CEAA 2012 with the *Impact Assessment Act.* It is therefore recommended that LGDs ensure they are using the federal EA legislation that is currently in force when looking at the federal EA process.

Responsible Authority

Under previous federal EA legislation, a " Responsible Authority" included any federal department that was required to make a decision under a federal law in order for a project to proceed or that provided funding for a project.

Under *CEAA 2012*, however, there are typically only three federal bodies that can be responsible authorities, namely the:

1. Canadian Environmental Assessment Agency (Agency)
2. Canadian Nuclear Safety Commission
3. National Energy Board

CEAA 2012 does allow for other federal authorities to perform the regulatory functions of a Responsible Authority, but only if prescribed by regulations made under paragraph 83(b) of CEAA 2012.

Other Federal Authorities

Other federal authorities having expertise or knowledge relevant to an EA may be requested to provide that information to the Responsible Authority or review panel. For example:

- Fisheries and Oceans Canada (DFO) may be requested to provide information on fisheries
- Environment and Climate Change Canada on birds
- Indigenous and Northern Affairs Canada (INAC) on FN reserve Issues

Substitution

A new section of CEAA 2012 introduces the concept of "substitution," which:

- Enables cooperation between the federal government and other jurisdictions in the delivery of timely, high quality EAS
- Is intended to reduce duplication of provincial and federal EAs. In this case, a provincial EA would be accepted by Canada if the provincial assessment adequately addresses federal interests as specified in CEAA 2012. Substitution occurs if requested by a Province.

This approach achieves the objective of "one project-one assessment". For more information on "substitution" click here.

Projects that Require an EA under CEAA 2012

Introduction

Overall, the number of proposed projects that will require an EA under *CEAA 2012* can be expected to be much smaller than the number that would have been studied under the former CEAA. This reduced number of assessments was a stated goal of the government in re-writing the Act.

However, on FN Reserve land, many of the non-designated projects that required an EA under the former CEAA will continue to require a section 67 review. This will be discussed in more detail in the following sections of this courselet.

Designated Project

"Designated Project" is defined in section 2(1) of *CEAA 2012* as:

One or more physical activities that:

a) are carried out in Canada or on federal lands;

b) are designated by regulations made under paragraph 84(a) of *CEAA 2012* or designated by an order made by the Minister of the Environment under subsection 14(2) of *CEAA 2012*; AND

c) are linked to the same federal authority as specified in those regulations or that order

It includes any physical activity that is incidental to those physical activities. Proponents of a designated project are prohibited from carrying out any part of their project until it has been reviewed in accordance with *CEAA 2012*. Proponents should therefore submit project descriptions as early as possible in the planning stages of a designated project so that the results of the review can be incorporated into their project plans, including any recommended mitigation measures to address adverse environmental effects.

Regulations Designating Physical Activities

CEAA 2012's Regulations Designating Physical Activities are the regulations made under paragraph 84(a) of CEAA 2012 designating physical activities for which a full federal EA is required. The Minister of the

Environment and Climate Change may also decide that an EA is required for a project not listed in the Regulations. The Regulations identify eight pages of projects for which a full federal EA is required, and include specified hydroelectric projects, transmission lines, pipelines, rail lines, highways, oil sands and gas production projects, mines, pulp mills, airports, and military facilities.

In general, only large projects are "designated projects" under *CEAA 2012*. For ease of reference, this courselet refers to projects included in the *Regulations Designating Physical Activities* as "designated projects".

Project

Section 67 and 68 of *CEAA 2012* require federal authorities to consider the significance of adverse effects of a project occurring on federal land or outside Canada before exercising a power or performing a duty or function that would allow the project to proceed.

Section 66 of *CEAA 2012* defines 'project' as:

- a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and is not a designated project

For ease of reference, this courselet will refer to projects requiring review under Section 67 as "non-designated projects", and their review process as "section 67 reviews".

Triggers

Assessments of environmental effects are triggered under *CEAA 2012* if either of the

following two conditions exists:

1. A project is identified in *CEAA 2012's* "*Regulations Designating Physical Activities*," (s. 13) or the Minister of the Environment and Climate Change decides that an EA is required for a project not listed in the Regulations; or

2. A federal authority proposes to carry out a project on federal lands or the authority must exercise a power, duty or function under a federal law in order for a project proposed on federal lands to be carried out (s.67).

"Federal authorities" include Ministers of the Crown, federal agencies, and many departments of the federal government. "Federal land" includes FNs Reserves.

Different Assessment Process Requirements for Different Types of Projects

Introduction:

Under *CEAA 2012*, the assessment process and requirements are different for "designated projects" under s. 13 and "non-designated projects" under s. 67. A formal EA under CEAA 2012 is required by section 10(b) or by section 13 or 14 in respect of certain designated projects but is never required in respect of a non- designated project. Section 67 reviews of non-designated projects occurring on federal land are less formal assessments that determine the likelihood of significant adverse environmental effects.

Designated Projects – Two Levels of EA:

Under CEAA 2012, there are two levels of EA for designated projects:

1. Standard environmental assessment by a Responsible Authority: this is the default level of assessment applicable to a designated project under the *CEAA 2012*
2. Review panel: if the Minister of the Environment and Climate Change refers the environmental assessment of a designated project to a panel of one or more unbiased and knowledgeable or experienced persons who are free of any conflict of interest

A review panel is a group of independent experts appointed by the Minister of the Environment and Climate Change to conduct an EA. Review panels may be federal representatives only or may be joint review panels that include representatives of provincial bodies or Operational FNs.

Both types of assessments can be conducted by the federal government alone or in cooperation with another jurisdiction, such as a province.

Designated Project – EA Process:

The Agency provides the Federal EA Process by Agency chart and a Details document to describe the phases and timelines for its EA process.

Designate Project – EA Timeline:

In the case of an EA done by a Responsible Authority, the preparation of the EA and the EA decision are to be completed in no more than one year, unless the proponent requires additional time.

In the case of a review panel, an EA must be completed within two years of initiating the process.

Designated Project – Cost of an EA:

In most cases in Canada, the costs of the EA are paid by proponents of a project. If the FN is the proponent, then the FN must pay to conduct the EA.

Non-Designated Project:

Even if a project is not subject to a full review as a designated project under *CEAA 2012*, a government agency is nonetheless required by section 67 of *CEAA 2012* to determine the likelihood of significant adverse environmental effects that might result from a project being carried out on federal lands.

A finding that significant adverse environmental effects from a non-designated project are not likely or that they are likely but justified in the circumstances, according to a Governor in Council (GIC) decision, allows the authority to carry out the non- designated project on federal lands or exercise any power or perform any duty or function under an Act of Parliament other than *CEAA 2012* that could permit the non-designated project on federal lands to be carried out, in whole or in part.

Non-Designated Project Example:

For example, if an Authorization under the *Fisheries Act* is required for a non- designated project occurring on federal land, the DFO would need to make a determination that significant adverse environmental effects are not likely to occur prior to issuing an Authorization that would allow that non-designated project to proceed.

Non-Designated Project - Section 67 Review Process

CEAA 2012 does not set out a legislated process for section 67 reviews of non-designated projects occurring on federal lands. Section 67 simply states that federal authorities must not carry out a project or exercise any power, duty or function unless it determines that the project is not likely to cause significant adverse environmental effects or unless Cabinet has decided those adverse effects are justified in the circumstances.

The Agency's guidance document Projects on Federal Lands: Making a determination under section 67 of the *CEAA, 2012* outlines one mechanism to meet the requirement of section 67 of *CEAA 2012*. The Agency states that the tools presented in this guide can be adapted to meet the needs of the federal authorities. INAC has developed a Proponents' Guide to Aboriginal Affairs and Northern Development Canada's Environmental Review Process which speaks to section 67 reviews of non- designated projects on Indian Reserve land.

***CEAA 2012* Section 5 – Environmental Effects**

Introduction:

The primary goal of a federal EA of a designated project is to determine whether, after taking into consideration appropriate mitigation measures, a proposed project will cause "significant adverse environmental effects." Section 5 of *CEAA 2012* identifies the environmental effects that are to be taken into account when conducting an EA. Note that this definition of "environmental effects" also applies to the review of non-designated projects under section 67 of *CEAA 2012*.

Projects within Federal Jurisdiction:

Under *CEAA 2012's* Section 5, most EAS will focus on studying the potential adverse environmental effects of a project that are within federal jurisdiction, including:

- Fish and fish habitat
- Other aquatic species
- Migratory birds
- Effects that affect Indigenous peoples, such as their use of lands and resources for traditional purposes.

If the project is on federal lands, including Indian Reserves or First Nation Lands, or has inter- provincial or international impacts, changes that may be caused to the environment must be considered in an EA of the project (including, for example, impacts on wildlife).

Federal Authority Exercise of Power:

If a federal authority must exercise a power, duty or function under a federal law in order for a project to be carried out (e.g. federal *Fisheries Act* authorization), indirect environmental impacts on health and socio- economic conditions and physical and cultural heritage of non-indigenous people also must be considered in an EA of the project.

Effects Specific to First Nations Land:

Although the definition of "environmental effects" in *CEAA 2012* is much narrower than in the former *CEAA,* LGDs should note the following definition of effects specific to aboriginal peoples:

- Health and socio-economic conditions,
- Physical and cultural heritage,
- The current use of lands and resources for traditional purposes, or
- Any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

An EA or section 67 review of projects on FN Reserves must consider the effects any change in the "environment" caused by the project.

Other Considerations of an EA

Cumulative Effects:

Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions

Examples of cumulative effects are:

- Fish & Fish Habitat: destruction of habitat of the same fish population from three different physical activities
- Aquatic Species: shoreline destruction from multiple physical activities resulting in the removal of several patches of a marine plant
- Socio-Economic Conditions: environmental effects from various operations resulting in the decline of a bivalve (i.e. oysters, clams, mussels, and scallops) population on which an Indigenous group depends as a source of income
- Current Use of Lands and Resources: impacts on use of traditional fishing grounds owing to decreased fish population which results from multiple physical activities
- Archaeology: continued disturbance of an archaeologically significant site due to construction activities associated with multiple projects

For more information on CEF go to:

- Operational Policy Statement Assessing CEF under *CEAA 2012*
- Cumulative Effects Assessment Practitioners Guide

- Technical guidance for Assessing CEF under *CEAA 2012* (Draft December 2014)

Mitigation Measures:

Mitigation measures identify technically and economically feasible measures that would minimize or eliminate adverse environmental, socio-economic, or cultural effects. Mitigation measures can apply to direct, indirect, induced, or cumulative effects of a project. Mitigation may include elimination, reduction, or control, or where this is not possible, restitution measures such as replacement, restoration, or compensation.

Use of Indigenous Information:

Information provided by Indigenous people and communities can be particularly valuable in the conduct of EAs. Such information may be provided in the form of:

- Indigenous Traditional Knowledge (TK)
- Community knowledge
- Scientific knowledge
- Or simply an expression of concern regarding potential effects, including cumulative effects, to a particular valued ecosystem component.

Collection and use of Indigenous TK is covered in the reference guide Considering Aboriginal traditional knowledge in environmental assessments conducted under the *CEAA 2012*. Where a cumulative effects assessment gathers information useful to understanding the historical context of past impacts to Indigenous group's rights, EA practitioners should keep in mind that, in the context of consultation and accommodation, such information will also help in understanding potential impacts to Indigenous rights.

Cumulative Effects and Indigenous TK Examples:

Noise from a project could be identified by an Indigenous group as an issue of concern relative to wildlife in the context of traditional use of lands. There may be concern that existing noise in the area due to existing physical activities may already be at a level of concern. Existing noise in combination with additional noise from the project would therefore result in cumulative effects. This would typically result in the "noise" valued ecosystem component being identified for further consideration in the EA.

EA Report and Decisions under the CEAA 2012

Introduction:

An EA report includes:

• Conclusions regarding the potential environmental effects of the designated project

• Mitigation measures that were taken into account

• Significance of the remaining adverse environmental effect

• Follow-up program requirements

Information used in the preparation of an EA report comes, in part, from the EIS.

What is an Environmental Impact Statement?

An EIS is a document containing the results of an environmental study conducted as part of an EA under *CEAA 2012*. The proponent of a designated project is required to prepare the EIS, which identifies and assesses the environmental effects of the designated project and the measures proposed to mitigate those effects. Guidelines outlining the information to be contained in the EIS are provided to the proponent by the Agency.

An EIS includes:

• A full and complete assessment of the potential environmental effects associated with all components of the designated project at all phases

• Meaningful public participation

• Integration of Indigenous concerns into the EA process

• Consideration of the physical, biological, and human environment

Who Prepares the EA Report?

After a proponent of a designated project submits the EIS, the Responsible Authority or review panel prepares an EA report containing their conclusions and recommendations regarding the proposed project.

The EA report is intended to support decisions and will be made available to the public and FNs for comments. In most cases, the EA Report is then submitted to Canada's Minister of the Environment and Climate Change, who makes a decision about the project.

Who makes the Decision on Significant Adverse Environmental Effects?

If the Minister decides that a project is likely to result in significant adverse environmental effects, the matter is referred to the Governor in Council (i.e. Federal Cabinet) for a decision. If Cabinet decides that the significant adverse environmental effects are not justified, then the project may not proceed.

What if there are NO Significant Adverse Environmental Effects?

If it is determined that the project would cause no significant adverse effects, or if Cabinet determines that the significant adverse effects are justified, then an EA Decision Statement is issued by the decision maker. The EA decision statement also contains the conditions (e.g.: mitigation measures, follow-up program) that must be met by the proponent for the project to proceed.

What Else?

The contents of a follow-up program, if required, will be included in the EA Decision Statement. After obtaining a positive Decision Statement under *CEAA 2012*, a project proponent is still required to obtain permits under applicable federal and provincial laws.

Provincial Environmental Assessment Processes 2018

All provinces in Canada have their own EA laws and policies. The federal government recently accommodated the mining industry by changing legislation so that a provincial assessment process may be substituted for the federal one for some projects. For example, LNG Canada's gas plant proposal is not required to go through the federal process.

Provincial EA laws vary considerably in scope and application and are NOT applicable on Reserves or other federal land. Therefore, this courselet does not contain a detailed review of each provincial regime in Canada, but more information can be found by clicking on the links provided in the following sections.

BC Environmental Assessment Process:

In December 2002, the BC government proclaimed the current *Environmental Assessment Act*. It replaced the previous EA legislation that had been in effect since June 1995. The new legislation provides a streamlined EA process and reflects the provincial government's commitment to flexible, efficient, and timely reviews of proposed major projects.

BC Statute: *Environmental Assessment Act, S.B.C. 2002, c. 43*

Summaries & Guides:

- Environmental Assessment Office User Guide: An Overview of Environmental Assessment in British Columbia (January 2018)
- Environmental Assessment Office Guidance Documents
- Guide to Involving Proponents when consulting FNs in the EA Process
- Consulting with FNs

Alberta EA Process:

In Alberta, laws such as the *Environmental Protection and Enhancement Act* and the *Water Act* protect the environment by regulating industrial activities. The Alberta Energy Regulator is responsible for energy projects, specifically upstream oil and gas, oilsands and coal projects, while Alberta Environment and Parks administers the EA process for all other types of industrial activity.

Statute:

- Environmental Protection and Enhancement Act (EPEA)
- Water Act (See Part 2 Planning and Environmental Assessment)

Summaries & Guides:

- Alberta's Environmental Assessment Process – Updated December 2015
- Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management 2013
- Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management, 2014

Saskatchewan EA Process

In Saskatchewan, the Environmental Assessment Act requires that a proponent receives the approval of the Minister of the Environment before proceeding with a development that is likely to have significant environmental implications. When the Minister's decision of a development leads to actions that have the potential to adversely impact the exercise of Treaty and Indigenous rights and the pursuit of traditional uses, the ministry has a Duty To Consult (DTC) with FNs and Métis communities in advance of the decision. While the Government of Saskatchewan is responsible and ultimately accountable for managing and implementing the DTC, the proponent will be assigned procedural aspects of consultation to help ensure a direct, efficient and timely exchange of information among all parties and contribute to a meaningful and effective process of consultation. The DTC in the EA process diagram, provided in Appendix A of the Consultation with First Nations and Metis Guidelines, outlines proponent consultation during the EA process.

Statute: The Environmental Assessment Act, 1980, S.S. 1979-80, c. E-10.1

Summaries & Guides:

- The Saskatchewan Environmental Assessment Process -Simplified
- Environmental Assessment Saskatchewan Overview June 2014
- Proponents Guide: Consultation with First Nations and Metis in Saskatchewan Environmental Impact Assessment (2014)
- Environmental Assessment and Saskatchewan First Nations: A Resource Handbook (Prepared for: Prince Albert Model Forest Association Inc. Aboriginal Caucus)

Manitoba:

The *Environment Act* outlines the EA and licensing process for developments in Manitoba that may have potential for significant environmental and/or human health effects. The process exists to ensure environmental and human health protection, encourage early consultation, allow for full public participation, and ensure economic development occurs in an environmentally responsible manner.

Statute: The Environment Act, C.C.S.M. c. E125

Summaries and Guides:

- Information Bulletin - Environmental Assessment & Licensing under The Environment Act (June 2013)
- Environmental Assessment and Licensing Process - Flowchart (November 2013)
- Manitoba Crown Aboriginal Consultations
- Manitoba's Interim Provincial Policy For Crown Consultations with First Nations Metis Communities and Other Aboriginal Communities

Ontario:

The Ontario *Environmental Assessment Act* sets out a planning and decision-making process so that potential environmental effects are considered before a project begins. The Act allows Ontario to delegate to a proponent certain aspects of consultation (e.g., to provide information regarding the proposal and gather information about the impact of a proposed project on potential or established

Indigenous or treaty rights). But the ultimate legal responsibility to meet the duty to consult lies with the Crown. Responsibilities of the third party will vary depending on a variety of factors including the nature of the consultation, the extent of consultation required in the circumstance and the procedural aspects of consultation the Crown has delegated to the third party.

Statute: Environmental Assessment Act. R.S.O. 1990. c. E. 18

Summaries & Guides:

- Ontario's Environmental Assessment Process
- Preparing and Reviewing Environmental Assessments in Ontario
- Consulting Indigenous Communities
- Duty to Consult with Aboriginal Peoples in Ontario

Quebec EA Process:

In Quebec, statutes for EA purposes, are effectively divided into North and South. The James Bay and Northern Quebec Agreement, which applies in Northern Quebec, contains an Environmental Protection (EP) regime that has been adapted to allow the Naskapi's to participate in the EA process, so they can protect the rights and guarantees granted to them under the Agreement. This participation is assured through consultation and representation mechanisms, within which the Cree and Inuit have major roles. In southern Quebec *the Loi sur la qualité de l'environnement* (Southern Quebec), L.R.Q., c.Q-2 is the main environmental statute.

Statute:

- The James Bay and Northern Québec Agreement (North)
- Loi sur la qualité de l'environnement (Southern Quebec). L.R.O.. c. 0-2

Summaries & Guidelines:

- Environmental Assessment of Northern Projects - Overview
- Environmental Assessment in Southern Québec - Overview
- Interim Guide Consulting Aboriginal Communities

New Brunswick:

New Brunswick's *Environmental Impact Assessment Regulation* (Regulation 87-83), enacted under the *Clean Environment Act*, RSNB 1973, c C-6, is designed to identify environmental impacts associated with development proposals well in advance of their implementation, so that such impacts can be avoided or reduced to acceptable levels before they occur. Environmental impact assessment (EIA) gives technical specialists from government agencies, as well as FNs, local residents, and the general public a chance to provide their input to the decision-making process regarding specific development proposals.

Statute:

- Clean Environment Act R.S.N.B. 1973 c. C-6
- Environmental Impact Assessment Regulation. NB Reg 87-83

Summaries & Guides:

- A Guide to Environmental Impact Assessment in New Brunswick January 2018
- New Brunswick Duty to Consult Policy (November 2011)

Newfoundland:

The purpose of the *Environmental Protection Act* is "to facilitate the wise management of the natural resources of the province and to protect the environment and quality of life of the people of the province". It requires anyone who plans a project that could have a significant impact on the natural, social or economic environment to present the project for examination. The EA process ensures that development projects proceed in an environmentally acceptable manner. When the potential environmental effects of projects are of concern, the EA process generates real benefits by:

a. Providing for comprehensive project planning and design
b. Maximizing EP
c. Enhancing government coordination, accountability, and information exchange
d. Facilitating permitting and regulatory approval of projects

Statute:

- Newfoundland and Labrador *Environmental Protection Act*
- Newfoundland and Labrador Environmental Assessment Regulations. 2003 (O.C. 2003-220)

Guide: Environmental Assessment - A Guide to the Process (September 2016)

Nova Scotia:

The Nova Scotia Environment Act and Environmental Assessment Regulations are designed to identify the environmental impacts associated with designated development proposals long before the proposals are implemented. The Environmental Assessment Regulations require proponents to engage with the public and FNs (Mi'kmaq of Nova Scotia) about the adverse effects or environmental effects of the proposed undertaking. For FNs, it gives them the opportunity to provide information that will be considered by the Minister of the Environment when making a decision and in addition, in certain circumstances, special consultations may be held with FNs.

Statute:

- Environment Act S.N.S. 1994-95 c. 1
- Environmental Assessment Regulations

Summaries & Guides:

- A Citizen's Guide to Environmental Assessment (September 201 7)
- A Proponent's Guide to Environmental Assessment (September 201 7)
- Nova Scotia Policy and Guidelines: Consultation with Mi'kmaq of Nova Scotia (April 2015)
- Proponent's Guide: The Role of Proponents in Crown Consultation with the Mi'Kmaq of Nova Scotia (November 2012)

Prince Edward Island:

Under Section 9 of the *Environmental Protection Act*, Prince Edward Island (PEI) has established an EIA and describes the responsibility of the proponents in the EIA process. The PEI EIA review process is for any project that may have a negative impact on the environment. The EIA review is a valuable tool. In the early stages of planning it allows the applicant, federal and provincial regulatory agencies, and the public to identify and address environmental issues that may be associated with a specific project.

Statute:

Environmental Protection Act R.S.P.E.I. 1988 c. E-9

Summaries and Guides:

- EIA Review Process
- EIA Guidelines (January 2010)
- Prince Edward Island Duty to Consult

Federal & Provincial EAs: Duty to Consult

Duty to consult

The DTC applies regardless of whether or not a FN is party to the Framework Agreement, and regardless of whether or not a FN that is a party has enacted a LC. The federal and provincial governments must consult and, where appropriate, accommodate, Indigenous groups when a project has the potential to adversely affect potential or established Indigenous or Treaty rights. The type of consultation activities carried out by the Agency will vary on a project-by project basis and depend on the nature of the rights and the potential adverse impacts on those rights. Note that the discussion regarding the DTC applies not only to projects proposed on a FN's Reserve land but also to projects proposed to be developed off-Reserve on a FN's treaty lands or traditional territory.

Court Cases

The Supreme Court of Canada has repeatedly confirmed in decisions that the Crown has a duty under the *Constitution Act*, 1982 to consult and where appropriate, accommodate FNs with respect to projects that might affect a FN's asserted or established Indigenous rights and title or treaty rights. Court cases confirming the DTC include:

- Delgamuukw v. British Columbia et al 119971 3 S.C.R. 1010 (SCC)
- Haida Nation v. BC (Minister of Forests) 120041 3 S.C.R. 51 1
- Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage). 120051 3 S.C.R. 388. 2005 SCC 69

Federal & Provincial Consultation

For projects involving federal and provincial/territorial governments, jurisdictions will often coordinate FN consultation efforts to the maximum extent possible to increase efficiency by minimizing duplication. INAC, on behalf of Canada, has been engaging with provincial and territorial partners to explore the potential for developing memoranda of understanding aimed at reducing duplication, working collaboratively, sharing information, and improving coordination on Indigenous consultation. In any of

the foregoing situations, the levels of government with an EA law that is triggered (i.e. Federal, Provincial or FN) typically cooperate and harmonize their EA processes. EA harmonization agreements will be discussed in more detail later in this courselet

Federal Consultation Requirements

Proposed Project: Canada consults with Indigenous peoples as part of the EA process for a variety of reasons, including: statutory and contractual obligations, policy and good governance, and the common law duty to consult.

CEAA:

Potentially affected FNs are to be consulted in preparing federal EAs:

"The Government of Canada consults with Aboriginal people as part of the EA process for a variety of reasons, including statutory and contractual obligations, policy and good governance, and the common law duty to consult"(Canadian Environmental Assessment Agency 2013.

Introduction to the Canadian *Environmental Assessment Act*, 2012, Participant Manual. Module 2-17). The Taku River Tlingit case of 2004 determined that governments have a Duty to Consult(DTC) and accommodate FNs throughout the life of a project.

CEAA Policy & Duty to Consult:

Canada implements its DTC in part through CEAA policy. Under CEAA policy, FNs are usually consulted with respect to impacts of a project on their use of land and resources for traditional purposes, on heritage sites and on their aboriginal rights and aboriginal title or treaty rights. The scope and extent of the Crown's DTC with a FN with respect to projects undergoing an EA under CEAA depends on the strength of the claim to aboriginal rights and title or treaty rights and the extent of impacts of a project on those rights. However, at a minimum, the FN should be given an opportunity to comment on key documents in the EA process including the Terms of Reference for the EA and the EA document itself. The Crown must show that it took a FN's comments seriously and that they were incorporated into its decisions during the EA process.

Crown Consultation Coordinator:

The Agency is considered the Crown Consultation Coordinator, charged with integrating federal Indigenous consultation activities into the EA process. Regardless of whether a proposed project occurs on and off a Reserve, the Crown is to provide Indigenous groups with an opportunity to comment.

Consider Environmental Effects:

A federal EA must consider any environmental effect that a project could have on Indigenous people's:

- Health and socio- economic conditions
- physical and cultural heritage
- Current use of lands and resources for traditional purposes
- Structures, sites or things that are of historical, archaeological, paleontological or architectural significance

Indigenous Groups Comment:

During the assessment, Indigenous groups have the opportunity to comment on:

• potential environmental effects of the project and how they should be included in the EA

• Share TK

• Comment on the potential impacts of a project on their potential or established Indigenous or Treaty rights

• Mitigation measures

• Follow-up programs

Subsection 19(3) of *CEAA 2012* gives responsible authorities the discretion to consider Indigenous TK in any EA:

"The environmental assessment of a designated project may take into account community knowledge and Aboriginal Traditional Knowledge. "

Accommodation:

Where impacts on a FN's rights are established through consultation, the Crown must then "accommodate" those impacts which might include requiring a proponent to modify its project or compensate a FN for the impacts through an " Accommodation Agreement." Sometimes, the Crown delegates the procedural aspects of its DTC to the company or agency proposing a project (the "proponent"), which can result in an Impacts and Benefits Agreement with a proponent that compensates a FN for impacts of a project on its Indigenous rights and title or treaty rights.

Federal Funding Opportunities:

Funding to support Indigenous participation in federal EAS and related consultation may be available under the Agency's Participant Funding Program.

Provincial Consultation Requirements

Introduction:

The Crown's DTC also applies to provincial governments. Some have instituted their own Crown consultation processes, polices and guidelines for projects within their jurisdictions. It is advisable to check the appropriate provincial, territorial and community websites for additional information on their specific consultation agreements and protocols, processes and policies.

Provincial Crown's Duty to Consult:

The scope and extent of the provincial Crown's DTC with respect to a project undergoing a provincial EA depends on the strength of the FN's claim to Indigenous rights and title or treaty rights and the extent of a project's impacts on those rights.

However, at a minimum, the province should provide a FN with an opportunity to comment on key documents in the EA process including the Terms of Reference for the EA and the EA document itself.

The Crown must show that it took a FN's comments seriously and that the comments were considered in the crown's decisions during the EA process.

First Nations' Consultation in Provincial EA Processes:

A FN may be involved in a provincial EA process in at least four situations:

a) Where a project is physically present on both provincial Crown lands and a Reserve, e.g. transmission line, road or pipeline that crosses Reserve boundaries

b) Where a project is located on provincial Crown lands but may have potential impacts on the Reserve, e.g., release of harmful substances from proposed mines, accidental spills from a pipeline into water or landfill leachate polluting groundwater

c) Where a project is located on provincial Crown lands or private lands and has the potential to have an effect on the FN's aboriginal rights, including title or treaty rights.

d) Where a project is located on a FNs traditional territory

In these cases, the Provincial EA law, federal law and, if the project is physically located on Reserve, a FN's law could apply to the project.

Off Reserve Projects:

As previously noted, a FN has an opportunity to be involved in provincial EAS for projects proposed to occur off-Reserve in a FN's traditional territory or treaty settlement land.

This opportunity may arise:

- From specific provisions in the provincial EA law or policy requiring public or Indigenous participation in the EA process
- From the common law duty of the Crown to consult and where appropriate, accommodate FNs when projects might affect their aboriginal rights and title or treaty rights
- According to the terms of the treaty and land claims agreement that establishes the treaty settlement land

Provincial Crown Delegates its Procedural Aspects of …(unable to see the rest)

The provincial Crown sometimes delegates the procedural aspects of its DTC to the project proponent. The proponent may subsequently negotiate an Impacts and Benefits Agreement to compensate a FN for project impacts.

- Increasingly, proponents engage FNs:
- Directly in discussions of proposed projects
- By involving FNs in the design and conduct of EAS
- In the formulation of mitigation measures

Provincial staff, FNs, and proponents sometimes differ over whether these engagement activities

constitute "consultation." These differences notwithstanding, FNs often play influential roles in the conduct of EAS for projects proposed beyond Reserve boundaries. The DTC applies to projects on a FN's traditional territory or treaty settlement lands, not just reserve lands.

Questions a LGD Should Ask:

An LGD, when faced with dealing with a provincial project, should be familiar with the province's (that their First Nation Land is situated in) EA laws and policies. Since provincial EA laws vary considerably in scope and application and because a provincial project may have an environmental effect on First Nation Lands, the LGD should be asking certain questions, for example:

• What is the name of the provincial EA law in your

province?

• Is there a guidance document or procedural policy to assist you to understand how the provincial law is applied or implemented in practice? If so, what is the name of that policy?

• Does your province's EA law provide for the kind of "effects" or "environmental effects" must be considered in the EA process? (**Hint: Consider looking in the "Definitions" or "Interpretation" section of the law.)

• Does your province's EA law provide specific time frames within which milestones in the EA process must occur?

• Does the EA law or policy in your province provide for specific involvement or consultation of FNs, Indigenous people or Indians in the EA process?

• Does your province have a Federal-Provincial EA Co-operation Agreement? If so, what issues does it address?

• Are there examples of your FN's involvement in provincial EAs?

EA Harmonization Agreement

EA Harmonization in Canada envisions governments working in partnership to achieve the highest level of environmental quality for all Canadians.

In Canada, each government will retain its existing authorities but will use them in a coordinated manner to achieve enhanced environmental results. Each government will undertake clearly defined responsibility for environmental performance and will report publicly on its results.

We will take a closer look at:

a) Federal-Provincial EA Harmonization Agreements
b) FN-Federal-Provincial EA Harmonization Agreements

Federal- Provincial EA Harmonization Agreements:

Introduction

Under the Constitution Act, 1982 both the federal and provincial governments have legislative jurisdiction over environmental matters in Canada, including EA. In order to ensure efficient and effective environmental stewardship, the federal and provincial governments have entered into cooperation or harmonization agreements whereby they agree to work together to protect the environment.

Canada-wide Accord on Environmental Harmonization:

In 1993 the Canada-wide Accord on Environmental Harmonization (Accord) was signed by the Canadian Council of Ministers of the Environment (the 13 ministers of the environment for the federal, provincial and territorial governments). This Accord was to guide conclusion and implementation of further agreements, including agreements between Canada and provincial governments.

The Accord emphasizes adherence to common principles (such as " polluter pays"), cooperation, promoting efficiency, eliminating duplication and ensuring consistent standards and public accountability. The intent of the Accord is similar to the "substitution" provisions of CEAA 2012 (Sec. 32 through 37), which allow a provincial EA to satisfy both federal and provincial requirements. More information on the Accord is available by clicking the following link: Accord on Environmental Harmonization.

Sub-agreements:

The Accord also provides for the ability of the parties to enter into sub- agreements, including a Sub-Agreement on EA. The EA sub-agreement concerns the effective conduct of EAS where two or more governments are required by law to assess the same proposed project. In such cases, the agreement provides that a single assessment and review process would take place, which would be designed to meet the requirements of all the governments involved. An anticipated result provides greater predictability and fewer delays in the process. The LGD should know that, in practice, each government still conducts its own process, though they may "share" the results of an EA prepared by a project proponent.

Sun-Agreements on EA:

Under the Sub Agreement on EA, the federal and provincial government agencies agree to base their regulatory decisions on the information generated by a single EA process. The EA would be prepared under the lead of one government, but necessarily involve the collaboration of the other government. Each government would retain its authority to issue or refuse permits, and to approve or disallow the project, but it would agree to do so on the basis of the results of the coordinated EA process.

Bilateral Agreements

The parties agree that the Environmental Sub-agreement will be implemented through bilateral agreements between the federal government and each province and territory. The bilateral agreements between several provinces and Canada can be found at the following link: Bilateral Agreements.

FN Federal-Provincial EA Harmonization Agreement

Introduction:

After a FN becomes Operational, Canada still retains some EA jurisdiction on First Nation Lands. For example, designated projects will undergo an EA under CEAA 2012.

Framework Agreement:

In clause 25.7 of the Framework Agreement, FNs and Canada agreed to develop a plan to harmonize their EA processes, with the involvement of the applicable province where they agree to participate. Such an agreement would be entered into for the same reasons the federal and provincial governments enter into harmonization agreements – to reduce duplication, prevent delays and increase predictability in the process.

Retained Jurisdiction:

Under section 67 of CEAA 2012, for example, Fisheries and Oceans Canada (DFO) must determine if a project proposed on First Nation Land is likely to cause significant adverse effects before issuing an authorization under the *Fisheries Act* This retained EA jurisdiction might raise some concerns for a FN, because these processes under CEAA 2012 could delay proposed developments on First Nation Land.

Tripartite Agreements:

FN-Federal-Provincial EA Harmonization Agreements under the Framework Agreement should be designed to address many of the same issues as Federal-Provincial environmental sub-agreements, including:

- What agency and individual will be the main contact and coordinator of the EA of each jurisdiction?
- Under what circumstances would each party notify each other of an EA process that is triggered in the jurisdiction of another party?
- What are the common information requirements under the federal, provincial and First Nation's EA laws?
- How will the lead party for an EA be determined?
- How the parties will develop a specific work plan for each project undergoing a multi-jurisdictional EA?
- How the parties will co-ordinate their EA decisions and associated regulatory decisions with respect to a project?

Overlapping Jurisdiction:

The LGD should keep in mind that clause 25.6 of the Framework Agreement provides that a FN and Canada will make best efforts to ensure the FN's EA process will be used where there is overlapping jurisdiction. This priority should be reflected in a First Nation-Federal- Provincial EA harmonization plan.

Determining which EA Laws Apply to a Project

Introduction:

This courselet:

- Reviewed when and how provincial and federal EA laws are triggered for projects on or near FN reserve land.
- Referenced CEAA 2012, which can be found by clicking here for determining when CEAA is triggered

A FN could now use the content in this courselet to aid them in determining which EA laws apply to a project.

Example 1:

Project: A FN needs to construct a road for its own infrastructure purposes across a fish bearing stream on its Reserve land and requires an authorization under s. 35 of the Fisheries Act because the project will cause serious harm to fish that are part of a commercial, recreational, or Indigenous fishery (serious harm).

Question: Which EA law or laws would likely apply - federal and/or provincial?

Answer: The road would be a non-designated project under s. 67 of CEAA 2012. DFO must determine under section 67 if a project on First Nation's land is likely to cause significant adverse effects before issuing an authorization under the *Fisheries Act*. Provincial law would not generally apply. A FN's EA process would also apply (and may take precedence over other's processes).

Example 2:

Project: If a major oil or gas pipeline was proposed to be constructed on provincial Crown lands and FN Reserve land, the proponent would likely be required to obtain several authorizations under s. 35 of the *Fisheries Act* because the project will cause serious harm to fish.

Question: Which EA law or laws would likely apply - federal and/or provincial?

Answer: Unless the pipeline meets the criteria in the Designated project Regulation, no EA under CEAA 2012 would be required. If the pipeline is interprovincial, the National Energy Board would manage the assessment. As in Example 1, regardless of whether a full EA is required, DFO would need to determine if the pipeline is likely to cause significant adverse effects before issuing an authorization under the *Fisheries Act*. In addition, a provincial EA likely would be required because most major oil and gas pipelines trigger an EA under most provincial EA laws. A FN's EA process would also apply (and may take precedence over other's processes).

Final Questions to Ask:

An LGD should review your FN's experience with federal/provincial EAS on Reserve Lands before becoming Operational to better understand the Federal-Provincial EA Process. Here are some helpful questions to ask:

- Have you had projects on your Reserve lands that required a federal EA under CEAA 2012? If so, what kinds of projects were they?
- What federal decision or activity triggered the EA under CEAA 2012?
- Which federal government agencies were involved in the process?
- Was your Provincial EA agency involved?
- Was the EA a screening, comprehensive study, mediation or review panel type of EA?
- How was your FN involved in the process?
- How long did the process take?
- How did the EA process affect the quality of the project?
- Did the process effectively identify project impacts and mitigation?
- Were the First Nation's interests considered in the EA?
- How do you think the EA process could have been improved?

Summary:

Introduction:

The goal of this courselet was to summarize the key elements of both the federal and provincial EA processes. LGD need to understand both those government's EA laws, regimes, processes and requirements of CEAA 2012 and how they can approach harmonization.

Federal Laws:

The federal EA law in Canada is called the *CEAA 2012*.

The primary goal of the federal EA process under *CEAA 2012* is to determine whether, after taking into consideration appropriate mitigation measures, a proposed designated project will cause "significant adverse environmental effects."

Projects that do not cause significant adverse environmental effects may proceed. Projects that do cause significant adverse environmental effects may still proceed if Cabinet determines that the effects are justified in the circumstances.

Provincial Laws:

Developmental and Operational FNs may be involved in provincial EAS where a project is:

- Physically located partly on Indian Reserve or First Nation Land and partly on provincial Crown land
- Physically located off Indian Reserve or First Nation Land but may have impacts on those lands

All provinces have their own environmental assessment laws that apply to provincial Crown land.

Many provincial laws have a similar purpose to *CEAA 2012.* Each reader should review its own province's EA law or policies and guidance documents to obtain an understanding of the requirements in his or her province.

First Nation Laws and *CEAA 2012*:

CEAA 2012 will have less application on First Nation Lands after an Operational FN adopts its own EA law under its LC. However, even after a FN passes its own EA law under its LC *CEAA 2012* will continue to apply. Designated projects proposed on First Nations Lands will still need to undergo an EA under *CEAA 2012.* Federal authorities will still need to determine if non-designated projects on First Nation Lands may cause significant adverse environmental effects prior to exercising a power, duty or function under federal law.

First Nation Law:

Operational FNs that have not passed their own EA laws under their LC will need to apply the Interim EA Process set out in their Individual Agreements. Typically, those Interim EA Processes must be consistent with *CEAA 2012* or the intent of *CEAA 2012*.

Harmonization:

After a FN is Operational, if more than one federal, provincial, and FN EA laws or an Interim EA Process apply to a project, the applicable levels of government (federal, provincial, FN) will need to work together to harmonize their EA processes.

Final Considerations:

Federal and provincial EA laws and processes are often criticized for not producing EAS that are effective or efficiently produced. FNs need to be cautious about simply applying the federal or provincial EA regimes to their circumstances without adequate consideration of the needs and capacity of their FN communities.

There are many questions to be asked and answered by the FN if a proposed project has potential impacts on its First Nation Land and Indigenous title and rights. Some of those questions are posed in the Important Questions to Answer document.

ACRONYM LIST

Accord	-	Canada-wide Acord on Environmental Harmonization
Agency	-	Canadian Environmental Assessment Agency
BC	-	British Columbia
CEAA	-	*Canadian Environmental Assessment Act*
CEF	-	Cumulative Environmental Effects
DFO	-	Department of Fisheries and Oceans Canada
DTC	-	Duty to Consult
EA	-	Environmental Assessment
EP	-	Environmental Protection
EIA	-	Environmental Impact Assessment
EIS	-	Environmental Impact Statement
EPEA	-	*Environmental Protection & Enhancement Act*
FN	-	First Nation
FRAMEWORK AGREEMENT	-	*Framework Agreement on First Nation Land Management*
GIC	-	Governor In Council
INAC	-	Indigenous & Northern Affairs Canada
LC	-	Land Code
LGD	-	Land Governance Director
PEI	-	Prince Edward Island

RC	-	First Nations Land Management Resource Centre
TK	-	Traditional Knowledge

GLOSSARY OF TERMS

ADVERSE EFFECTS

Adverse Effects means an undesirable or harmful effect to an organism, indicated by some result such as mortality, altered food consumption, altered body and organ weights, altered enzyme concentrations or visible pathological changes.

DEVELOPMENTAL

When referring to the *Framework Agreement* "developmental" means those First Nations who are signatories to the Framework Agreement and who are developing a Land Code, an Individual Agreement with Canada, and a community approval process to ratify the *Framework Agreement*, Land Code and Individual Agreement through a vote of the eligible voters.

DESIGNATED PROJECT

Designated project is defined in section 2(1) of *CEAA 2012* as: One or more physical activities that are carried out in Canada or on federal lands; are designated by regulations made under paragraph 84(a) of *CEAA 2012* or designated by an order made by the Minister of the Environment under subsection 14(2) of *CEAA 2012*; and are linked to the same federal authority as specified in those regulations or that order. It includes any physical activity that is incidental to those physical activities.

ENVIRONMENTAL ASSESSMENT

According to the International Association of Impact Assessments, an EA is

> "the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made."

An EA examines effects of proposed projects on soil, air quality, water quality and supply, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic and environmental topics. A well-designed EA assesses the "cumulative effects" of a proposed project combined with other past and proposed future human activities. Ways of avoiding or reducing impacts are identified in an EA.

An EA is a planning tool, a means of reviewing the effects of proposed development, a process of community engagement and an instrument for complying with regulatory requirements. After considering federal and provincial environmental assessment

processes, an operational First Nation can design an efficient EA regime that is beneficial to the environment and to the quality of development occurring on reserves.

ENVIRONMENTAL EFFECT

The *CEAA, 2012* states that the environmental effects of a project that are to be taken into account for the purposes of the Act are:

- a change that may be caused to a component of the environment under federal jurisdiction, such as fish or migratory birds;
- a change that may be caused on federal lands or outside the province where the project is to be carried out; and
- an effect on Aboriginal peoples of a change to the environment.

However, if the project requires a federal authority to exercise a power or perform a duty or function to proceed (such as issue a permit), then the definition of environmental effects also includes certain changes to the environment directly linked or necessarily incidental to that exercise or performance (such as changes to the environment that result because a permit was issued), as well as socio-economic effects of such a change

ENVIRONMENTAL IMPACT ASSESSMENT

An environmental impact assessment (EIA) is a systematic analysis of the potential impacts of proposed development projects on the natural and human environment, for identifying measures to prevent or minimize impacts prior to major decisions being taken and project commitments made. In Canada, EIA was formally introduced in Canada in 1973 by the federal Environmental Assessment and Review Process (EARP). In 1992, the *Canadian Environmental Assessment Act* was proclaimed as law to replace EARP and to strengthen EIA in Canada. EIA is also required under the law of the provinces and territories, and under various Land Claim agreements in Canada's north.

ENVIRONMENTAL PROTECTION

Environmental protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce attendant risks to environmental and human health and safety. The adverse effects of exposure to contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.

FIRST NATION LAND

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code.

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a First Nations Land Management Resource Centre (RC) to assist the First Nations in implementing their own land management regimes. The RC is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement.*

The RC's functions are:

- Developing model land codes, laws and land management systems
- Developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations
- On request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes -assisting a verifier when requested by the verifier
- Establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code
- On request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty
- Proposing regulations for First Nation land registration

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

The *Framework Agreement on First Nation Land Management* is a government-to-government agreement. The Framework Agreement is an initiative for First Nations to opt out of the land management sections of the *Indian Act* and take over responsibility for the management and control of their reserve lands and resources. The Framework Agreement sets out the principal components of this new land management process.

The *Framework Agreement* provides First Nations with the option to manage their reserve lands under their own Land Codes. Until a First Nation community develops and approves a Land Code to take control of its reserve lands and resources, federal administration of their reserve lands continues under the Indian Act. The Framework Agreement is not a treaty and does not affect treaty rights or other constitutional rights of the First Nations.

INDIVIDUAL AGREEMENT

An Individual Agreement between each community and Canada will be negotiated to deal with such matters as: the reserve lands to be managed by the First Nation, the specifics of the transfer of the administration of land from Canada to the First Nation,

e.g. the interests in land held by Canada that are to be transferred to the First Nation, the transfer of revenues and an interim environmental assessment process, and the funding to be provided by Canada to the First Nation for land management.

LAND CODE

A Land Code will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Land Code will be drafted by the First Nation and will make provision for the following matters: identifying the reserve lands to be managed by the First Nation (called "First Nation land"), the general rules and procedures for the use and occupation of these lands by First Nation members and others, financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law), the making and publishing of First Nation land laws, the conflict of interest rules, a community process to develop rules and procedures applicable to land on the breakdown of a marriage, a dispute resolution process, procedures by which the First Nation can grant interests in land or acquire lands for community purposes, the delegation of land management responsibilities, and the procedure for amending the Land Code.

MITIGATION

From the *Canadian Environmental Assessment Act* 1992: Mitigation means, in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

OPERATIONAL

When referring to the *Framework Agreement* "operational" means a First Nation which has ratified its Land Code and the Land Code is in **force**.

RESERVE

The *Constitution Act of 1867 Section 91 (24)* - "Indians and lands reserved for Indians":

- Creates a distinction between Indian reserve lands and other lands in Canada
- Provides that Indians and reserve lands are a federal responsibility
- Gives the federal government exclusive jurisdiction over reserve lands
- Provides that only Parliament can legislate with regard to the use of reserve lands

The basic legal framework underlying reserves is:

- The underlying legal title to reserves belongs to the federal Crown

- How the reserve was created (e.g. before or after Confederation in 1867)
- Pursuant to section 2 of the *Indian Act*, reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation

The *Framework Agreement* (see Section 4) clarifies that reserve lands under a Land Code will continue to be reserves within the meaning of the *Indian Act* and that any reserve, title to which is vested in Canada, and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

RESPONSIBLE AUTHORITY

Under *Canadian Environmental Assessment Act 2012 (CEAA 2012)*, a responsible authority ensures that an environmental assessment of a designated project is conducted in accordance with the *CEAA 2012*, including ensuring the public is provided with an opportunity to participate in the environmental assessment.

Under *CEAA 2012*, responsible authorities can be the Canadian Nuclear Safety Commission, the National Energy Board or the Agency.

TRADITIONAL KNOWLEDGE

While there is not yet an accepted definition the World Intellectual Property Organization definition is: Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Definitions of Cumulative Effects

The definition of cumulative effects is an ongoing source of discussion among Environmental Assessment practitioners. The following definitions are provided to help explain the concept of cumulative effects to Lands Governance Directors.

- “Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions” (AXYS 1999, p. 1)
- "Cumulative environmental effects" are defined more narrowly in the Practitioners Guide (AXYS 1999) than under the [Canadian Environmental Assessment] Act. While the Practitioners Guide is limited to cumulative biophysical effects, assessments of cumulative environmental effects under the Act can extend to the effects of such changes on health and socio-economic conditions, physical and cultural heritage, and other matters described in the definition of "environmental effects" in section 5 of the Act”.
- “Though the [Yukon Environmental and Socio-economic Assessment] Act does not provide a definition of cumulative effects, the concept is understood to be the combined environmental or socio-economic impacts that accumulate from a series of similar or related individual actions, contaminants, or projects. Although each action may seem to have a small impact, the combined effect can be significant” (Yukon Environmental and Socio-economic Assessment Board 2005, p. 1)

Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis. While impacts can be differentiated by direct, indirect, and cumulative, the concept of cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. Thus the cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource no matter what entity (federal, non-federal, or private) is taking the actions (US EPA 1999, p. 2).

FEDERAL ENVIRONMENTAL ASSESSMENT PROCESS BY AGENCY

Aboriginal consultation is integrated throughout the Environmental Assessment (EA) Process to the Extent possible

Up to 10 days*

PD Review

- Proponent submits PD
- Agency accepts PD or requests more information from proponent

Project description

Up to 45 days*

Determine if an EA is required

- Comment period on PD and the need for an environmental assessment #1
- Agency determines if an EA is required
- Agency discusses cooperation with province

No EA

- Proceed with any other required federal decisions or approvals
- Aboriginal consultation will occur if required

Yes to EA

Maximum government timeline of 365 days*

Agency begins EA**

- Comment period on the draft EIS guidelines #2
- Agency finalizes the EIS Guidelines and issues them to the proponent

EIS Guidelines

Analysis

- Agency plans consultation activities with Aboriginal groups and applications may be submitted for PFP
- Proponent submits EIS for government review
- Comment period on the potential environmental effects described in EIS #3
- Proponent may be requested to provide more information

EIS

EA Report

- Agency prepares draft EA report
- Comment period on the draft EA report #4
- Agency finalizes EA report

EA Report

EA Decision

- Minister reviews EA Report to make decision on the significance of environmental effects
- If there will be any significant effects, the project cannot proceed unless Cabinet decides that the effects are justified
- Minister issues EA decision statement

EA Decision Statement

After EA

Approvals and Follow-Up

- Federal departments may proceed with the appropriate actions (permits, authorizations) needed for the project to proceed
- Agency ensures that mitigation measures and a follow-up program have been put in place
- Further Aboriginal consultation may be required

Legend

**Timelines do not include time required by proponents to provide information.*

*** The Minister has up to 60 days from the start of the EA to refer the project to a review panel.*

: Comment Periods

FIRST NATION JURISDICTION UNDER *FRAMEWORK AGREEMENTON FIRST NATION LAND MANAGEMENT*

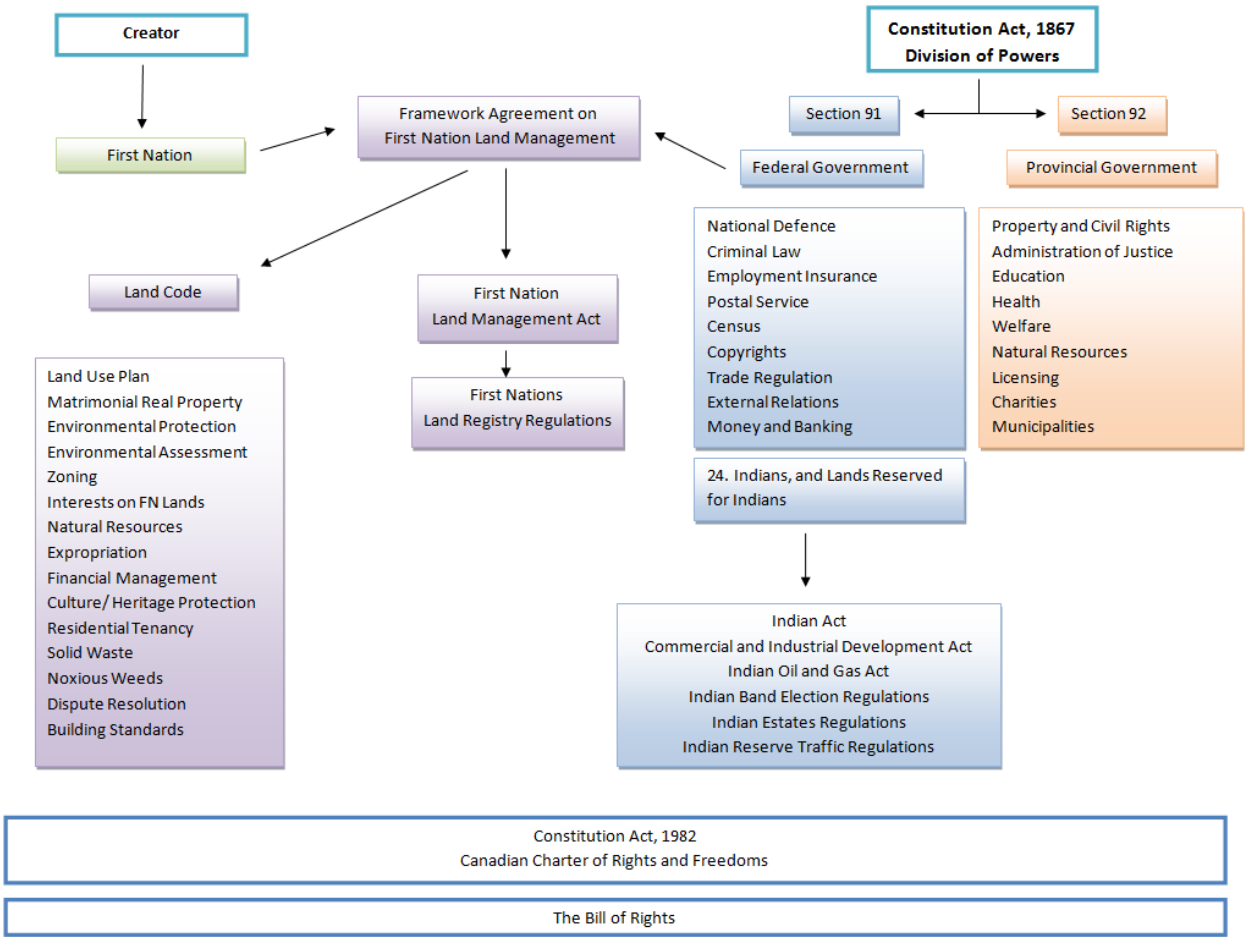

Figure 1 AUTHORITY TO ENACT LAWS

Narrative for the Chart

First Nations say that everything, including their rights, responsibilities and privileges flow from the creator. The chart illustrates how First Nations are re-establishing their jurisdiction over their lands and resources by signing the *Framework Agreement on First Nation Land Management (Framework Agreement)*. A First Nation ratifies the *Framework Agreement* by enacting a community Land Code. The Land Code is enabling and is general in nature. The community exercises its land governance powers by enacting specific land based laws.

The *Constitution Act, 1867* established a federation based on the sharing of powers between the federal and provincial governments. Each government has responsibility over a number of specific areas.

Under Section 91(24), the federal government has exclusive responsibility for Indians, and Lands Reserved for Indians. In exercising its responsibility, the federal government has signed treaties with First Nations, enacted legislation and regulations and established programs.

The federal government used this head of power to undertake negotiations which eventually lead to the development and signing of the *Framework Agreement on First Nation Land Management*. The federal government ratified this *Framework Agreement* by enacting the *First Nation Land Management Act*. The federal government also established the *First Nations Land Registry Regulations*.

All law-making bodies in Canada are constrained in their ability to make laws by the Bill of Rights, the Constitution Act, 1982, and the list of powers they were provided with (their jurisdiction). The courts are the forum for determining whether or not law-making bodies are acting within their powers.

Text of the **Framework Agreement on First Nation Land Management**

(signed in 1996)

Includes modifications resulting from

Amendment #1 1998
Amendment #2 1998
Amendment #3 2002
Amendment #4 2007
Amendment #5 2011

Texte de l'**Accord-Cadre relatif à la Gestion des Terres de Premières Nations**

(signé en 1996)

Comprend les changements apportés par les modifications suivantes

Modification #1 1998
Modification #2 1998
Modification #3 2002
Modification #4 2007
Modification #5 2011

Framework Agreement on First Nation Land Management

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

BETWEEN:

THE FOLLOWING FIRST NATIONS:

WESTBANK, MUSQUEAM, LHEIDLI T'ENNEH (formerly known as "LHEIT-LIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, as represented by their Chiefs and all other First Nations that have adhered to the Agreement

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development

WHEREAS:

The First Nations have a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator and have a deep desire to preserve their relationship with the land;

The First Nations should have the option of

Accord-cadre relatif à la Gestion des Terres de Premières Nations

ACCORD-CADRE RELATIF À LA GESTION DES TERRES DE PREMIÈRES NATIONS

ENTRE :

LES PREMIÈRES NATIONS SUIVANTES :

WESTBANK, MUSQUEAM, LHEIDLI T'ENNEH (autrefois connue sous le nom de "LHEIT-LIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, représentées par leurs chefs et toutes les autres Premières Nations qui se sont jointes à l'Entente

ET

SA MAJESTÉ LA REINE DU CHEF DU CANADA, représentée par le ministre des Affaires indiennes et du Nord canadien

ATTENDU QUE :

Les premières nations entretiennent une relation profonde avec la terre, basée sur la valeur spirituelle qu'elles attribuent à la Terre et aux dons du Créateur et qu'elles ont le désir de préserver cette relation;

Les premières nations devraient avoir la possibilité de soustraire leurs terres aux

withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and resources for the use and benefit of their members;

The Parties wish to enter into a government to government agreement, within the framework of the constitution of Canada, to deal with the issues of land management;

The Parties understand that this Agreement must be ratified;

NOW THEREFORE,

In consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree that the First Nations shall have the option of exercising control over their lands and resources.

PART I
PRELIMINARY MATTERS

1. INTERPRETATION

1.1 In this Agreement,

"Canada" or "Crown" means Her Majesty the Queen in right of Canada; ("Canada")

"eligible voter" means a member of a First Nation who is eligible, pursuant to clause 7.2, to vote under this Agreement; ("électeurs")

"federal law" means a law enacted by

dispositions de la Loi sur les Indiens concernant la gestion des terres de façon à exercer un contrôle sur leurs terres et sur leurs ressources à l'usage et au profit de leurs membres;

Les parties souhaitent conclure un accord de gouvernement à gouvernement, dans le cadre de la constitution du Canada, concernant des questions touchant la gestion des terres;

Les parties reconnaissent que le présent accord doit être ratifié;

PAR CONSÉQUENT,

En contrepartie de l'échange des promesses figurant dans le présent accord et sous réserve de ses modalités, les Parties conviennent que les premières nations doivent avoir la possibilité d'exercer un contrôle sur leurs terres et sur leurs ressources.

PARTIE I
QUESTIONS PRÉLIMINAIRES

1. INTERPRÉTATION

1.1 Les définitions qui suivent s'appliquent au présent accord.

« Canada » ou « Couronne » Sa Majesté la Reine du chef du Canada; (« Canada »)

« code foncier » Code adopté par une première nation conformément au présent accord contenant les dispositions générales relatives à l'exercice des droits et pouvoirs de la première nation sur ses terres de

Canada and does not include a land code or a First Nation law; ("loi fédérale")

"federal legislation" means the legislation to be enacted by Canada under Part X; ("loi de ratification")

"First Nation" means a band that is a Party to this Agreement; ("première nation")

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code; ("terres de première nation")

"First Nation Lands Register" means the register established pursuant to clause 51 to register interests or land rights in First Nation land; ("registre des terres de premières nations")

"First Nation law" means a law enacted by a First Nation in accordance with its land code; ("texte legislative de la Première nation")

"interest", in relation to First Nation land in any province or territory other than Québec, means any interest, right or estate of any nature in or to that land, including a lease, easement, right of way, servitude, or profit à prendre, but does not include title to that land; ("intérêt")

"land code" means a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land (although each First Nation can select its own name for the land code); ("code

première nation (les premières nations peuvent néanmoins donner l'appellation de leur choix à ce code foncier). (« land code »)

« Conseil consultatif des terres » Le conseil visé à l'article 38. (« Land Advisory Board »)

« droit foncier » Relativement aux terres de première nation dans la province de Québec, tout droit de quelque nature qu'il soit portant sur ces terres, à l'exclusion du titre de propriété; y sont assimilés les droits du locataire. (« land right »)

« électeurs » Les membres d'une première nation qui ont le droit de voter en vertu de l'article 7.2 du présent accord. (« eligible voters »)

« intérêt » Relativement aux terres de première nation situées dans toute province ou territoire autre que le Québec, tout intérêt, droit ou domaine de quelque nature qu'il soit portant sur ces terres, notamment un bail, une servitude, un droit de passage, un service foncier ou un profit à prendre, à l'exclusion du titre sur ces terres. (« interest »)

« loi de ratification » La loi adoptée par le Canada aux termes de la Partie X. (« federal legislation »)

« loi fédérale » Loi adoptée par le Canada mais ne comprend pas un code foncier ou un texte législatif d'une première nation. (« federal law »)

« membre » À l'égard d'une première

foncier")

"land right", in relation to First Nation land in the Province of Québec, means any right of any nature in or to that land excluding title, and includes the rights of a lessee; ("droit foncier")

"Lands Advisory Board" means the board referred to in clause 38; ("Conseil consultatif des terres")

"licence", in relation to First Nation land, ("permis")

(a) in a province or territory other than Québec, means any right of use or occupation of First Nation land, other than an interest in that land;

(b) in the Province of Québec, any right to use or occupy First Nation land, other than a land right in that land;

"member", in respect of a First Nation, means ("membre")

(a) a person whose name appears on the Band List, or

(b) a person who is entitled to have his or her name appear on the Band List;

"Minister" means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of this Agreement; ("ministre")

nation : (« member »)

a) personne dont le nom figure sur la liste de bande;

b) personne qui a droit à ce que son nom y figure.

« ministre » Le ministre des Affaires indiennes et du Nord canadien ou un membre du Conseil privé de la Reine désigné par le gouverneur en conseil aux fins du présent accord. (« Minister »)

« permis » Relativement aux terres d'une première nation : (« licence »)

a) dans une province ou un territoire autre que le Québec, tout droit d'usage ou d'occupation des terres de première nation, autre qu'un intérêt sur ces terres;

b) dans la province de Québec, tout droit d'utiliser ou d'occuper les terres de première nation autre qu'un droit foncier sur ces terres.

« première nation » Une bande qui est Partie au présent accord. (« First Nation »)

« registre des terres de premières nations » Le registre créé conformément à l'article 51 pour l'enregistrement des intérêts ou des droits fonciers sur les terres de premières nations. (« First Nation Lands Register »)

« terres de première nation » Dans le cas d'une première nation, tout ou partie d'une réserve décrite dans son code foncier. (« First Nation land »)

"verifier" means the person appointed pursuant to clauses 8 and 44 to monitor and verify the opting in process for a First Nation. ("vérificateur")

« texte législatif de la première nation » Une loi ou un autre texte législatif adopté par une première nation conformément à son code foncier. (« First Nation law »)

« vérificateur » La personne chargée, en application des articles 8 et 44, de surveiller et de vérifier le processus d'adhésion d'une première nation. (« verifier »)

1.2 Terms that are defined or used in the Indian Act have the same meaning in this Agreement, unless the context otherwise requires.

1.2 Sauf indication contraire, les termes du présent accord qui sont définis ou utilisés dans la Loi sur les Indiens s'entendent au sens de cette loi.

1.3 This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section 35 of the Constitution Act, 1982.

1.3 Le présent accord ne constitue pas un traité et n'est pas considéré comme un traité au sens de l'article 35 de la Loi constitutionnelle de 1982.

1.4 The Parties acknowledge that the Crown's special relationship with the First Nations will continue.

1.4 Les Parties reconnaissent que la Couronne maintiendra la relation spéciale qu'elle entretient avec les premières nations.

1.5 This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement.

1.5 Le présent accord ne s'applique pas aux terres ou aux droits sur ces terres qui ne sont pas visés par lui.

1.6 This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights.

1.6 Le présent accord n'a pas pour but de définir les droits inhérents ou autres des premières nations d'exercer un contrôle sur leurs terres et leurs ressources ni d'y porter atteinte, ni d'empêcher que ces droits fassent l'objet d'autres négociations.

1.7 The parties agree that when a provision of this agreement contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law

1.7 Les parties conviennent, que lorsque une disposition du présent accord emploie à la fois des termes propres au droit civil et à la common-law ou des termes qui ont

terminology or meaning is intended to apply to this provision with respect to First Nations in the Province of Quebec and the common law terminology or meaning is intended to apply with respect to First Nations in a province or territory other than Québec.

un sens différent dans l'un et l'autre de ces systèmes, l'intention est, d'appliquer à cette disposition la terminologie de droit civil ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations au Québec et la terminologie de common-law ou le sens qu'on lui donne dans ce système en ce qui a trait aux Premières nations dans toute province ou territoire autre que le Québec.

2. FIRST NATION LAND

2.1 Land that is a reserve of a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

2.2 First Nation land includes all the interests and rights or all the land rights and other rights, as well as the resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

2.3 The Parties agree that First Nation lands are lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867.

2. TERRES D'UNE PREMIÈRE NATION

2.1 Les terres qui constituent une réserve d'une première nation sont admissibles à être gérées par celle-ci en vertu d'un code foncier à titre de terres de première nation.

2.2 Les terres de première nation comprennent tous les intérêts et droits ou tous les droits fonciers et autres droits ainsi que les ressources relatifs à ces terres dans la mesure où ils relèvent de la juridiction du Canada et font partie de ces terres.

2.3 Les parties reconnaissent que les terres de premières nations sont des terres réservées aux Indiens au sens du point 24 de l'article 91 de la Loi constitutionnelle de 1867.

3. INDIAN OIL AND GAS

3.1 The Indian Oil and Gas Act will continue to apply to any First Nation lands, or interests or land rights in First Nation land, that are "Indian lands" within the meaning of that Act.

3. PÉTROLE ET GAZ DES INDIENS

3.1 La Loi sur le pétrole et le gaz des terres indiennes continuera à s'appliquer aux terres de premières nations et aux intérêts ou droits fonciers sur les terres de premières nations qui sont des « terres indiennes » au sens de cette Loi.

3.2 Any interest or land right in First Nation land that is granted to Canada for the exploitation of oil and gas under a land code will be deemed to be "Indian lands" within the meaning of the Indian Oil and Gas Act.

3.3 Section 4 of the Indian Oil and Gas Act will continue to apply to revenues and royalties from oil or gas on First Nation land, despite anything to the contrary in clause 12.

4. RESERVES

4.1 Any reserve managed by a First Nation under a land code will continue to be a reserve within the meaning of the Indian Act.

4.2 Any reserve, title to which is vested in Canada, and managed by a First Nation under a land code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

4.3 Where a First Nation wishes to manage a reserve, the whole of the reserve will be included as First Nation land to avoid disjointed administration of the reserve, subject to clauses 4.4, 4.5 and 4.5A.

4.4 Subject to clause 4.5A, a portion of a reserve may be excluded from a land code only if:

(a) the portion of the reserve is in an environmentally unsound condition and the condition cannot be remedied

3.2 Les intérêts ou droits fonciers sur les terres de première nation octroyés au Canada pour l'exploitation du pétrole et du gaz en vertu d'un code foncier seront réputés être des « terres indiennes » au sens de la Loi sur le pétrole et le gaz des terres indiennes.

3.3 L'article 4 de la Loi sur le pétrole et le gaz des terres indiennes continuera de s'appliquer aux revenus et aux redevances provenant du pétrole ou du gaz situés sur les terres de première nation, nonobstant toute disposition contraire de l'article 12.

4. RÉSERVES

4.1 Les réserves gérées par une première nation en vertu d'un code foncier demeurent des réserves au sens de la Loi sur les Indiens.

4.2 Toute réserve, dont le titre est détenu par le Canada et qui est gérée par une première nation en vertu d'un code foncier, continuera d’appartenir au Canada à l'usage et au profit de la première nation pour laquelle la réserve fut mise de côté.

4.3 Lorsqu'une première nation souhaite gérer une réserve, l'ensemble de la réserve sera inclus comme terres de première nation de façon à éviter la double administration de la réserve sous reserve des articles 4.4, 4.5 et 4.5A.

4.4 Sous réserve de l’article 4.5A, il est permis de soustraire une partie d'une réserve à l’application du code foncier seulement dans l'un ou l’autre des cas suivants :

a) l’environnement y est si dégradé que

by measures that are technically and financially feasible before the land code is expected to be submitted for community approval;

(b) the portion of the reserve is the subject of ongoing litigation that is unlikely to be resolved before the
land code is expected to be submitted for community approval;

(c) the portion of the reserve is uninhabitable or unusable as a result of a natural disaster; or

(d) there exist one or more other reasons which the First Nation and the Minister agree justify excluding a portion of a reserve.

4.5 A portion of a reserve may not be excluded if the exclusion would have the effect of placing the administration of a lease or other interest or right in land in more than one land management regime.

4.5A Land may be excluded from the application of the land code when it is uncertain whether the land forms part of the reserve. An exclusion for this reason shall be without prejudice to the right of the First Nation or Her Majesty to assert that the land forms part of the reserve. If excluding the land would have the effect of placing a lease, other interest or right in land in more than one land management regime, then all land that is subject to that lease, interest or right shall be excluded from the application of the land code.

des mesures réalisables sur les plans technique et économique ne permettront pas de l'assainir avant la présentation prévue du code foncier à l'approbation de la communauté;

b) cette partie de la réserve fait l'objet d'un litige qui ne sera probablement pas résolu avant la présentation prévue du code foncier à l'approbation de la communauté;

c) cette partie de la réserve est inhabitable ou inutilisable en raison d'un sinistre naturel;

d) l'exclusion est justifiée pour une ou plusieurs autres raisons convenues par la première nation et le ministre.

4.5 Une partie de la réserve ne peut être exclue si l'exclusion avail pour effet d'assujettlr un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion fonciére.

4.5A Une terre peut être exclue de application du code foncier lorsqu'il y a incertitude quant à la question de savoir si la terre est située ou non dans la réserve. L'exclusion pour ce motif ne porte pas atteinte au droit de la première nation ou de Sa Majesté de faire valoir que la terre fait partie de la réserve. Si l'exclusion a pour effet d'assujettir un bail ou tout autre intérêt ou droit foncier à plus d'un régime de gestion foncière, toute la partie de la réserve qui est assujettie au bail ou autre intérêt ou droit foncier doit être exclue de l'application du code foncier.

4.6 The First Nation will make provision to

amend the description of its First Nation land in its land code to include the excluded portion of the reserve when the First Nation and the Minister agree that the condition justifying the exclusion no longer exists and the individual agreement will be amended accordingly.

PART II
OPTING IN PROCEDURE

4.6 Lorsque la première nation et le ministre conviennent que la condition justifiant l'exclusion d'une partie d'une réserve n'existe plus, la première nation fera en sorte que la description des terres de première nation contenue dans son code foncier soit modifiée pour y inclure la partie jusqu'à présent exclue et l’accord distinct sera modifié en conséquence.

PARTIE II
PROCÉDURE D'ADHÉSION

5. DEVELOPMENT OF A LAND CODE

5.1 A First Nation that wishes to manage one or more of its reserves will first develop a land code.

5.2 The land code of a First Nation will

(a) describe the lands that are subject to the land code;

(b) set out the general rules and procedures that apply to the use and occupancy of First Nation land, including use and occupancy under

(i) licenses and leases, and

(ii) interests or land rights in First Nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the First Nation;

(b.1) set out the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or land rights in First Nation land;

(c) set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;

(d) set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under

5. ÉLABORATION D'UN CODE FONCIER

5.1 La première nation qui souhaite gérer une ou plusieurs de ses réserves doit préalablement élaborer un code foncier.

5.2 Les éléments suivants figurent dans le code foncier d'une première nation :

a) la description des terres qui y sont assujetties;

b) les règles générales - de procédure et autres - applicables en matière d’utilisation et d’occupation des terres de première nation, notamment :

(i) en vertu d’un permis ou d’un bail,

(ii) en vertu d’un intérêt ou d’un droit foncier sur les terres de première nation découlant soit de l’attribution de cet intérêt ou droit foncier en vertu du paragraphe 20(1) de la Loi sur les Indiens, soit de la coutume de la première nation;

(b.1) les règles de procédure applicables en matière de transfert d’intérêts ou de droits fonciers sur les terres de première nation, par disposition testamentaire ou succession;

c) les règles générales – de procédure et autres - applicables aux revenus tirés des ressources naturelles relatives aux terres de première nation;

d) les exigences touchant l’obligation de rendre compte de la gestion des fonds et des terres de première nation aux termes

the land code;

(e) set out the procedures for making and publishing its First Nation laws;

(f) set out the conflict of interest rules for land management;

(g) identify or establish a forum for the resolution of disputes in relation to interests or land rights in First Nation lands, including the review of land management decisions where a person, whose interest or land right in First Nation land is affected by a decision, disputes that decision;

(h) set out the general rules and procedures that apply to the First Nation when granting or expropriating interests or land rights in First Nation land, including provisions for notice and the service of notice;

(i) set out the general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to another person or entity; and

(j) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land.

5.3 A land code could also contain the following provisions:

du code foncier devant les membres de la première nation;

e) les règles d'édiction et de publication des textes législatifs de la première nation;

f) les règles applicables en matière de conflit d'intérêts dans la gestion des terres;

g) la création ou l'identification d'une instance chargée de résoudre les différends concernant les intérêts ou les droits fonciers sur les terres de première nation, y compris la révision de toute décision en matière de gestion des terres contestée par une personne dont les intérêts ou les droits fonciers sur ces terres sont affectés par cette décision;

h) les règles générales – de procédure et autres - applicables à la première nation en matière d'attribution ou d'expropriation d'intérêts ou de droits fonciers sur des terres de première nation, y compris les dispositions en matière d'avis et de notification;

i) les pouvoirs et procédures généraux applicables en matière de délégation, par le conseil de la première nation à une autre personne ou entité, des pouvoirs de gestion des terres de première nation;

j) la procédure selon laquelle la première nation peut modifier son code foncier ou approuver un échange de ses terres de première nation.

5.3 Peuvent également figurer dans le code foncier :

(a) any general conditions or limits on the power of the First Nation council to make First Nation laws;

(b) in any province or territory other than Quebec, any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;

(b.1) in the province of Quebec, any general exceptions, reservations, conditions or limits to be attached to the land rights or other rights that may be granted in First Nation land;

(c) any provisions respecting encumbering, seizing, or executing a right or an interest or land right in First Nation land as provided in clause 15; and

(d) any other matter respecting the management of First Nation land.

5.4 In order to clarify the intentions of the First Nations and Canada in relation to the breakdown of a marriage as it affects First Nation land:

(a) a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of First Nation land and the division of interests or land rights in that land;

a) les conditions ou limites générales applicables au pouvoir du conseil de la première nation d'édicter des textes législatifs de la première nation;

b) dans une province ou un territoire autre que le Québec, les exclusions, réserves, conditions ou délimitations générales applicables en matière d'attribution des droits et des intérêts sur les terres de première nation;

b.1) dans la province de Québec, les exceptions, réserves, conditions ou limites générales applicables en matière d'attribution des droits fonciers et autres droits sur les terres de première nation;

c) les dispositions, telles que prévues à l'article 15, concernant la saisie ou l'exécution d'un droit ou d'un intérêt ou droit foncier sur les terres de première nation, ou le fait de les gérer;

d) toute autre disposition concernant la gestion des terres de première nation.

5.4 Afin de préciser l'intention des premières nations et du Canada en ce qui a trait à l'échec du mariage et à ses effets sur les terres de premières nations :

a) une première nation établira, dans son code foncier, un processus communautaire pour l'élaboration de règles et de procédures applicables, au moment de l'échec d'un mariage, en matière d'usage, d'occupation et de possession des terres de première nation et en matière de partage des intérêts ou des droits fonciers sur ces terres;

(b) for greater certainty, the rules and procedures referred to in clause (a) shall not discriminate on the basis of sex;

(c) the rules and procedures referred to in clause (a) shall be enacted in the First Nation's land code or First Nation laws;

(d) in order to allow sufficient time for community consultation during the community process referred to in clause (a), the First Nation shall have a period of 12 months from the date the land code takes effect to enact the rules and procedures;

(e) any dispute between the Minister and a First Nation in respect of this clause shall, notwithstanding clause 43.3, be subject to arbitration in accordance with Part IX;

(f) for greater certainty, this clause also applies to any First Nation that has voted to approve a land code before this clause comes into force.

6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT

6.1 The Minister and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the transfer of administration between Canada and the First Nation.

b) il est entendu que les règles et procédures mentionnées à l'alinéa a) ne peuvent faire aucune distinction fondée sur le sexe;

c) les règles et procédures mentionnées à l'alinéa a) sont prévues soit dans le code foncier de la première nation, soit dans ses textes législatifs;

d) afin qu'il puisse y avoir une période suffisante pour consulter la communauté, tel que mentionné à l'alinéa a), la première nation dispose d'un délai de 12 mois, à compter de la date d'entrée en vigueur de son code foncier, pour adopter ces règles et procédures;

e) tout différend entre le ministre et une première nation au sujet du présent article est, par dérogation à l'article 43.3, porté en arbitrage en conformité avec la Partie IX;

f) il est entendu que le présent article s'applique également à toute première nation qui a voté en faveur de l'adoption d'un code foncier avant que le présent article n'entre en vigueur.

6. ÉLABORATION D'UN ACCORD DISTINCT AVEC CHAQUE PREMIÈRE NATION

6.1 Le ministre et la première nation qui entend gérer ses propres terres concluront également un accord distinct fixant le niveau du financement opérationnel destiné à la première nation ainsi que les modalités du transfert des responsabilités en matière d'administration entre le

Canada et la première nation.

6.2 The First Nation and the Minister will each choose a representative to develop the individual agreement and to assist in transferring administration of the First Nation land.

6.2 La première nation et le ministre désignent chacun un représentant chargé de préparer l'accord distinct et de faciliter le transfert de l'administration des terres de première nation.

6.3 Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:

(a) a list of all the interests or land rights and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the Indian Act;

(b) all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and

(c) any other information in Canada's possession that materially affects the interests or land rights and licences mentioned in clause 6.3(a).

6.3 À la demande de la première nation qui élabore un code foncier le ministre lui fournit les renseignements suivants, dans les meilleurs délais :

a) une liste de tous les intérêts ou droits fonciers et permis concernant les terres de la première nation proposées, qui sont consignés dans le registre des terres de réserve et le registre des terres désignées et cédées aux termes de la Loi sur les Indiens;

b) tous les renseignements en la possession du Canada concernant les problèmes environnementaux réels ou potentiels concernant les terres de la première nation proposées;

c) tout autre renseignement en la possession du Canada qui touche notablement les intérêts ou droits fonciers et les permis mentionnés à l'alinéa 6.3 a).

6.4 An amendment to an individual agreement with the Minister must be made in accordance with the procedure in that agreement.

6.4 L'accord distinct conclu avec le ministre est modifié selon la procédure prévue dans celui-ci.

7. COMMUNITY APPROVAL

7. APPROBATION DE LA COMMUNAUTÉ

7.1 Both the First Nation's land code and its

7.1 Le code foncier de la première nation

individual agreement with the Minister need community approval in accordance with this clause.

7.2 Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and its individual agreement with the Minister.

7.3 The land code and individual agreement will be considered approved by the community if

(a) a majority of eligible voters participate in the vote and at least a majority of the participating voters vote to approve them;

(b) the First Nation registers all eligible voters who signified, in a manner determined by the First Nation, their intention to vote, and a majority of the registered voters vote to approve them; or

(c) the community approves them in such other manner as the First Nation and the Minister may agree upon.

7.4 The land code and individual agreement will not be considered approved if less than 25% plus one of all eligible voters voted to approve them.

7.5 The First Nation council may, by resolution, increase the minimum percentage for community approval otherwise required under this clause.

et l'accord distinct conclu avec le ministre doivent être approuvés par la communauté conformément au présent article.

7.2 A le droit de voter, dans le cadre de l'approbation du projet de code foncier de la première nation et de l'accord distinct conclu avec le ministre, tout membre de la première nation qui a au moins 18 ans, qu'il réside ou non dans la réserve.

7.3 Le code foncier et l'accord distinct sont réputés validement approuvés par la communauté dans les cas suivants :

a) la majorité des électeurs participent au scrutin et au moins une majorité des électeurs participants ont exprimé un vote favorable;

b) la première nation inscrit tous les électeurs qui ont fait connaître, selon les modalités fixées par la première nation, leur intention de voter et une majorité des électeurs inscrits ont exprimé un vote favorable;

c) la communauté les approuve selon d'autres modalités fixées conjointement par la première nation et par le ministre.

7.4 Dans tous les cas cependant, le code foncier et l'accord distinct ne sont approuvés que si au moins vingt-cinq pour cent plus un des électeurs ont exprimé un vote favorable.

7.5 Le conseil de la première nation peut, par résolution, augmenter le pourcentage minimum requis en vertu du présent article pour recueillir l’approbation de la communauté.

7.6 A First Nation will take reasonable steps to locate its eligible voters and inform them of

(a) their right to participate in the approval process and the manner in which that right can be exercised; and

(b) the content of this Agreement, the individual agreement with the Minister, the proposed land code and the federal legislation.

7.7 Reasonable steps to locate and inform eligible voters may include the following :

(a) mailing out information to eligible voters at their last known addresses;

(b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;

(c) making follow up contact with eligible voters by mail or telephone;

(d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;

(e) posting notices in the community;

(f) holding information meetings in the community and in other places where appropriate; and

7.6 Le conseil de la première nation doit prendre des mesures raisonnables pour retrouver les électeurs et les informer :

a) de leur droit de participer au processus d'approbation et de la manière d'exercer ce droit;

b) du contenu du présent accord, de l'accord distinct conclu avec le ministre, du projet de code foncier et de la loi de ratification.

7.7 Parmi les mesures raisonnables envisagées pour retrouver les électeurs et les informer, le conseil peut prendre les mesures suivantes :

a) envoyer par courrier de l’information aux électeurs à leur dernière adresse connue;

b) s’enquérir auprès des membres de la famille et d’autres personnes afin de retrouver les électeurs dont l'adresse est inconnue ou incertaine;

c) effectuer un suivi auprès des électeurs par courrier ou par téléphone;

d) publier des avis dans les journaux distribués dans la communauté et dans toute autre localité où le nombre d'électeurs le justifie;

e) afficher des avis dans la communauté;

f) tenir des réunions d'information dans la communauté et à tout autre endroit approprié;

(g) making copies of the documents referred to in clause 7.6(b) available at the administration office of the First Nation and in other places where appropriate.

g) rendre disponible, au bureau d'administration de la première nation et à tout autre endroit approprié, une copie des documents mentionnés à l'alinéa 7.6b).

7.8 A First Nation will, within a reasonable time before the vote, also take appropriate measures to inform other persons having an interest or land right in its lands of the federal legislation, the proposed land code and the date of the vote.

7.8 La première nation doit prendre dans un délai raisonnable avant le jour du scrutin, des mesures appropriées pour informer les autres personnes ayant un intérêt ou un droit foncier sur ses terres au sujet de la loi de ratification, du projet de code foncier et de la date du scrutin.

7.9 Where the federal legislation has not yet been enacted when a First Nation proceeds under this clause, Canada will provide the First Nation with a draft copy of its proposed legislation which the First Nation will use to inform its eligible voters and other persons.

7.9 Si la loi de ratification n'a pas encore été adoptée au moment où la première nation met en oeuvre le présent article, le Canada fournira à la première nation une ébauche du projet de loi que la première nation portera à la connaissance des électeurs et des autres personnes concernées.

7.10 An amendment to a land code must be made in accordance with the procedure in the First Nation's land code.

7.10 Le code foncier d'une première nation est modifié selon la procédure prévue dans celui-ci.

8. VERIFICATION PROCESS

8. PROCESSUS DE VÉRIFICATION

8.1 Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier to monitor and verify the opting in process. The verifier will be chosen in accordance with clause 44.

8.1 Lorsqu'une première nation élabore un projet de code foncier et décide de le présenter à la communauté pour approbation, une personne indépendante doit être nommée à titre de vérificateur chargée de surveiller le processus d'adhésion et d'en vérifier la régularité. Le vérificateur est choisi conformément à l'article 44.

8.2 The representatives of the First Nation

8.2 Les représentants de la première nation

and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and provide information and advice to the verifier, after consulting with their respective Parties.

et du ministre, qui ont participé au processus de transfert de la gestion des terres, rencontrent le vérificateur et lui fournissent renseignements et avis, après avoir consulté leurs Parties respectives.

8.3 The First Nation will submit the following information to the verifier:

8.3 La première nation communique au vérificateur les documents suivants :

(a) a copy of the proposed land code;

a) un exemplaire du projet de code foncier;

(b) an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and

b) la liste initiale des membres de la première nation qui, selon les registres de la première nation disponibles à ce moment, auraient le droit de voter aux fins de l'approbation de ce code;

(c) a detailed description of the community approval process that the First Nation proposes to use under clause 7.

c) un exposé détaillé du processus d’approbation de la communauté proposé par la première nation aux termes de l'article 7.

8.4 The verifier will

8.4 Le vérificateur a pour mandat:

(a) decide whether the proposed land code conforms with the requirements of clause 5;

a) de décider de la conformité du projet de code foncier avec les exigences de l'article 5;

(b) decide whether the proposed community approval process conforms with the requirements of clause 7;

b) de décider de la conformité du processus d’approbation de la communauté proposé avec les exigences de l'article 7;

(c) determine whether the community approval process is conducted in accordance with the process that was confirmed; and

c) de décider de la conformité du déroulement du scrutin avec le processus retenu pour l’approbation de la communauté;

(d) certify as being valid a First

d) d'attester la validité du code foncier de

Nation's land code that is properly approved by the First Nation.

8.5 The verifier also has the power to make a final decision to resolve

(a) any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and

(b) any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.

8.6 A verifier will make decisions that are consistent with clauses 4.4 and 4.5.

8.7 A verifier will not deal with disputes over funding.

8.8 Within 30 days of receiving the First Nation's information pursuant to clause 8.3, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.

8.9 The verifier will provide written reasons to the First Nation and the Minister in any case where he or she decides that the proposed land code and community approval process are not consistent with this Agreement.

9. CONDUCT OF COMMUNITY VOTE

9.1 Once the verifier confirms that the

la première nation dûment approuvé par elle.

8.5 Le vérificateur a également le pouvoir de trancher de façon définitive :

a) tout différend ayant trait à la question de savoir si une partie d'une réserve peut être soustraite à l'application du code foncier selon l'article 4.4;

b) tout différend concernant les modalités du transfert des pouvoirs d'administration entre le Canada et la première nation.

8.6 Les décisions du vérificateur doivent être conformes aux paragraphes 4.4 et 4.5.

8.7 Le vérificateur ne peut être saisi des différends concernant le financement.

8.8 Le vérificateur émet à la première nation et au ministre, dans les 30 jours de la réception des documents visés à l'article 8.3, un avis écrit indiquant si le projet de code foncier et le processus d’approbation de la communauté proposé sont conformes au présent accord.

8.9 Dans tous les cas où, à son avis, le projet de code foncier ou le processus proposé pour obtenir l’approbation de la communauté ne sont pas conformes au présent accord, le vérificateur consigne par écrit les motifs de cette décision qu'il transmet à la première nation et au ministre.

9. TENUE DU SCRUTIN

9.1 Après que le vérificateur ait décidé que

proposed land code and community approval process are consistent with this Agreement, the First Nation may proceed to submit its proposed land code, and the individual agreement with the Minister, for community approval.

le projet de code et le processus proposé pour obtenir l'approbation de la communauté sont conformes au présent accord, la première nation peut soumettre à l'approbation de la communauté le projet de code foncier et l'accord distinct conclu avec le ministre.

9.2 The verifier will publish one or more notices advising the community of the date, time and place of the First Nation's approval vote.

9.2 Le vérificateur fait publier un ou plusieurs avis informant la communauté de la date, de l'heure et du lieu du scrutin.

9.3 The verifier may designate one or more assistants to help observe the conduct of the vote.

9.3 Le vérificateur peut s'adjoindre un ou plusieurs assistants pour l'aider à surveiller le déroulement du scrutin.

9.4 The verifier and any assistant observers will have complete authority to observe the approval process.

9.4 Le vérificateur et ses adjoints ont pleins pouvoirs pour surveiller le processus d'approbation de la communauté.

9.5 Within 15 days of the conclusion of the vote, the verifier will issue a written report to the First Nation and to the Minister on whether the community approval process was conducted in accordance with the process as previously confirmed.

9.5 Le vérificateur remet à la première nation et au ministre, dans les 15 jours suivant la fermeture du scrutin, son rapport écrit au sujet de la conformité du déroulement du scrutin avec le processus d'approbation retenu.

10. CERTIFICATION OF LAND CODE

10. CERTIFICATION DU CODE FONCIER

10.1 Where a First Nation approves a land code and its individual agreement with the Minister, the First nation council must, without delay, send a a true copy of the land code to the verifier together with a true copy of the fully signed individual agreement and a statement from the First Nation council that the land code and the individual agreement were properly approved.

10.1 Lorsque la première nation approuve le code foncier et l'accord distinct avec le ministre, le conseil de la première nation adresse au vérificateur, dans les meilleurs délais, une copie cértifée conforme de l'accord distinct entièrement signé et du code foncier approuvé ainsi qu'une déclaration du conseil de la première nation indiquant que le code foncier et l'accord distinct ont été dûment approuvés.

10.2 Upon receiving a copy of a First Nation's land code, signed individual agreement and statement, the verifier will, subject to clause 11, certify the land code as being valid.

10.3 The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.

10.4 The Lands Advisory Board will, in such manner as it considers advisable, publish a notice announcing the certification of a land code and the date the land code takes effect and advising the public of the means of obtaining copies of it.

10.4.1 Certified copies of the land code will be made available to the public at such places deemed necessary by the First Nation.

10.5 Once a land code is certified by a verifier and takes effect, the land code has the force of law and will be given judicial notice.

10.6 A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

10.7 A land code takes effect on the day that it is certified by the verifier or on such later date as may be specified in the land code.

11. DISPUTED VOTE

11.1 The Minister or any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting

10.2 Sur réception de la copie du code foncier, de i'accord distinct signée et de la déclaration, le vérificateur atteste la validité du code foncier, sous réserve de l'article 11.

10.3 Le vérificateur adresse immédiatement à la première nation, au Conseil consultatif des terres et au ministre une copie du code foncier dont il a attesté la validité.

10.4 Le Conseil consultatif des terres publie, selon les modalités qu'il estime appropriées, un avis attestant la validité du code foncier, sa date d'entrée en vigueur et faisant connaître au public la façon de s'en procurer des copies.

10.4.1 Des copies certifiées du code foncier seront mises à la disposition du public aux endroits que la première nation estime appropriés.

10.5 Dès que le code foncier reçoit l'attestation du vérificateur et qu'il entre en vigueur, il a dès lors force de loi et est admis d'office dans toute instance.

10.6 Une fois sa validité attestée conformément au présent accord, le code est réputé avoir été dûment approuvé par la première nation.

10.7 Le code foncier entre en vigueur à la date de l'attestation de sa validité par le vérificateur ou à la date postérieure fixée dans le code.

11. CONTESTATION DU VOTE

11.1 Le ministre ou tout électeur peut, dans les cinq jours suivant la clôture du scrutin, informer le vérificateur de toute

process to the verifier.

11.2 A verifier will not certify a land code if he or she is of the opinion that the following two conditions exist:

(1) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and

(2) the land code might not have been approved but for the irregularity in the process.

11.3 Before making a decision under this clause, the verifier will provide the First Nation and the Minister with a reasonable opportunity to make submissions on the issue.

11.4 Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.

PART III

FIRST NATION LAND MANAGEMENT RIGHTS AND POWER

12. LAND MANAGEMENT POWERS

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

irrégularité dont a été entaché le déroulement du scrutin.

11.2 Le vérificateur ne peut attester la validité du code foncier s'il en vient aux conclusions suivantes :

(1) d’une part, le déroulement du scrutin n'est pas conforme au processus d’approbation qu'il a lui-même confirmé au préalable ou est autrement entaché d'irrégularité;

(2) d’autre part, le code n'aurait peut-être pas été approuvé sans cette irrégularité.

11.3 Avant de prononcer une décision aux termes du présent article, le vérificateur donne à la première nation et au ministre l'occasion de présenter des observations.

11.4 Toute décision du vérificateur en vertu du présent article doit être prise dans un délai de 10 jours suivant la conclusion du vote.

PARTIE III

DROITS ET POUVOIRS DE GESTION DES TERRES DE PREMIÈRE NATION

12. POUVOIRS DE GESTION DES TERRES

12.1 Dès que le code foncier entre en vigueur, la première nation a le pouvoir de gérer ses terres de première nation et d'exercer ses pouvoirs en vertu du présent accord, sous réserve de l'article 13.

12.2 This power includes

(a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

12.3A In the province of Quebec, a land right or licence granted in relation to First Nation land is subject to any exceptions, reservations, conditions or limits established by the First Nation in its land code.

12.4 For any purpose related to First Nation land, a First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

12.5 First Nation land, revenues, royalties, profits and fees in respect of that land will be managed by the First Nation council or its delegate for the use and benefit of the First Nation.

12.2 Elle peut notamment :

a) exercer tous les droits, pouvoirs et privilèges d’un propriétaire, pour ce qui est de ses terres de première nation;

b) sous réserve des articles 3, 18.5 et 23.6, attribuer des permis et des intérêts ou droits fonciers relatifs à ses terres de première nation et gérer ses ressources naturelles.

12.3 Dans une province ou un territoire autre que le Québec, un intérêt ou un permis relatif aux terres de première nation est assujetti aux exclusions, réserves, conditions ou délimitations énoncées par la première nation dans son code foncier.

12.3A Dans la province de Québec, un droit foncier ou un permis relatif aux terres de première nation est assujetti aux exceptions, réserves, conditions ou limites énoncées par la première nation dans son code foncier.

12.4 À l'égard de ses terres de première nation, la première nation a la capacité juridique d'acquérir et de détenir des biens, de conclure des contrats et d'emprunter, de dépenser des fonds et de faire des investissements, d’ester en justice et d'exercer ses pouvoirs et attributions.

12.5 Le conseil de la première nation ou son délégué administre les terres de première nation ainsi que les revenus, les redevances, les recettes et les droits y afférents à l'usage et au profit de la première nation.

12.6 If a First Nation establishes an entity for the purpose of administering its First Nation land, the entity shall be deemed to be a legal entity with the capacity, rights, powers and privileges of a natural person.

12.7 A First Nation has the right, in accordance with its land code, to receive and use all moneys acquired by or on behalf of the First Nation under its land code.

12.8 Once a First Nation's land code takes effect, all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members before that date, and from time to time thereafter, shall cease to be Indian moneys under the Indian Act, except for the purposes of paragraph 90 (1) (a),and shall be transferred by Canada to the First Nation

12.6 Si la première nation met sur pied une entité pour gérer ses terres, l'entité est réputée être une entité juridique ayant la capacité, les pouvoirs, les droits et les privilèges d'une personne physique.

12.7 La première nation a, conformément à son code foncier, le droit de recevoir et d'utiliser les sommes acquises par ou pour le compte de la première nation en vertu de son code foncier.

12.8 À compter de la date d'entrée en vigueur du code foncier d'une première nation, les fonds perçus, reçus et détenus par la Canada à l'usage et au profit de la première nation ou de ses membres avant cette date, ainsi que ceux qui le sont après cette date, cessent d'être de l'argent des Indiens aux fins de le Loi sur les Indiens, sauf aux fins de l'alinéa 90(1)a), et sont transférés par le Canada à la première nation.

13. PROTECTION OF FIRST NATION LAND

13.1 Title to First Nation land is not changed when a First Nation's land code takes effect.

13.2 The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land.

13.3 First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

13. PROTECTION DES TERRES DE PREMIÈRE NATION

13.1 L'entrée en vigueur du code foncier d'une première nation n'a pas pour effet de modifier le titre des terres de première nation.

13.2 Les Parties déclarent reconnaître l'importance fondamentale que revêt la préservation de la superficie et de l'intégrité des terres de première nation.

13.3 Les terres de première nation ne sont pas susceptibles d'être vendues, échangées ou transférées, si ce n'est dans le cadre d'un échange ou d'une expropriation effectué en conformité avec le présent

accord.

14. VOLUNTARY EXCHANGE OF FIRST NATION LAND

14.1 A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation land. An exchange of First Nation land may provide for additional compensation, including land that may not become First Nation land, and may be subject to any other terms and conditions.

14.2 Any exchange of First Nation land will require community approval in accordance with the process established in the land code.

14.3 First Nation land will only be exchanged for land that Canada consents to set apart as a reserve. In addition, the agreement of Canada is required on the technical aspects of the exchange.

14.4 The title to the land to be received in exchange for that First Nation land will be transferred to Canada and will be set apart by Canada as a reserve, as of the date of the land exchange or such later date as the First Nation may specify. This does not apply to land that is received by the First Nation as additional compensation and that is not intended to become First Nation land.

14.5 Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can

14. ÉCHANGE VOLONTAIRE DE TERRES DE PREMIÈRE NATION

14.1 Une première nation a le droit d'échanger une parcelle des terres de première nation contre une autre parcelle, si cette autre parcelle fait dès lors partie des terres de première nation. L'échange peut également comporter une contrepartie supplémentaire, notamment des terres supplémentaires qui ne sont pas destinées à devenir des terres de première nation, et être assorti d'autres conditions.

14.2 Tout échange de terres de première nation doit être approuvé par les membres de la première nation selon les modalités prévues par le code foncier.

14.3 Des terres de première nation ne peuvent être échangées que contre des terres que le Canada accepte de mettre de côté à titre de réserve. L'accord du Canada est également requis quant aux aspects techniques de l'opération.

14.4 Le titre des terres reçues en échange des terres de première nation sera transféré au Canada, qui mettra ces terres de côté à titre de réserve, à la date de l'échange ou à la date ultérieure fixée par la première nation. Cette disposition ne s'applique pas aux terres remises à une première nation à titre de contrepartie supplémentaire et qui ne sont pas destinées à devenir des terres de première nation.

14.5 Lorsque l'échange des terres de première nation est approuvé par la première nation conformément à son code

execute an authorization to Canada to transfer title to the land.

foncier, la première nation peut délivrer au Canada une autorisation de procéder au transfert du titre sur les terres en question.

14.6 Upon the issuance to Canada of an authorization to transfer title to First Nation land under clause 14.5, Canada will transfer title to the land in accordance with the authorization and the applicable terms and conditions of the exchange.

14.6 Le Canada procède, sur réception de l'autorisation prévue à l'article 14.5, au transfert du titre sur les terres en question, en conformité avec cette autorisation et avec les conditions de l'échange.

14.7 A copy of the instruments or acts transferring title to First Nation land will be registered in the First Nation Lands Register.

14.7 Une copie des instruments ou actes de transfert du titre sur les terres de première nation sera enregistrée dans le registre des terres de premières nations.

14.8 As of the date of the land exchange, or such later date as the First Nation may specify, the description of First Nation land in the land code will be deemed to be amended to delete the description of the First Nation land that was exchanged and to add the description of the First Nation land received in exchange.

14.8 À partir de la date de l'échange de terres, ou à la date ultérieure fixée par la première nation, la description des terres de première nation dans le code foncier est réputée être modifiée de façon à supprimer la description des terres de première nation qui ont été échangées et à ajouter celle des terres de première nation reçues en échange.

14.9 For greater certainty, the First Nation land that was exchanged will cease to be a reserve.

14. 9 Il est entendu que les terres de première nation qui ont été échangées cessent de constituer une réserve.

15. IMMUNITY FROM SEIZURE, ETC.

15. INSAISISSABILITÉ, ETC.

15.1 The Parties confirm that section 29 and subsections 89(1) and (2) of the Indian Act will continue to apply to any reserve that is First Nation land.

15. 1 Les parties confirment que l'article 29 et les paragraphes 89(1) et (2) de la Loi sur les Indiens continuent de s'appliquer aux réserves faisant partie des terres de première nation.

15.2 Subsection 89(1.1) of the Indian Act will continue to apply to all leasehold interests or leases that existed when the land code took effect if the First Nation land was

15.2 Le paragraphe 89(1.1) de la Loi sur les Indiens continue de s'appliquer à tous les baux ou intérêts à bail qui existaient lorsque le code foncier est entré en

designated land at that time.

15.3 A land code may provide that some or all of the provisions of subsection 89(1.1) of the Indian Act are also applicable to other leasehold interests or leases in any First Nation lands.

15.4 The Parties confirm that section 87 of the Indian Act continues to apply to First Nation land, so that

> (a) the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and
>
> (b) the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

16. THIRD PARTY INTERESTS

16.1 Interests or land rights or licences held by third parties or Canada in First Nation land, that exist at the time the land code takes effect, continue in force according to their terms and conditions.

16.2 Any rights of locatees in possession of First Nation land, either by custom or by allotment under the Indian Act, to transfer, lease and share in natural resource revenues will be defined in the land code.

vigueur, dans le cas où les terres de première nation étaient des terres désignées à ce moment.

15.3 Le code foncier peut énoncer que les dispositions du paragraphe 89(1.1) de la Loi sur les Indiens sont également applicables, en tout ou en partie, aux autres baux ou intérêts à bail sur les terres de première nation.

15.4 Les parties confirment que l'article 87 de la Loi sur les Indiens continue de s'appliquer aux terres de première nation de façon à ce que:

a) le droit d'un Indien ou d'une première nation sur une réserve faisant partie des terres de première nation demeure exempté de taxation, sous réserve de l'article 83 de la Loi sur les Indiens;

b) les biens personnels ou les meubles d'un Indien ou d'une première nation situés sur une réserve faisant partie des terres de la première nation demeurent exemptés de taxation.

16. INTÉRÊTS DES TIERS

16.1 Les intérêts ou droits fonciers ou les permis que détiennent les tiers ou le Canada sur des terres de première nation lorsque le code foncier entre en vigueur continuent d'avoir effet selon leurs conditions.

16.2 Les droits des occupants en possession de terres de première nation, que ce soit conformément à la coutume ou par attribution aux termes de la Loi sur les Indiens, en matière de transfert, de bail et

de partage des revenus provenant de ressources naturelles seront définis par le code foncier.

16.3 Once a land code takes effect, no interest, land right or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.

16.3 Après l'entrée en vigueur du code foncier, les permis, les intérêts ou droits fonciers concernant les terres de première nation ne peuvent être acquis ou accordés qu'en conformité avec ce code.

16.4 For greater certainty, disputes in relation to third party interests shall be dealt with in the forum identified or established in a land code pursuant to clause 5.2(g).

16.4 Il est entendu que les différends relatifs aux intérêts des tiers sont réglés selon ce que prévoit le code foncier conformément à l'alinéa 5.2g).

17. EXPROPRIATION BY FIRST NATIONS

17. EXPROPRIATION PAR LES PREMIÈRES NATIONS

17.1 A First Nation with a land code in effect has the right to expropriate interests or land rights in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.

17.1 La première nation ayant un code foncier en vigueur a le droit d'exproprier sans consentement des intérêts ou droits fonciers sur ses terres de première nation, si le conseil de la première nation estime en avoir besoin pour réaliser des ouvrages communautaires ou à d'autres fins de la première nation.

17.2 A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.

17.2 La première nation procède à l'expropriation conformément aux règles et procédures établies dans son code foncier, à ses textes législatifs et au présent accord.

17.3 In any province or territory other than Québec, an interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or encumbrance in respect of the interest.

17.3 Un intérêt sur les terres de première nation dans une province ou un territoire autre que le Québec exproprié par la première nation devient la propriété de celle-ci, libre de toute réclamation ou tout grèvement antérieurs quant à cet intérêt.

17.3A In the province of Québec, the First Nation that expropriates a land right in its First Nation lands becomes the holder of that

17.3A La première nation qui exproprie un droit foncier sur ses terres de première nation dans la province de Québec devient

right free of any previous right, charge or claim in respect of that land right.

17.4 A First Nation that expropriates an interest or land right in First Nation land will give fair compensation based on the heads of compensation set out in the Expropriation Act (Canada).

17.5 A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.

17.6 Any interest in First Nation land that was obtained pursuant to section 35 of the Indian Act or any interest or land right that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.

17.7 A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest or land right in First Nation land that is exempt from expropriation by the First Nation.

17.8 No expropriation of an interest or land right in First Nation land by a First Nation takes effect earlier than either of the following days:

(a) the date the notice of expropriation is registered in the First Nation Lands Register; or

titulaire de ce droit foncier, libre de tout droit, charge ou réclamation antérieurs.

17.4 La première nation qui exproprie un intérêt ou droit foncier sur ses terres de première nation est tenue de verser une indemnité équitable, calculée selon les règles énoncées dans la Loi sur l'expropriation (Canada).

17.5 La première nation est tenue de mettre sur pied un mécanisme de règlement des différends relatifs à l'indemnisation qu'elle paye pour les expropriations.

17.6 Ne sont toutefois pas susceptibles d'expropriation par la première nation les intérêts ou les droits fonciers sur les terres de première nation obtenus sous le régime de l'article 35 de la Loi sur les Indiens ou qui ont été acquis par le Canada ou encore qui seront acquis par le Canada après l'entrée en vigueur du présent accord conformément à celui-ci.

17.7 Il n'est pas interdit à la première nation de conclure avec un organisme public ou une société de service public un accord lui attribuant un intérêt ou un droit foncier sur les terres de première nation non susceptible d'être exproprié par la première nation.

17.8 L'expropriation par une première nation d'un intérêt ou d'un droit foncier sur les terres de première nation ne prend effet qu'à la première des dates suivantes :

a) la date d'inscription de l'avis d'expropriation dans le registre des terres de la première nation;

(b) the 30th day after the day the last copy of the notice is served.

b) le 30e jour suivant la signification de la dernière copie de cet avis.

PART IV
FIRST NATION LAW MAKING

PARTIE IV
POUVOIRS DE LÉGIFÉRER DE LA PREMIÈRE NATION

18. LAW MAKING POWERS

18. POUVOIRS DE LÉGIFÉRER

18.1 The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

18.1 Le conseil de la première nation ayant un code foncier en vigueur peut édicter des textes législatifs, conformément à celui-ci, concernant le développement, la conservation, la protection, la gestion, l'utilisation et la possession des terres de première nation et des intérêts ou droits fonciers et permis les concernant. Cela comprend les textes législatifs portant sur des questions nécessaires ou afférentes à l'élaboration des textes législatifs relatifs aux terres de première nation.

18.2 The following examples illustrate some of the First Nation laws contemplated by the Parties:

(a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;

(c) laws on environmental assessment and protection;

(d) laws on the provision of local

18.2 Les exemples qui suivent illustrent certaines des fins pour lesquelles les premières nations peuvent adopter des textes législatifs, comme l’envisagent les Parties :

a) pour réglementer, régir ou interdire le zonage, l'aménagement, l'utilisation, le lotissement ou la mise en valeur des terres;

b) pour créer et réglementer les permis et les intérêts ou les droits fonciers relatifs aux terres de première nation ou prévoir des interdictions à cet égard;

c) pour régir la protection de l'environnement et l'évaluation environnementale;

services in relation to First Nation land and the imposition of equitable user charges; and

(e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

18.3 A land code will not address the taxation of real or personal property or of immovables or movables. Section 83 of the Indian Act will continue to apply.

18.4 In any proceeding, a copy of a First Nation law, appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

18.5 This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.

19. ENFORCEMENT OF FIRST NATION LAWS

19.1 To enforce its land code and its First Nation laws, a First Nation will have the power to

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment,

d) pour régir la prestation de services locaux relatifs aux terres de première nation et l'imposition de frais équitables à leurs usagers;

e) pour régir la prestation de services de règlement extrajudiciaire des différends relatifs aux terres de première nation.

18.3 Le code foncier ne traite pas de l'imposition des biens réels ou personnels ou des immeubles ou meubles. L'article 83 de la Loi sur les Indiens continue de s'appliquer.

18.4 La copie d'un texte législatif de la première nation paraissant certifiée conforme par un fonctionnaire de la première nation fait foi, dans le cadre de toute procédure, de son adoption à la date qui y est inscrite sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

18.5 Le présent accord ne modifie en rien les droits et pouvoirs actuels relatifs aux pêcheries, ni ne crée des droits ou pouvoirs additionnels à cet égard.

19. CONTRÔLE D'APPLICATION DES TEXTES LÉGISLATIFS DE LA PREMIÈRE NATION

19.1 Aux fins de contrôle d'application de son code foncier et de ses textes législatifs, la première nation peut :

a) créer des infractions punissables par procédure sommaire;

b) prévoir des peines, notamment les

restitution, community service, and alternate means for achieving compliance; and

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

19.2 First Nation laws may adopt or incorporate by reference the summary conviction procedures of the Criminal Code for the purpose of enforcement.

19.3 Persons may be appointed by the First Nation or the Governor in Council to act as justices of the peace for the purposes of enforcement. If no justice of the peace is appointed, then First Nation laws will be enforced through the provincial courts.

19.4 A person appointed as a justice of the peace under this clause will have jurisdiction to try offences established by or under a land code or a First Nation law.

19.5 Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.

19.6 The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province, for example tenure, removal and

amendes, l'emprisonnement, la restitution, les travaux d'intérêt collectif ou toute autre mesure de nature à assurer l'observation de ces textes;

c) établir, conformément aux lois fédérales, des mesures de contrôle d'application de ces textes notamment en matière d'inspection, de perquisition, de saisie, de prise d'échantillons, d'examen et de communication de renseignements.

19.2 Les textes législatifs de la première nation peuvent, à ces fins, reproduire ou incorporer par renvoi la procédure sommaire du Code criminel.

19.3 La première nation ou le gouverneur en conseil peut nommer des juges de paix chargés d'assurer le contrôle d’application des textes législatifs de la première nation. En l'absence de juges de paix, les poursuites relatives aux textes législatifs de la première nation sont instruites devant les tribunaux provinciaux.

19.4 Il relève de la compétence du juge de paix nommé aux termes du présent article d'instruire les poursuites relatives aux infractions créées par un code foncier ou par un texte législatif de la première nation.

19.5 Les décisions du juge de paix nommé aux termes du présent article sont susceptibles d'appel devant un tribunal compétent.

19.6 La première nation est tenue de protéger l'indépendance des juges de paix qu'elle nomme, de façon analogue à ce que font les provinces, par exemple la durée de

remuneration.

19.7 The First Nation and Canada may enter into agreements for the training, supervision and administrative support for justices of the peace appointed by the First Nation. Provinces may also be parties to such agreements with First Nations.

19.8 The First Nation and Canada will enter into an agreement for the appointment, training, supervision and administrative support for any justice of the peace appointed under this clause by the Governor in Council. The affected province will be invited to participate in the development of and be a party to such agreement.

19.9 For the purpose of prosecuting offences, the First Nation will follow one or more of these options:

(a) retain its own prosecutor;

(b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor; or

(c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses.

20. APPLICATION OF FEDERAL LAWS

20.1 Federal laws applicable on First Nation land will continue to apply, except to the extent that they are inconsistent with the

leur mandat, leur destitution et leur rémunération.

19.7 La première nation et le Canada peuvent conclure des ententes concernant la formation, la surveillance et le soutien administratif des juges de paix nommés par la première nation. Les provinces peuvent également être parties à ces ententes avec les premières nations.

19.8 La première nation et le Canada sont tenus de conclure une entente relativement à la nomination, la formation, la surveillance et le soutien administratif des juges de paix nommés aux termes du présent article par le gouverneur en conseil. La province concernée sera invitée à participer à l'élaboration de cette entente et à être partie à celle-ci.

19.9 Aux fins des poursuites, la première nation peut se prévaloir d’une ou de plusieurs des mesures suivantes :

a) embaucher ses propres procureurs;

b) conclure avec le Canada et le gouvernement provincial concerné une entente prévoyant le recours à un procureur provincial;

c) conclure avec le Canada une entente prévoyant le recours à un mandataire fédéral.

20. APPLICATION DES LOIS FÉDÉRALES

20.1 Les lois fédérales applicables sur les terres de première nation continuent de s'appliquer à celles-ci sauf dans la mesure

federal legislation.

20.2 Notwithstanding any inconsistency with the federal legislation, the Emergencies Act will apply on First Nation land, but any appropriation of an interest or land right in First Nation land under the Emergencies Act shall be authorized expressly by an order in council.

20.3 For greater certainty, and subject to Part VII, the Atomic Energy Control Act or any successor legislation continue to apply to First Nation lands.

21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS

21.1 Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:

(a) sections 18 to 20 and 22 to 28 of the Indian Act;

(b) sections 30 to 35 of the Indian Act;

(c) sections 37 to 41 of the Indian Act;

(d) sections 49, 50(4) and 53 to 60 of the Indian Act;

(e) sections 66, 69 and 71 of the Indian Act;

où elles sont incompatibles avec la loi de ratification.

20.2 La Loi sur les mesures d'urgence est applicable sur les terres de première nation, même si elle est incompatible avec la loi de ratification. Cependant, la réquisition d'intérêts ou de droits fonciers sur les terres de première nation aux termes de la Loi sur les mesures d'urgence doit être expressément autorisée par un décret.

20.3 Sous réserve de la partie VII, il est entendu que la Loi sur le contrôle de l'énergie atomique, ou toute loi qui la remplace, continue de s'appliquer sur les terres de première nation.

21. INAPPLICABILITÉ DE CERTAINS ARTICLES DE LA LOI SUR LES INDIENS ET DES RÈGLEMENTS Y AFFÉRENTS

21.1 Dès l'entrée en vigueur de son code foncier, la première nation, ses membres et les terres de première nation, cessent d'être assujettis aux dispositions suivantes :

a) les articles 18 à 20 et 22 à 28 de la Loi sur les Indiens;

b) les articles 30 à 35 de la Loi sur les Indiens;

c) les articles 37 à 41 de la Loi sur les Indiens;

d) l'article 49, le paragraphe 50(4) et les articles 53 à 60 de la Loi sur les Indiens;

e) les articles 66, 69 et 71 de la Loi sur les

(f) section 93 of the Indian Act;

(g) regulations made under section 57 of the Indian Act; and

(h) regulations made under sections 42 and 73 of the Indian Act to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.

Indiens;

f) l'article 93 de la Loi sur les Indiens;

g) les règlements pris en application de l'article 57 de la Loi sur les Indiens;

h) les règlements pris en application des articles 42 et 73 de la Loi sur les Indiens dans la mesure où ils sont incompatibles avec le présent accord, avec le code foncier ou avec les textes législatifs de la première nation.

22. EXISTING FIRST NATION BY-LAWS

22.1 A First Nation will continue to have the authority under the Indian Act to make by-laws.

22. RÈGLEMENTS ADMINISTRATIFS ACTUELS DE LA PREMIÈRE NATION

22.1 La première nation conserve le pouvoir d'adopter des règlements administratifs aux termes de la Loi sur les Indiens.

PART V
ENVIRONMENT

PARTIE V
ENVIRONNEMENT

23. GENERAL PRINCIPLES

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.3 The principles of these regimes are set out below.

23. PRINCIPES GÉNÉRAUX

23.1 Le conseil de la première nation ayant un code foncier en vigueur a le pouvoir d'édicter des textes législatifs de nature environnementale concernant les terres de première nation.

23.2 Les Parties s'entendent pour qu’il y ait un régime de protection de l'environnement et un régime d'évaluation environnementale pour chaque première nation.

23.3 Les principes de ces régimes sont énoncés ci-dessous.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

23.4 Les régimes de protection et d'évaluation environnementales seront mis en oeuvre par des textes législatifs de la première nation.

23.5 The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

23.5 Les Parties conviennent d'harmoniser leurs régimes et processus environnementaux respectifs, en invitant les provinces à participer à cette opération si celles-ci le souhaitent, dans le but de promouvoir l'uniformité et l'efficacité des régimes et processus environnementaux et d'éviter les incertitudes et le double emploi.

23.6 This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

23.6 Le présent accord n'a pas pour effet de modifier les droits et pouvoirs concernant les oiseaux migrateurs et les espèces en voie de disparition. Ces questions pourront faire l'objet d'autres négociations. Le présent accord n'a pas pour objet de déterminer la résolution de ces questions ou d'y porter préjudice.

24. ENVIRONMENTAL MANAGEMENT

24. GESTION DE L'ENVIRONNEMENT

24.1 Subject to clause 27, a First Nation with a land code in effect will develop an environmental protection regime, with the assistance of the appropriate federal agencies to the extent that they agree to participate.

24.1 Sous réserve de l'article 27, une première nation qui a un code foncier en vigueur élaborera un régime de protection environnementale, avec l'appui des organismes fédéraux concernés, dans la mesure où la province accepte de participer.

24.2 Each First Nation agrees to

harmonize environmental protection with the province in which the First Nation is situated, where the province agrees to participate

24.2 Chaque première nation accepte d'harmoniser son régime de protection environnementale avec celui de la province où elle est située, dans la mesure où la province accepte de participer.

24.3 The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.

24.4 For greater certainly, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of any inconsistency.

25. ENVIRONMENTAL ASSESSMENT

25.1 Subject to clause 27, a First Nation will, with the assistance of the Lands

24.3 Les normes de protection environnementale et penalités de la première nation devront avoir au moins l'effet équivalent a celui des lois de la province où se situe la première nation.

24.4 Il est entendu qu'en cas d’incompatibilité entre une disposition d'une loi fédérale en matière de protection de l'environnement et une disposition d'un code foncier ou d'un texte législatif des premières nations en matière de protection de l'environnement, la disposition fédérale l'emporte dans la mesure de l’incompatibilité.

25. ÉVALUATION ENVIRONNEMENTALE

25.1 Sous réserve de l'article 27, la première nation s'efforce, avec l'aide du

Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code takes effect, or within such longer period as the Minister and the First Nation may agree to.

Conseil consultatif des terres et des organismes fédéraux intéressés, d'élaborer un processus d'évaluation environnementale dans l'année suivant l'entrée en vigueur du code foncier de la première nation ou dans un délai plus long convenu entre le ministre et la première nation.

25.2 The First Nation and the Minister will, in the individual agreement referred to in clause 6, address how to conduct the environmental assessment of projects on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

25.2 L'accord distinct conclu entre la première nation et le ministre conformément à l'article 6 doit prévoir les modalités de l'évaluation environnementale des projets devant être réalisés sur les terres de première nation au cours de la période transitoire, jusqu'à ce que la première nation ait élaboré un processus d'évaluation environnementale.

25.3 The First Nation's environmental assessment process will be consistent with requirements of the Canadian Environmental Assessment Act.

25.3 Le processus d'évaluation environnementale mis sur pied par la première nation doit être compatible avec les exigences de la Loi canadienne sur l'évaluation environnementale.

25.4 The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

25.4 Sera un élément déclencheur du processus d'évaluation environnementale dans les cas indiqués, tout projet sur les terres de première nation devant être réalisé, financé, approuvé ou réglementé par celle-ci. Cette évaluation doit s'effectuer le plus tôt possible au cours des premières étapes de la planification du projet avant que des décisions irrévocables ne soient prises.

25.5 The Parties agree that section 10 of the Canadian Environmental Assessment Act will not apply to projects located on First Nation land.

25.5 Les Parties conviennent que l'article 10 de la Loi canadienne sur l'évaluation environnementale ne s'applique pas aux projets situés sur les terres de première nation.

25.6 The Parties agree to use their best efforts to implement the principle that the First Nation's environmental assessment process be used where an environmental assessment of a project on First Nation land is required by the Canadian Environmental Assessment Act.

25.6 Les Parties s'efforceront de mettre en œuvre le principe selon lequel le processus d'évaluation environnementale de la première nation sera appliqué lorsque la Loi canadienne sur l'évaluation environnementale exige qu'un projet devant être réalisé sur des terres de première nation fasse l'objet d'une telle évaluation.

25.7 The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces where they agree to participate.

25.7 Les Parties conviennent d'élaborer un plan visant à harmoniser leurs processus d'évaluation environnementale respectifs, avec la participation des provinces si celles-ci le souhaitent.

26. OTHER AGREEMENTS

26. AUTRES ENTENTES

26.1 The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.

26.1 La première nation et le Canada reconnaissent qu'il pourrait être souhaitable de conclure d'autres ententes, entre elles et avec d'autres gouvernements, dans le domaine de l'environnement, notamment au sujet des questions d'harmonisation, de mise en oeuvre, de calendrier, de financement et de contrôle d'application.

26.2 Where matters being negotiated pursuant to clause 26.1 normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the parties will invite the affected province to be a party to such negotiations and resulting agreements.

26.2 Si une question faisant l'objet de négociation en vertu de l'article 26.1 relève normalement de la compétence de la province, ou si de telles questions sont susceptibles d'avoir des effets importants à l'extérieur des terres de première nation, les Parties inviteront la province concernée à être partie à ces négociations et à l'entente qui en résulte.

27. RESOURCES

27. RESSOURCES

27.1 The Parties understand that the obligation of a First Nation to establish

27.1 Les Parties reconnaissent qu'une première nation ne peut remplir son

environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

obligation relative à l'établissement de régimes de protection et d'évaluation environnementales que si elle dispose des ressources financières et de l’expertise nécessaires.

PART VI
FUNDING

PARTIE VI
FINANCEMENT

28. APPROPRIATION

28.1 Any amounts provided by Canada to the First Nations pursuant to funding arrangements in relation to First Nation land shall be paid out of such moneys as may be appropriated by Parliament for this purpose.

28. CRÉDITS

28.1 Les sommes versées par le Canada aux premières nations conformément aux ententes en matière de financement à l'égard des terres de première nation sont prélevées sur les crédits affectés à cette fin par le Parlement.

29. DEVELOPMENTAL FUNDING

29.1 Canada and the Lands Advisory Board will enter into a funding arrangement to allow the First Nations to develop land codes and community approval processes for their land codes, to negotiate the individual agreements mentioned in clause 6 and to seek community approval under clause 7.

29. FINANCEMENT DE DÉMARRAGE

29.1 Le Canada et le Conseil consultatif des terres sont tenus de conclure une entente de financement pour permettre aux premières nations d’élaborer leur code foncier et leur processus d’approbation de la communauté relatif à ce code, de négocier l'accord distinct mentionné à l'article 6 et d’obtenir l’approbation de la communauté prévue à l'article 7.

30. OPERATIONAL FUNDING

30.1 An individual agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a land code. The agreement will determine specific funding issues, for example period of time, and terms and

30. FINANCEMENT DE FONCTIONNEMENT

30.1 L'accord distinct conclu entre le ministre et la première nation fixera les ressources que le Canada s'engage à fournir à la première nation pour que celle-ci gère les terres de première nation et édicte, administre et applique les textes législatifs de la première nation pris en vertu du code foncier. L'accord précisera

conditions.

30.2 A method for allocating such operating funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board.

30.3 Unless a First Nation and Canada agree otherwise, an individual agreement respecting the provision of funding under this clause will have a maximum term of five years and will include provisions for its amendment and renegotiation.

31. LANDS ADVISORY BOARD FUNDING

31.1 Canada will enter into a funding arrangement with the Lands Advisory Board for the five year period following the coming into force of this Agreement.

PART VII
EXPROPRIATION OF FIRST NATION LAND BY CANADA

32. RESTRICTIONS

32.1 In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.

32.2 Despite the general principle against expropriation, First Nation land may be expropriated by Canada

(a) only with the consent of the

les différents aspects du financement, par exemple sa périodicité et ses modalités.

30.2 Les Parties et le Conseil consultatif des terres sont tenus d'élaborer une méthode d'attribution des fonds de fonctionnement autorisés par le Parlement.

30.3 À défaut d'entente contraire de la première nation et du Canada, l'accord distinct concernant le financement prévu par le présent article sera en vigueur pour une durée maximale de cinq ans et prévoira des dispositions concernant sa modification et sa renégociation.

31. FINANCEMENT DU CONSEIL CONSULTATIF DES TERRES

31.1 Le Canada est tenu de conclure avec le Conseil consultatif des terres une entente de financement qui portera sur une période de cinq ans à partir de l'entrée en vigueur du présent accord.

PARTIE VII
EXPROPRIATION DE TERRES DE PREMIÈRES NATIONS PAR LE CANADA

32. RESTRICTIONS

32.1 Conformément au principe énoncé à l'article 13.2, les parties conviennent qu'en règle générale, les terres de première nation ne peuvent faire l'objet d'une expropriation.

32.2 Malgré le principe général voulant que les terres ne puissent faire l'objet d'une expropriation, le Canada peut toutefois exproprier les terres de première nation, si les conditions suivantes sont

Governor in Council; and

(b) only by and for the use of a federal department or agency.

32.3 The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest.

32.4 When making a decision to expropriate First Nation land, the Governor in Council, in addition to other steps that may be required before making such a decision, will at a minimum follow these steps:

(a) it will consider using means other than expropriation and will use those other means where reasonably feasible;

(b) it will use non-First Nation land, where such land is reasonably available;

(c) if it must use First Nation land, it will make reasonable efforts to acquire the land through agreement with the First Nation, rather than by expropriation;

(d) if it must expropriate First Nation land, it will expropriate only the smallest interest or land right necessary and for the shortest time required; and

réunies :

a) le gouverneur en conseil y consent;

b) l’expropriation est faite par un ministère ou un organisme fédéral pour ses seuls besoins.

32.3 Le gouverneur en conseil ne consentira à l'expropriation de terres de première nation que si cela est justifiable et nécessaire à des fins d’intérêt public national relevant de la compétence fédérale.

32.4 Avant de donner son consentement à une expropriation de terres de première nation, le gouverneur en conseil, en plus des autres mesures qui peuvent être requises, prendra au moins les mesures suivantes :

a) il envisagera d'autres moyens que l'expropriation et utilisera ces moyens lorsque cela est raisonnablement faisable;

b) il utilisera des terres autres que celles d’une première nation, lorsque de telles terres sont raisonnablement disponibles;

c) s'il faut utiliser des terres de première nation, il s'efforcera de procéder à l'acquisition des terres par convention avec la première nation et non par expropriation;

d) s'il doit exproprier des terres de première nation, il veillera à ce que l'expropriation se limite au strict nécessaire, tant en ce qui touche l'étendue de l’intérêt ou du droit foncier que la

(e) in every case, it will first provide the First Nation with information relevant to the expropriation.

période pour laquelle il est exproprié;

e) dans tous les cas, il communiquera d'abord à la première nation tous les renseignements se rapportant à l'expropriation.

32.5 Prior to the Governor in Council issuing an order consenting to the expropriation of First Nation land, the federal department or agency will make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this clause and will provide a copy of the report to the First Nation.

32.5 Avant que le gouverneur en conseil ne prenne un décret consentant à l'expropriation de terres de première nation, le ministère ou l'organisme fédéral est tenu de publier un rapport qui énonce les motifs la justifiant et les mesures prises en application du présent article et de fournir en même temps une copie de ce rapport à la première nation.

32.6 Where a First Nation objects to a proposed expropriation it may refer the issue to an independent third party for a neutral evaluation under Part IX, within 60 days of the release of the report referred to in clause 32.5.

32.6 Si une première nation s'oppose à un projet d'expropriation, elle peut, dans les 60 jours de la publication du rapport mentionné à l'article 32.5, renvoyer l'affaire à une tierce partie indépendante pour conciliation aux termes de la Partie IX.

32.7 An order of the Governor in Council consenting to the expropriation will not be issued earlier than

32.7 Un décret du gouverneur en conseil consentant à l'expropriation ne sera pas émis avant :

(a) the end of the 60 day period referred to in clause 32.6; or

a) soit l'expiration du délai de 60 jours prévu à l'article 32.6;

(b) the day the opinion or recommendation of the neutral evaluator is released, where the First Nation referred the proposed expropriation to an independent evaluator under clause 32.6.

b) soit le jour où l'opinion ou la recommandation du conciliateur est publiée, si la première nation renvoie le projet d'expropriation à un conciliateur, en application de l'article 32.6.

33. COMPENSATION BY CANADA

33. INDEMNISATION PAR LE CANADA

33.1 In the event of the expropriation of First Nation land by Canada under this Part, Canada will provide compensation to the First Nation in accordance with this clause.

33.1 Si le Canada exproprie des terres de première nation sous le régime de la présente partie, il est tenu d'indemniser la première nation conformément aux termes du présent article.

33.2 The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code took effect.

33.2 L'indemnité comprendra des terres substitutives ayant une superficie égale ou supérieure ou ayant une valeur comparable à celles qui ont été expropriées. Si les terres substitutives ont une valeur inférieure aux terres expropriées, le Canada est alors tenu d'offrir une indemnité supplémentaire. Les terres substitutives peuvent avoir une superficie moindre que les terres expropriées seulement si, à la suite de l'opération, la première nation dispose d'une superficie de terres qui n'est pas inférieure à celle qu'elle avait lorsque son code foncier est entré en vigueur.

33.3 The total value of the compensation provided by Canada under this clause will be based on the following:

33.3 La valeur totale de l'indemnité versée par le Canada aux termes du présent article doit tenir compte des éléments suivants :

(a) the market value of the land or interest or land right that is acquired;

a) la valeur marchande des terres ou de l’intérêt ou du droit foncier acquis;

(b) the replacement value of any improvement to the land that is acquired;

b) la valeur de remplacement des améliorations apportées aux terres acquises;

(c) the damages attributable to disturbance;

c) les dommages attribuables au trouble de jouissance;

(d) the value of any special economic advantage arising out of or incidental to the occupation or use of the affected First Nation land to the extent that this value is not otherwise

d) la valeur de tout avantage économique particulier découlant ou résultant de l'occupation ou de l'utilisation des terres de première nation concernée, dans la mesure où cette valeur n'a pas déjà donné lieu à

compensated;

(e) damages for any reduction in the value of a remaining interest or land right; and

(f) damages for any adverse effect on any cultural or other special value of the land.

33.4 If the value and nature of the compensation cannot be agreed upon by the federal department or agency and the affected First Nation, either party may refer a dispute on compensation to arbitration under Part IX.

33.5 In any province or territory other than Québec, any claim or encumbrance in respect of the interest, or in Québec any right, charge or claim in respect of the land right, expropriated by Canada may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest or land right is being expropriated.

33.6 Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the superior court of the province in which the First Nation land is located.

34. STATUS OF LANDS

34.1 Where less than the full interest or only part of the land right of the First Nation in

une indemnité;

e) les dommages attribuables à la diminution de la valeur de l'intérêt ou du droit foncier non exproprié;

f) les dommages attribuables aux répercussions négatives sur la valeur culturelle ou toute autre valeur particulière de ces terres.

33.4 En cas de différend relatif à la valeur ou à la nature de l'indemnité, le ministère ou l'organisme fédéral ou la première nation peut saisir un arbitre de tout différend relatif à l'indemnité aux termes de la Partie IX.

33.5 Dans les provinces ou territoires autres que le Québec, le recouvrement de toute réclamation ou tout grèvement concernant l'intérêt exproprié par le Canada, ou dans la province de Québec, le recouvrement de tout droit, charge ou réclamation concernant le droit foncier ainsi exproprié, ne peut être demandé que jusqu'à concurrence de l'indemnité par ailleurs payable à la personne ou à l'entité dont l'intérêt ou le droit foncier est visé par l'expropriation.

33.6 L'indemnité porte intérêt à partir de la prise d'effet de l'expropriation, au taux applicable à l'intérêt avant jugement applicable devant la Cour supérieure de la province où sont situées les terres de première nation.

34. STATUT DES TERRES

34.1 Dans les cas où l'expropriation par le Canada porte sur moins que la totalité de

First Nation land is expropriated by Canada,

(a) the land retains its status as First Nation land;

(b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and

(c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

34.2 Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land.

35. REVERSION OR RETURN OF INTERESTOR LAND RIGHTIN FIRST NATION LAND

35.1 In any province or territory other than Québec, where an expropriated interest in First Nation land which is less than the full interest of the First Nation in the land is no longer required by Canada for the purpose for which it was expropriated, the interest in land will revert to the First Nation.

35.1A In the province of Québec, where the expropriated land right in First Nation land constitutes only part of the land right of the First Nation in the land, and it is no longer required by Canada for the purpose for

l'intérêt ou seulement sur une partie du droit foncier de la première nation sur les terres en question :

a) les terres conservent leur statut de terres de première nation;

b) les terres demeurent assujetties au code foncier et aux textes législatifs adoptés par la première nation, sauf dans la mesure où le texte ou le code foncier est incompatible avec l'expropriation;

c) la première nation peut continuer à utiliser et à occuper ces terres, sauf dans la mesure où cette utilisation ou cette occupation est incompatible avec l'expropriation.

34.2 Les terres substitutives acceptées par la première nation comme partie de l'indemnité deviennent à la fois une réserve et des terres de première nation.

35. RÉVERSION OU RETOUR D'UN INTÉRÊT OU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

35.1 Dans une province ou territoire autre que le Québec, lorsque l'intérêt exproprié est moindre que la totalité de l'intérêt de la première nation sur les terres en question, cet intérêt est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.1A Dans la province de Québec, lorsque l'expropriation porte seulement sur une partie du droit foncier de la première nation sur les terres en question,

which it was expropriated, the land right will return to the First Nation.

le droit foncier est, lorsqu'il n'est plus nécessaire au Canada aux fins de l'expropriation, retourné à la première nation.

35.2 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the interest or the land right is no longer required and determine the disposition of any improvements.

35.2 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que l'intérêt ou le droit foncier exproprié n'est plus nécessaire et il peut déterminer comment disposer des améliorations.

36. RETURN OF FULL INTEREST OR ENTIRE LAND RIGHT IN FIRST NATION LAND

36. RETOUR DE LA TOTALITÉ DE L'INTÉRÊT OU DU DROIT FONCIER SUR LES TERRES DE PREMIÈRE NATION

36.1 Where the full interest or the entire land right of a First Nation in First Nation land was expropriated but is no longer required by Canada for the purpose for which it was expropriated, the land will be returned to the First Nation on terms negotiated by the First Nation and the federal department or agency, at the time of the expropriation or at a later date as agreed to by them.

36.1 Lorsque la totalité de l'intérêt ou le droit foncier entier de la première nation sur les terres en question a été exproprié et qu'il n'est plus nécessaire au Canada aux fins de l'expropriation, les terres seront retournées à la première nation selon les conditions négociées par la première nation et le ministère ou l'organisme fédéral, soit au moment de l'expropriation, soit à une date ultérieure convenue par eux.

36.2 Where the terms and conditions of the return cannot be agreed upon by the First Nation and the federal department or agency, either party may refer the dispute to arbitration under Part IX.

36.2 En cas de différend relatif aux conditions du retour, la première nation ou le ministère ou l'organisme fédéral peut renvoyer l'affaire à un arbitre nommé aux termes de la Partie IX.

36.3 The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the land is no longer required and determine the disposition of any

36.3 Le ministre responsable du ministère ou de l'organisme à l'origine de l'expropriation peut, sans le consentement du gouverneur en conseil, décider que les terres expropriées ne sont plus nécessaires

improvements.

et il peut déterminer comment disposer des améliorations apportées aux terres concernées.

37. APPLICATION OF EXPROPRIATION ACT

37. APPLICATION DE LA LOI SUR L'EXPROPRIATION

37.1 Any provisions of the Expropriation Act, (Canada) that are applicable to an expropriation of First Nation land by Canada continue to apply, unless inconsistent with this Agreement.

37.1 Les dispositions de la Loi sur l'expropriation (Canada) applicables à l'expropriation de terres de première nation par le Canada continuent de s'appliquer dans la mesure où elles ne sont pas incompatibles avec le présent accord.

PART VIII
LANDS ADVISORY BOARD

PARTIE VIII
CONSEIL CONSULTATIF DES TERRES

38. LANDS ADVISORY BOARD

38. CONSEIL CONSULTATIF DES TERRES

38.1 The Lands Advisory Board shall consist of at least three members appointed:

38.1 Le Conseil consultatif des terres sera formé d'au moins trois membres nommés :

(a) Prior to September 1, 2003, by the Councils of the original First Nation parties to this Agreement; and

a) avant le 1er septembre 2003 par les conseils des premières nations qui étaient parties initiales au présent accord;

(b) After September 1, 2003, by the Councils of the First Nations that have ratified this Agreement, whether they ratify the Agreement on, before or after that date.

b) après le 1er septembre 2003 par les conseils des premières nations qui ont ratifié le présent accord, qu'ils l'aient ratifié à cette date, ou avant ou après cette date.

38.2 The Lands Advisory Board will have all necessary powers and capacity to properly perform its functions under this Agreement.

38.2 Le Conseil consultatif des terres possédera tous les pouvoirs et la capacité nécessaires à l'exercice efficace de ses attributions en vertu du présent accord.

38.3 The Lands Advisory Board will select a chairperson to preside over the Board and, subject to the direction of the Board, to act

38.3 Le Conseil consultatif des terres est tenu de choisir un président qui peut, sous réserve des instructions du conseil, agir

on its behalf.

39. FUNCTIONS OF THE LANDS ADVISORY BOARD

39.1 In addition to any other functions specifically assigned to it by the Parties, the Lands Advisory Board will be responsible for the following functions:

(a) developing model land codes, laws and land management systems;

(b) developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;

(c) on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;

(d) assisting a verifier when requested by the verifier;

(e) establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;

(f) on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;

pour le compte du conseil.

39. ATTRIBUTIONS DU CONSEIL CONSULTATIF DES TERRES

39.1 Outre les autres attributions que pourraient lui confier les Parties, le Conseil consultatif des terres possédera les attributions suivantes :

a) il élabore des modèles de code foncier, de textes législatifs et de systèmes de gestion des terres;

b) il élabore des modèles d'ententes destinés à être utilisés entre les premières nations et les autres autorités et institutions, notamment les sociétés de service public et les organismes privés;

c) à la demande d'une première nation, il assiste celle-ci dans l'élaboration et la mise en oeuvre de son code foncier, de ses textes législatifs, de ses systèmes de gestion des terres, et de ses régimes de protection et d'évaluation environnementales;

d) il apporte son aide au vérificateur, à la demande de ce dernier;

e) il met sur pied un centre de ressources, des cours et des programmes de formation à l'intention des gestionnaires et des autres personnes qui exercent des attributions aux termes d'un code foncier;

f) à la demande d'une première nation qui éprouve des difficultés dans la gestion des terres de la première nation, il l'aide à obtenir l’expertise dont elle a besoin pour

(g) proposing regulations for First Nation land registration;

(h) proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;

(i) in consultation with First Nations, negotiating a funding method with the Minister; and

(j) performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

résoudre les difficultés;

g) il propose des règlements concernant l'enregistrement des terres de première nation;

h) il propose au ministre les modifications au présent accord et à la loi de ratification qu'il estime souhaitables ou nécessaires;

i) en consultation avec les premières nations, il négocie avec le ministre un mécanisme de financement;

j) il exerce les autres attributions ou fournit à une première nation les services dont le conseil et celle-ci peuvent convenir.

39.2 The Lands Advisory Board will have authority to adopt rules for the procedure at its meetings and generally for the conduct of its affairs.

39.2 Le Conseil consultatif des terres a le pouvoir d'adopter des règles de procédure pour la tenue de ses réunions et, d'une façon générale, pour l'exercice de ses activités.

40. RECORD KEEPING

40. TENUE DES DOSSIERS

40.1 The Lands Advisory Board will maintain a record containing

(a) the name of each First Nation that approves a land code;

(b) a copy of that land code;

(c) a copy of each amendment to a land code; and

(d) the dates on which each was approved and certified.

40.1 Le Conseil consultatif des terres est tenu de maintenir un registre dans lequel figurent :

a) le nom des premières nations ayant adopté un code foncier;

b) une copie de ces codes fonciers;

c) une copie des modifications apportées aux codes fonciers;

d) les dates auxquelles les codes ont été approuvés et celles auxquelles leur validité a été attestée.

40.2.1 The Lands Advisory Board shall, in consultation with the Minister, prescribe procedures for a First Nation to authorize the signing of this Agreement and for the formal signature of the First Nations to this Agreement, and shall advise the Minister when a First Nation has completed the procedures.

40.2.1 Le Conseil consultatif des terres doit, en consultation avec le ministre, prescrire les procédures qu'une première nation doit suivre pour autoriser la signature du présent accord et les procédures régissant la signature formelle de cet accord par les premières nations et il doit aviser le ministre lorsqu'une première nation a complété les procédures.

40.2.2 Subject to sub-clause 40.2.1, a First Nation may only become a signatory under this section with the consent of Canada, and Canada shall advise the Lands Advisory Board if and when such consent is given.

40.2.2 Sous réserve de l'article 40.2.1, une première nation peut devenir signataire en vertu de cet article seulement avec le consentement du Canada, et ce dernier doit aviser le Conseil consultatif des terres lorsque le consentement a été accordé.

40.2.3 The Lands Advisory Board shall receive and record the adhesion of a First Nation party to this Agreement, made after January 1, 2001,and advise the Minister that the said First Nation has signed the Framework Agreement.

40.2.3 Le Conseil consultatif des terres doit recevoir et inscrire l'adhésion d'une première nation qui est Partie au présent accord, intervenue après le 1er janvier 2001, et aviser le ministre de la signature de l'accord par celle-ci.

41. ANNUAL REPORT

41. RAPPORT ANNUEL

41.1 Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.

41.1 Le Conseil consultatif des terres remet aux Parties, dans les 90 jours suivant la fin de son année de fonctionnement, un rapport annuel, dans les deux langues officielles, concernant les travaux accomplis pendant cette année.

41.2 The Minister will cause a copy of the Lands Advisory Board's annual report to be laid before each House of Parliament within the first 30 sitting days of that House after the Minister receives it.

41.2 Le ministre est tenu de présenter le rapport annuel du Conseil consultatif des terres aux deux Chambres du Parlement dans les 30 premiers jours de séance de chaque Chambre suivant sa réception par le ministre.

42. LANDS ADVISORY BOARD NO LONGER IN EXISTENCE

42. DISPARITION DU CONSEIL CONSULTATIF DES TERRES

42.1 In the event that the Lands Advisory Board is no longer in existence, the functions of the Lands Advisory Board under this Agreement will be performed by the Parties, except as follows:

(a) the functions set out in clauses 29 and 39, except clause 39.1(g), will be performed by the First Nations; and

(b) the functions set out in clauses 10 and 40 will be assumed by the First Nations Lands Register.

PART IX
DISPUTE RESOLUTION

43. GENERAL PRINCIPLES

43.1 The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out-of-court processes referred to in this Part to resolve the dispute.

43.2 Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

43.3 Subject to clause 43.4, any dispute

42.1 En cas de disparition du Conseil consultatif des terres, les attributions de celui-ci en vertu du présent accord seront exercées par les Parties, sous réserve des dispositions suivantes :

a) les attributions énumérées aux articles 29 et 39, sauf pour ce qui est de l'alinéa 39.1g), seront exercées par les premières nations;

b) les attributions prévues aux articles 10 et 40 seront assumées par le bureau du Registre des terres des premières nations.

PARTIE IX
RÈGLEMENT DES DIFFÉRENDS

43. PRINCIPES GÉNÉRAUX

43.1 Les Parties s'engagent à résoudre entre elles, à l'amiable et de bonne foi, les différends qui peuvent découler du présent accord. Lorsque les Parties n'arrivent pas à s'entendre pour résoudre un différend par la négociation, elles conviennent de mettre sur pied les processus extrajudiciaires de règlement des différends décrits dans la présente partie et d'y avoir recours.

43.2 Les dispositions du présent accord n'empêchent pas les Parties de recourir à la médiation en vue de régler à l'amiable un différend. Lorsqu'une partie a soumis un différend à un médiateur, l'autre partie est tenue d'assister à une première rencontre avec le médiateur. L'une ou l'autre des Parties peut toutefois mettre fin à la médiation en tout temps après cette première rencontre.

43.3 Sous réserve de l'article 43.4, les

arising from the implementation, application or administration of this Agreement, the federal legislation, an individual agreement or an environmental management agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

différends découlant de la mise en oeuvre, de l'application ou de l'administration du présent accord, de la loi de ratification, d'un accord distinct ou d'un accord en matière de gestion de l'environnement peuvent être résolus selon l'un des deux moyens suivants :

a) la conciliation — le différend peut être renvoyé à un conciliateur par l'une des parties impliquées dans le différend;

b) l'arbitrage — le différend peut être soumis à l'arbitrage par les deux parties impliquées dans le différend.

43.4 Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest or the entire land right in First Nation land will be referred to arbitration.

43.4 Sont soumis à l'arbitrage, les différends portant sur l'indemnité à verser par le Canada en raison de l'expropriation par celui-ci de terres de première nation, ou sur les conditions du retour de la totalité de l’intérêt ou du droit foncier entier sur les terres de première nation.

43.5 Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

43.5 Toute opposition, par la première nation, à un projet d'expropriation en vertu de la Partie VII qui aura été porté devant un conciliateur sera évalué par ce dernier. Par la suite, un rapport sera soumis, par ce dernier, à la première nation et au Canada dans un délai de 60 jours suivant le dépôt de l'opposition devant le conciliateur.

44. PANELS OF ARBITRATORS, ETC.

44. LISTES D'ARBITRES, ETC.

44.1 The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

44.1 Les Parties et le Conseil consultatif des terres sont tenus d'établir conjointement des listes de personnes mutuellement acceptables prêtes à agir en qualité de médiateur, d'arbitre, de vérificateur et de conciliateur.

44.2 Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

44.3 The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

44.4 Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

45. NEUTRAL EVALUATION

45.1 Where a dispute is referred to neutral evaluation, the evaluator will where appropriate,

(a) identify the issues in the dispute;

(b) assess the strengths of each party's case;

(c) structure a plan for the progress of the case;

(d) encourage settlement of the dispute; and

(e) provide the parties with a non-binding opinion or recommendation to resolve the dispute.

44.2 Les parties à un différend peuvent choisir, parmi ces listes, un médiateur, un arbitre et un conciliateur ou s'entendre sur la nomination d'une personne qui ne figure pas sur ces listes.

44.3 Le Conseil consultatif des terres, le Canada et la première nation choisiront les vérificateurs, définiront leurs attributions et fixeront la procédure que ces derniers doivent utiliser.

44.4 Les personnes nommées en qualité de médiateur, d'arbitre, de vérificateur ou de conciliateur doivent être impartiales et ne pas se trouver en situation de conflit d'intérêts par rapport aux questions en litige; elles doivent par ailleurs posséder la compétence ou l'expérience nécessaires pour agir en cette qualité.

45. CONCILIATION

45.1 Lorsque la situation l'exige, le conciliateur saisi d'un différend exerce les fonctions suivantes :

a) il précise les questions sur lesquelles porte le différend;

b) il évalue le bien-fondé des arguments des parties;

c) il établit un plan afin de faire progresser la situation;

d) il encourage le règlement du différend;

e) il remet aux parties une opinion ou une recommandation non exécutoire visant à mettre fin au différend.

46. ARBITRATION

46.1 Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

46.2 The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.

46.3 If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

46.4 The arbitrator will establish the procedures of the arbitration, subject to this clause.

47. RELATED ISSUES

47.1 The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

47.2 Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if

(a) all parties to the process consent; and

(b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.

47.3 The decision of a verifier and a

46. ARBITRAGE

46.1 Sauf entente contraire des Parties, l'arbitrage s'effectuera conformément au présent article.

46.2 La procédure qui sera suivie est celle du Code d'arbitrage commercial, figurant à l'annexe de la Loi sur l'arbitrage commercial.

46.3 Si ce Code ne contient pas de disposition procédurale appropriée, les parties au différend peuvent suivre les Règles d'arbitrage commercial établies à l’occasion par le British Columbia International Commercial Arbitration Centre.

46.4 L'arbitre est tenu de déterminer la procédure d’arbitrage à suivre, sous réserve du présent article.

47. QUESTIONS CONNEXES

47.1 Les parties à un différend assument les frais relatifs à sa résolution à parts égales.

47.2 Toute personne dont les intérêts seraient lésés par un différend porté devant l'un des mécanismes de règlement des différends peut participer au mécanisme de règlement si :

a) d’une part, toutes les parties au mécanisme y consentent;

b) d’autre part, cette personne assume les frais de sa participation, sauf entente contraire des autres parties au différend.

47.3 La décision du vérificateur et la

decision or award of an arbitrator will be final and binding on the participating parties.

47.4 No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement.

47.5 Despite clause 47.4, judicial review may be taken under the Federal Court Act within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

PART X
RATIFICATION AND ENACTMENTS BY THE PARTIES

48. RATIFICATION OF AGREEMENT

48.1 The Parties agree that they will seek to ratify this Agreement and implement it in the following manner:

(a) each First Nation agrees to develop a land code and to seek community approval; and

(b) following community approval by two First Nations, Canada agrees to recommend to Parliament the

décision ou sentence d'un arbitre sont définitives et lient les parties qui ont participé aux mécanismes de règlement.

47.4 Aucune ordonnance ne peut être rendue, exécutée ou inscrite, et aucune poursuite ne peut être initiée devant une cour par voie d'injonction, de mandamus, de certiorari, de prohibition ou de quo warranto pour contester, réviser, empêcher ou limiter une mesure prise par le vérificateur, l'arbitre ou le conciliateur nommé sous le régime du présent accord.

47.5 Malgré l'article 47.4, une demande de révision judiciaire peut, dans les 30 jours qui suivent la décision prise par toute personne agissant comme vérificateur, arbitre ou conciliateur sous le régime du présent accord, être présentée en vertu de la Loi sur les Cours fédérales au motif que cette personne a outrepassé sa compétence, refusé de l’exercer ou n'a pas respecté un principe de justice naturelle.

PARTIE X
RATIFICATION PAR LES PARTIES ET MESURES LÉGISLATIVES

48. RATIFICATION DE L'ACCORD

48.1 Les Parties conviennent de ratifier le présent accord et de le mettre en oeuvre de la façon suivante :

a) chaque première nation s'engage à élaborer un code foncier et à le soumettre à l’approbation de la communauté;

b) une fois un code approuvé par deux premières nations, le Canada s'engage à recommander au Parlement l'adoption

enactment of legislation.

48.2 This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

49. ENACTMENTS BY THE PARTIES

49.1 Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

49.2 In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

49.3 In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the Indian Act, the land code will prevail to the extent of the inconsistency or conflict.

PART XI
OTHER MATTERS

50. LIABILITY

50.1 The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code takes effect.

d'une loi de ratification.

48.2 Le présent accord sera réputé avoir été ratifié par une première nation lorsque celle-ci aura approuvé un code foncier, et il sera réputé avoir été ratifié par le Canada au moment de l'entrée en vigueur de la loi de ratification.

49. MESURES LÉGISLATIVES ADOPTÉES PAR LES PARTIES

49.1 Le Canada s'engage à ce que la loi de ratification qu'il présentera au Parlement soit conforme au présent accord et ait pour effet de le ratifier.

49.2 En cas d'incompatibilité ou de conflit entre la loi de ratification et une autre loi fédérale, la loi de ratification l'emporte dans la mesure de l'incompatibilité ou du conflit.

49.3 En cas d'incompatibilité ou de conflit entre le code foncier d'une première nation et des dispositions de ses textes législatifs ou de règlements administratifs pris par son conseil en vertu de l'article 81 de la Loi sur les Indiens, le code foncier l'emporte dans la mesure de l'incompatibilité ou du conflit.

PARTIE XI
AUTRES QUESTIONS

50. RESPONSABILITÉ

50.1 La première nation n'est pas responsable des actes ou omissions du Canada ou d'une personne ou entité autorisée par le Canada à agir à l'égard des terres de première nation et qui surviendraient avant l'entrée en vigueur du

code foncier de la première nation.

50.2 Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code takes effect.

50.2 Le Canada n'est pas responsable des actes ou omissions de la première nation ou d'une personne ou entité autorisée par celle-ci à agir à l'égard des terres de première nation et qui surviendraient après l'entrée en vigueur du code foncier de la première nation.

50.3 Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code takes effect.

50.3 Le Canada s'engage à indemniser la première nation de toute perte découlant d'un acte ou d'une omission du Canada, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait avant l'entrée en vigueur du code foncier de la première nation.

50.4 The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code takes effect.

50.4 La première nation s'engage à indemniser le Canada de toute perte découlant d'un acte ou d'une omission de la première nation, ou d'une personne ou entité agissant pour son compte, à l'égard des terres de première nation et qui surviendrait après l'entrée en vigueur du code foncier.

50.5 No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith, during the course of and for the purposes of carrying out his or her functions under this Agreement.

50.5 Aucune action ni autre procédure ne peut être intentée contre une personne agissant en qualité de membre du Conseil consultatif des terres, de médiateur, de vérificateur, de conciliateur ou d'arbitre pour avoir, de bonne foi, agi ou omis d’agir dans l'exercice de ses fonctions ou dans le but de les exercer aux termes du présent accord.

51. FIRST NATION LANDS REGISTER

51. REGISTRE DES TERRES DE PREMIÈRES NATIONS

51.1 Canada will establish a First Nation

51.1 Le Canada est tenu d'établir un

Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land. It will be administered by Canada as a subsystem of the existing Reserve Land Register.

registre des terres de premières nations où seront consignés les documents relatifs aux terres de premières nations ou aux intérêts ou aux droits fonciers sur celles-ci. Ce registre sera administré par le Canada à titre de sous-système du registre actuel des terres de réserve.

51.2 A separate register will be maintained for each First Nation with a land code in effect.

51.2 Un registre distinct sera créé pour chaque première nation ayant un code foncier en vigueur.

51.3 The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

51.3 La loi de ratification autorisera le gouverneur en conseil à prendre un règlement concernant le registre des terres de premières nations. Ce règlement sera élaboré conjointement par le Conseil consultatif des terres et le ministre.

52. STATUS OF DOCUMENTS

52. STATUT DES DOCUMENTS

52.1 The Statutory Instruments Act, or any successor legislation, will not apply to a land code or to First Nation laws.

52.1 La Loi sur les textes réglementaires ou les lois qui pourraient la remplacer, ne s'appliqueront pas au code foncier, ni aux textes législatifs des premières nations.

53. PROVINCIAL RELATIONS

53. RAPPORT AVEC LES PROVINCES

53.1 Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province to be a party to the negotiations and resulting agreement.

53.1 Si le Canada et une première nation entendent conclure une entente qui n'est pas mentionnée dans le présent accord mais qui est nécessaire à la mise en oeuvre du présent accord, et si cette entente traite des questions qui relèvent normalement de la compétence des provinces ou risque d'avoir des effets importants à l'extérieur des terres de première nation, le Canada et la première nation inviteront la province concernée à participer aux négociations de l'entente ainsi qu'à l'entente qui en résulte.

54. TIME LIMITS

54.1 The time limits in this Agreement for the doing of anything may be waived on consent.

55. OTHER REGIMES

55.1 Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

55.2 Sub-clause 38.1 and clause 57 do not apply to a First Nation to which sub-clause 55.1 applies.

56. REVIEW PROCESS

56.1 The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

56.2 Within four years of the federal legislation coming into force, the Minister and the Lands Advisory Board or their representatives will jointly conduct a review of this Agreement. It will focus on the following issues, among others:

(a) the functioning of land management under this Agreement;

(b) the adequacy and appropriateness of the funding arrangements;

54. DÉLAIS

54.1 Les Parties peuvent, par consentement mutuel, renoncer aux délais prévus par le présent accord.

55. AUTRES RÉGIMES

55.1 Aucune disposition du présent accord n’empêche une première nation, en tout temps, d'adhérer à tout autre régime en matière de prise de décision et de contrôle par la communauté, à la condition que cette première nation soit admissible à adhérer à cet autre régime et y adhère, conformément à la procédure prévue par cet autre régime.

55.2 Le paragraphe 38.1 et l’article 57 ne s’appliquent pas à une première nation à laquelle le paragraphe 55.1 s’applique.

56. MÉCANISME D'EXAMEN

56.1 Le Conseil consultatif des terres est tenu de consulter régulièrement les représentants des Parties dans le but d'évaluer l'efficacité du présent accord et de la loi de ratification.

56.2 Dans les quatre ans de l'entrée en vigueur de la loi de ratification, le ministre et le Conseil consultatif des terres ou leurs représentants procéderont conjointement à un examen du présent accord. Cet examen portera notamment sur les points suivants :

a) le fonctionnement de la gestion des terres aux termes du présent accord;

b) le caractère adéquat et approprié des modalités de financement;

(c) the role of the Lands Advisory Board;

(d) whether there is a demand by other First Nations to use this Agreement;

(e) changes that may improve the functioning of First Nation land management;

(f) the dispute resolution processes; and

(g) such other issues as may be agreed to by the Parties.

56.3 Canada and the First Nations will make best efforts to complete this review within one year. Following completion of the review, the Minister will meet with representatives of the First Nations to discuss the results of the review.

57. AMENDMENTS

57.1 Until September 1, 2003, this Agreement may be amended by agreement of the parties, provided that the amendments to Part VIII may be made with the consent of Canada and 2/3 of the original First Nation parties to this Agreement.

57.2 No amendment affecting the powers, authorities, obligations, operations or operational funding of a First Nation that has ratified this agreement is effective with respect to that First Nation without the consent of that First Nation.

c) le rôle du Conseil consultatif des terres;

d) l'identification d'autres premières nations désirant se prévaloir du présent accord;

e) les changements qui pourraient améliorer le fonctionnement de la gestion des terres de première nation;

f) les mécanismes de règlement des différends;

g) toute autre question convenue par les Parties.

56.3 Le Canada et les premières nations sont tenus de s'efforcer d'achever cet examen dans un délai d'un an. À la fin de l'examen, le ministre rencontrera les représentants des premières nations pour en analyser les résultats.

57. MODIFICATIONS

57.1 Le présent accord peut être modifié jusqu'au 1er septembre 2003 avec le consentement des parties, pourvu que les modifications à la Partie VIII soient apportées avec le consentement du Canada et des deux tiers des premières nations qui étaient Parties initiales au présent accord.

57.2 Aucune modification ayant une incidence sur les pouvoirs, les autorités, les obligations, les opérations ou les fonds de fonctionnement d'une première nation qui a ratifié le présent accord ne peut entrer en vigueur à l'égard de cette dernière sans son consentement.

57.3 After September 1, 2003, this Agreement, may, subject to 57.2, be amended with the consent of Canada and 2/3 of the First Nations which have ratified the Agreement, before, on or after that day.

57.3 Sous réserve du paragraphe 57.2, après le 1er septembre 2003, le présent accord peut être modifié avec le consentement du Canada et des deux tiers des premières nations qui l'ont ratifié que ce soit à cette date, ou avant ou après cette date.

58. RECITALS

58. PRÉAMBULE

58.1 The recitals form part of this Agreement.

58.1 Les dispositions figurant au préambule font partie du présent accord.

59. COMING INTO FORCE

59. ENTRÉE EN VIGUEUR

59.1 This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.

59.1 Le présent accord entrera en vigueur pour ce qui est du Canada et d'une première nation au moment où le Canada et cette première nation auront tous deux ratifié le présent accord conformément à la Partie X.

59.2 Despite clause 59.1, such provisions of this Agreement as are necessary to allow a First Nation to ratify this Agreement before Canada ratifies this Agreement will have effect as of the day Canada and that First Nation both sign this Agreement.

59.2 Malgré le paragraphe 59.1, les dispositions du présent accord nécessaires à sa ratification par une première nation avant que le Canada ne l'ait ratifié entrent en vigueur le jour où le Canada et cette première nation auront tous deux signé le présent accord.

FRAMEWORK AGREEMENT ON

FIRST NATION LAND MANAGEMENT

EXECUTIVE SUMMARY

INTRODUCTION

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. One other First Nation was added as of December 1997. The Agreement was ratified by Canada through the *First Nations Land Management Act,* assented to June 17, 1999

The Agreement is an initiative by these 14 First Nations to take over the governance and management control of their lands and resources. This First Nation designed and driven *Framework Agreement* with Canada has expanded from the original 14 First Nation signatories to 84 First Nation Signatories in 2013. The *Framework Agreement* applies only to those First Nations who choose to ratify it.

The *Framework Agreement* is not a treaty and does not affect existing treaty or other constitutional rights of the First nations. .

The *Framework Agreement* provides the option to govern and manage reserve lands outside the *Indian Act.* The option to regain control of reserve land through a land code can only be undertaken with the consent of the community. A land code replaces approximately 30 sections of the *Indian Act*.

TAKING CONTROL OF LAND GOVERNANCE

A First Nation signatory to the *Framework Agreement* develops its land governance system by creating its own Land Code, drafting a community ratification process and entering into an individual Agreement with Canada. The specific steps are set out in the *Framework Agreement*:

The Land Code: Drafted and approved by the community, will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Minister of Indian Affairs and Northern Development will no longer be involved in the management and decision making of a First Nation's reserve lands. The Land Code does not have to be approved by the Minister or AANDC.

The Land Code is drafted by each First Nation and provides for the following matters:

- Identifies the reserve lands to be governed by the First Nation under its Land Code,
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others,
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under the Indian Oil and Gas Act),
- Provides the procedures for making and publishing First Nation land laws,
- Provides conflict of interest rules,
- Provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage,
- Identifies a dispute resolution process,
- Sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes,
- Allows the delegation of certain land management responsibilities,
- Sets out the procedure for amending the Land Code,
- Deals with any other matter respecting the governance of First Nation reserve land and resources.

Individual Transfer Agreement: An Individual Agreement between each community and the Minister will be negotiated to deal with such matters as:

- The reserve lands to be managed by the First Nation,
- The specifics of the transfer of the administration of land from Canada to the First Nation,
- The transitional and operational funding to be provided by Canada to the First Nation for land governance.

Community Ratification Process: In order for the First Nation to assume control over its lands, the Land Code and the Individual Agreement must be ratified by the voting age members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

Federal Legislation: Canada agreed to ratify the *Framework Agreement* by enacting federal legislation that is consistent with the *Framework Agreement.* The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

Verification: An independent person selected jointly by the First Nation and Canada, called a Verifier, confirms that the community ratification process and Land Code are consistent with the *Framework Agreement.* The Verifier monitors the community ratification process to ensure that the rules are followed.

Recognition of Land Governance Authority: If the community ratifies their own Land Code and the Individual Agreement, control over First Nation lands and resources are no longer be subject to the *Indian Act*, but recognized to be under the governance authority of the First Nation.

TITLE TO FIRST NATIONS

Reserve lands under the *Indian Act* are held by Her Majesty and are set apart for the use and benefit of a First Nation. This will not change under the *Framework Agreement.* These lands remain a federal responsibility under section 91(24) of the *Constitution Act, 1867.* In addition, the First Nation's land will be protected against future surrender for sale.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The *Framework Agreement* provides First Nations with all the legal status and powers needed to govern and manage their lands and resources. While First Nations will not be able to sell their land, they will be able to lease or develop their lands and resources, subject to any limits imposed by their own community Land Code.

Law-Making Powers: A First Nation governing its lands under a Land Code will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation land. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the *Indian Act.* The First Nation's Council can also continue to make by-laws under section 81 of the *Indian Act.*

Land Management: The *Framework Agreement* provides the First Nation with all the powers of an owner in relation to its First Nation Land, except for control over title or the power to sell it. The First Nation's Council can manage land and resources, as well as revenues from the land and resources, in accordance with its Land Code.

Third Party Interests: Interests in First Nation land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

First Nation Expropriation: The First Nation will have the option to acquire lands for community purposes upon payment of fair compensation to those who interests are affected.

Accountability: A Land Code will make provision for a First Nation to report to its members and to be accountable for the governance of their lands, resources and revenues.

Marriage Breakdown: A First Nation will be able make rules on the rights of spouses to interests in First Nation land if their marriage breaks down. The community must, within 12 months of passage of its Land Code, develop and enact rules and procedures on this topic. The new rules and procedures will ensure the equality of women and men.

Registration of Interests: All documents pertaining to land interests of a reserve will be recorded in the First Nation Land Registry System (FNLRS).

The FNLRS is:

- Electronic
- Provides for Instant Registration
- Priority based
- Paperless
- Backed by Regulation (Unlike the *Indian Act* registry system)

The FNLRS system and regulations are landmark achievements. These regulations made it possible for reserve to have greater land certainty, mortgageability, title insurance and drastically reduced or eliminated land transaction costs

PROTECTION OF FIRST NATION LAND

The preserving of the quantity and quality of existing First Nations lands is a fundamental principle of the *Framework Agreement.* Some aspects of this principle are summarized below:

Taxation and Seizure under Legal Process: The current exemption of reserve lands, and personal property situated on-reserve, will continue under the relevant provisions of the *Indian Act.*

Environmental Protection: A First Nation with a land code in effect will be required to develop an environmental protection regime. A First Nation will have the power to make environmental assessment and protection laws and will harmonize these laws with federal and respective provincial environmental laws.

Voluntary Exchange of Lands: A First Nation may decide that it is advantageous to exchange some of its First Nation lands for other lands. Provision can be made in its Land Code for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the First Nation community.

No Provincial Expropriation: Under the *Framework Agreement* there can be no expropriation of First Nation land by a provincial or municipal government or agency.

Restricted Federal Expropriation: Canada's power to expropriate First Nation land is greatly restricted. That power can only be exercised with Cabinet approval and only when the expropriation is justified and necessary for a federal public purpose that serves

the national interest. Compensation must include provision for equivalent lands so that the land base of the First Nation is not diminished.

Enforcement: The First Nation will have full power to enforce its land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own Justice of the Peace or special prosecutor to try offences created under a Land Code or a First Nation law. First Nation laws may make provision for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will remain liable for and will indemnify a First Nation for losses suffered as a result of any act or omission by Canada, or its agents, that occurred before the Land Code comes into effect. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own processes for dealing with disputes in relations to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between the First Nations and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside the courts.

LANDS ADVISORY BOARD AND RESOURCE CENTRE

The First Nations party to the *Framework Agreement* established a Lands Advisory Board and Resource Centre to assist them in implementing their own land governance regimes, including developing model land codes, laws, documents, agreements and management systems.

FIRST NATIONS INVOLVED

The following is a list of the 40 First Nations who signed the *Framework Agreement* and who have enacted Land Codes pursuant to the *Framework Agreement.*

BC
1.Beecher Bay
2.Kitselas
3.Leq' a: mel
4.Lheidli T'enneh
5.Matsqui
6.Musqueam
7.Seabird Island
8.Shx'wha:y Village
9.Skawahlook
10.Sliammon
11.Snaw Naw As (Nanoose)
12.Songhees
13.Squiala
14.Sumas
15.Tsawout
16.Tsawwassen[(a)]

MB
1.Chemawawin
2.Opaskwayak
3.Swan Lake

17.Tsekani (Mcleod Lake)
18.Ts'kw'aylaxw (Pavilion)
19.T'sou-ke
20.Tsleil-Waututh
21.Tzeachten
22.Westbank[(b)]
23.We Wai Kai (Cape Mudge)
24.We Wai Kum (Campbell River)

SK
1.Kahkewistahaw
2.Kinistin
3.Muskeg Lake
4.Muskoday
5.Whitecap Dakota
6.Flying Dust

ON
1.Anishinaabeg of Naongashiing
2.Georgina Island
3.Henvey Inlet
4.Mississauga
5.Nipissing
6.Scugog Island
7.Whitefish Lake

(a) Now implementing treaty
(b) Now implementing full self-government

IMPORTANT QUESTIONS TO ANSWER REGARDING FIRST NATION/FEDERAL/PROVINCIAL ENVIRONMENTAL ASSESSMENT (EA) PROCESS WORKSHEET

No.	Question	Answer	Comment
1	Is the project physically present on both provincial Crown lands and a reserve?		(e.g. transmission line, road or pipeline that crosses reserve boundaries)
2	Is the project located on provincial Crown lands but may have potential impacts on the reserve?		(e.g., release of harmful substances from proposed mines, accidental spills from a pipeline into water or landfill leachate polluting groundwater)
3	Is the project located on provincial Crown lands or private lands and has the potential to have an effect on the FN's aboriginal rights, including title or treaty rights?		In questions 1, 2 & 3, the Provincial EA law, federal law and, if the project is physically located on reserve, a FN's law could apply to the project.
4	What is the name of the provincial environmental assessment law in your province?		If provincial EA law applies, that has environmental effect on First Nation Lands, then answer questions 4 to 10.
5	Is there a guidance document or procedural policy to assist you to understand how the provincial law is applied or implemented in practice? If so, what is the name of that policy?		
6	Does your province's EA law provide for what kind of "effects" or "environmental effects" must be considered in the EA process? (**Hint:		

IMPORTANT QUESTIONS TO ANSWER REGARDING FIRST NATION/FEDERAL/PROVINCIAL ENVIRONMENTAL ASSESSMENT (EA) PROCESS WORKSHEET

No.	Question	Answer	Comment
	Consider looking in the "Definitions" or "Interpretation" section of the law.)		
7	Does your province's EA law provide specific time frames within which milestones in the EA must occur?		
8	Does the EA law or policy in your province provide for specific involvement or consultation of FNs, aboriginal people or Indians in the EA process?		
9	Does your province have a Federal-Provincial Environmental Assessment Co-operation Agreement? What issues does it address?		
10	Are there examples of your FN's involvement in provincial EAs?		
11	Have you had projects on your reserve lands that required a federal EA under *CEAA*? If so, what kinds of projects were they?		If a federal EA under *CEAA 2012* is required it is helpful to ask yourself questions 11 to 21
12	What federal decision or activity triggered the EA under *CEAA*?		
13	Which federal government agencies were involved in the process?		
14	Was your Provincial EA agency involved?		
15	Was the EA a screening, comprehensive study,		

IMPORTANT QUESTIONS TO ANSWER REGARDING FIRST NATION/FEDERAL/PROVINCIAL ENVIRONMENTAL ASSESSMENT (EA) PROCESS WORKSHEET

No.	Question	Answer	Comment
	mediation or review panel type of EA?		
16	How was your First Nation involved in the process?		
17	How long did the process take?		
18	How did the EA process affect the quality of the project?		
19	Did the process effectively identify project impacts and mitigation?		
20	Were the First Nation's interests considered in the EA?		
21	How do you think the EA process could have been improved?		

(Insert name of FN) INDIVIDUAL AGREEMENT SUMMARY

(**Insert name of FN**) is one of a number of First Nations (FN) in Canada who is party to the *Framework Agreement on First Nation Land Management* (*Framework Agreement*). The federal government is also a party to the agreement and ratified it through the *First Nation Lands Management Act* on June 17, 1999.

The *Framework Agreement* and legislation enable these FNs to take control over the management and administration of their reserve lands from Aboriginal Affairs and Northern Development Canada (AANDC). In order to do this each FN must enter into an Individual Agreement with AANDC. This Individual Agreement sets out the specifics of the transfer of management of reserve lands from Canada to the (**Insert name of FN**).

The Individual Agreement for the (**Insert name of FN**) is summarized as follows:

Section 1 – Interpretation

This section defines the terms that are used in the Individual Agreement, including identifying the reserve lands that will be transferred.

Description of (Insert name of FN) Land

This section identifies the lands that are subject to this Individual Agreement:

> (**Insert Legal Land Descriptions here as recorded in the approved Legal Land Description Report**)

Section 2 – Information Provided by Canada

This section confirms that Canada has provided the (Insert name of FN) with all of the information in its possession regarding dispositions of reserve lands, environmental issues on reserve lands and any similar information. Land interests and dispositions are set out in “Annex C”.

The information collected during the Phase I Environmental Site Assessment (ESA) that was conducted in (insert date of Phase I ESA work) is summarized in “Annex D”. The environmental issues were identified in this report and an action plan for the Phase II Environmental Site Assessment is also included.

(**Insert the potential areas of environmental concerns as identified in the Phase I ESA report**)

This section also includes any other information in Canada's possession on monies payable, including information on any arrear of rent as the date of transfer as set out in "Annex E".

Section 3 – Transfer of Land Management

This section provides that Canada will transfer the management and control of reserve lands to the (**Insert name of FN**) on the effective date of the Individual Agreement. (**Insert name of FN**) will then begin managing and controlling its reserve lands and natural resources under its Land Code.

Section 4 – Transfer of Rights

This section transfers all of Canada's rights, obligations, powers and authorities in or under all previous interests or licenses affecting reserve lands to the (**Insert name of FN**).

Section 5 – Operational Funding

This section obligates Canada to provide the (**Insert name of FN**) with funding and resources for managing reserve lands. The amount of funding is set out in "Annex A". The amount of FN operational funding is based upon a variety of factors as outlined in the Memorandum of Understanding on Funding (October 19, 2011) that would give (**Insert name of FN**) (**Insert the operational funding amount**) for the first fiscal year.

Section 6 – Transfer of Revenues

This section obligates Canada to transfer to the (**Insert name of FN**) any monies that it holds in trust for the use and benefit of the (**Insert name of FN**) and any revenues it receives from reserve lands. Canada will transfer to the (**Insert name of FN**) the amount of (**Insert the amount to be transferred**) that is currently held in the (**Insert name of FN**) Revenue Account. The procedures for the transfer of funds are set out in "Annex B".

Section 7 – Notice to Other Persons

This section requires Canada to notify any non-members who hold an interest in reserve land that management of the reserve lands will be transferred to the (**Insert name of FN**) and that the (**Insert name of FN**) will collect the revenues from those interests in the future. This notice must be given within thirty days of the ratification of the Land Code.

Section 8 – Interim Environmental Assessment Process

This section provides that until the (**Insert name of FN**) establishes its own Environmental Assessment process, the *Canadian Environmental Assessment Act* will

apply. The procedure for Environmental Assessments during this period is set out in "Annex F".

Sections 9 and 10

These are standard formalities regarding this amendment of the Individual Agreement, giving formal notice and documentation.

Section 11 – Dispute Resolution

This section provides that the dispute resolution provisions of the *Framework Agreement* apply to any disputes between Canada and the (**Insert name of FN**) regarding the Individual Agreement.

Section 12 – Date of Coming into Force

This section provides that the Individual Agreement comes into force at the same time as the (**Insert name of FN**) Land Code.

ANNOTATED VERSION
IMPORTANT

DO NOT SEND OUT A DRAFT AGREEMENT WITH ANY FOOTNOTES OR ANNOTATIONS OR COMMENTS IN IT.

EXCEPT WHERE INDICATED IN THE FOOTNOTES, DO NOT CHANGE OR DELETE ANY WORDING OF ANY CLAUSES WITHOUT PRIOR CONSULTATION WITH JUSTICE CANADA.

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN

_____FIRST NATION

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

_____, 20__

TABLE OF CONTENTS

THIS AGREEMENT made in duplicate this ____ day of_____, 20__.

INDIVIDUAL AGREEMENT
ON
FIRST NATION LAND MANAGEMENT

BETWEEN:

_____ FIRST NATION, as represented by their Chief and Council (hereinafter called the "_____ First Nation" or the "First Nation")

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (hereinafter called "Canada") as represented by the Minister of Indian Affairs and Northern Development (hereinafter called "the Minister")

("the Parties")

WHEREAS the Framework Agreement on First Nation Land Management was signed by Canada and fourteen first nations in 1996 (the "Framework Agreement") and was ratified and brought into effect by the *First Nations Land Management Act*, S.C. 1999, c. 24 (the "Act");

AND WHEREAS the First Nation has been added as a signatory to the Framework Agreement by an adhesion signed by the First Nation and Canada on _____.[1]

AND WHEREAS the First Nation and Canada wish to provide for the assumption by the First Nation of responsibility for the administration of _____First Nation Land in accordance with the Framework Agreement and the Act;

AND WHEREAS clause 6.1 of the Framework Agreement and subsection 6(3) of the Act require the First Nation to enter into an individual agreement with the Minister for the purpose of providing for the specifics of the transfer of administration;

AND WHEREAS subsection 6(3) of the Act further requires that the individual agreement provide for the date and other terms of the transfer to the First Nation of Canada's rights and obligations as grantor of interests and licenses in or in relation

1. This whereas clause should be removed if the First Nation is one of the original fourteen First Nations.

to the land, the environmental assessment process that will apply to projects until the enactment of applicable First Nation laws, and any other relevant matter;

AND WHEREAS clause 6.1 of the Framework Agreement further requires that the individual agreement settle the actual level of operational funding to be provided to the First Nation;

NOW THEREFORE, in consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement,

"Act" means the *First Nations Land Management Act*, S.C. 1999, c.24, as amended;

"this Agreement" means this Individual Agreement on First Nation Land Management, including the Annexes attached hereto, and any documents incorporated by reference, all as amended from time to time;

"_____First Nation Land" means the land to which the Land Code will apply and more specifically means the Reserves known as _____and _____as described in the Legal Description Report(s) referred to in Annex "G" and includes all the interests in and resources of the land that are within the legislative authority of Parliament, but does not include the Excluded Land;[2]

"Excluded Land" means a portion of a reserve excluded from application of the Land Code pursuant to section 7 of the Act, the description of which is set out in Legal Description Report(s) referred to in Annex "G";[3]

"Fiscal Year" means Canada's fiscal year as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended;

"Framework Agreement" has the same meaning as in the Act;

"Funding Arrangement" means an agreement between Canada and the _____First Nation, or between Canada and a Tribal Council of

2. The reference to "Excluded Land" should only be used if the First Nations requests that land be excluded and if the Minister agrees to the request.

3. Do not include this definition if there is no Excluded Land.

which the First Nation is a member, for the purpose of providing funding, during the Fiscal Year(s) identified in that agreement, for the programs and services referred to in that agreement;[4]

"*Indian Act*" means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

"Land Code" means the _____First Nation Land Code, developed in accordance with clause 5 of the Framework Agreement and section 6 of the Act;

"Minister" means the Minister of Indian Affairs and Northern Development and his or her duly authorized representatives;

"Operational Funding" means the resources to be provided by Canada to the _____First Nation pursuant to clause 30.1 of the Framework Agreement to manage First Nation lands and make, administer and enforce its laws under a land code, and includes financial resources, as described in clause 27 of the Framework Agreement, to establish and maintain environmental assessment and environmental protection regimes;

"Operational Funding Formula" means the method approved by Canada for allocating to First Nations such Operational Funding as may have been appropriated by Parliament for that purpose.

1.2 Unless the context otherwise requires, words and expressions defined in the Framework Agreement, the Act or the *Indian Act* have the same meanings when used in this Agreement.

1.3 This Agreement is to be interpreted in a manner that is consistent with the Framework Agreement and the Act.

1.4 In the event of any inconsistency or conflict between the wording in any Article set out in the main body of this Agreement and the wording in any Annex attached hereto, the wording set out in the Article shall prevail.

2. INFORMATION PROVIDED BY CANADA

2.1 In accordance with clause 6.3 of the Framework Agreement, the Minister has provided the First Nation with the following information:

(a) a list, attached as Annex "C", and copies, or access to copies, of all the interests and licences granted by Canada in or in relation to the

4. The definition of "Funding Agreement" may need to be amended to adapt it to regional circumstances and/or changes in government funding policies.

_____First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register;

(b) a list, attached as Annex "D", and copies of all existing information in Canada's possession, respecting any actual or potential environmental problems with the _____First Nation Land; and

(c) a list, attached as Annex "E", and copies of any other information in Canada's possession that materially affects the interests and licences mentioned in clause 2.1(a).

2.2 The First Nation hereby acknowledges that it has received or been provided access to all the documents referred to in clause 2.1.

3. TRANSFER OF LAND ADMINISTRATION

3.1 The Parties acknowledge that, as of the date the Land Code comes into force, the First Nation shall have the power to manage the _____First Nation Land in accordance with section 18 of the Act and clause 12 of the Framework Agreement.

3.2 As provided in subsection 16(3) of the Act, Canada hereby transfers to the First Nation all of the rights and obligations of Canada as grantor in respect of the interests and licences in or in relation to _____First Nation Land that exist on the coming into force of the Land Code.

3.3 As of the date the Land Code comes into force, the First Nation shall be responsible for, among other responsibilities identified in this Agreement, the Framework Agreement and the Act, the following:

(a) the collection of all rents and other amounts owing, payable or accruing pursuant to any instrument granting an interest or a license in or in relation to _____First Nation Land; and

(b) the exercise of any power and authorities, and performance of any covenants, terms and conditions, under the instruments referred to in paragraph (a) which, but for the transfer, would have been Canada's responsibility.

3.4 The Parties acknowledge that the transfer of administration referred to in this Agreement is subject to section 39 of the Act, which provides for the continuation of the application of the *Indian Oil and Gas Act*.

4. ACCEPTANCE OF TRANSFER OF LAND ADMINISTRATION

4.1 The First Nation hereby accepts the transfer of land administration described in Article 3 of this Agreement, including, without limitation, the transfer of all the rights and obligations of Canada as grantor of the interests and licenses referred to in clause 3.2 of this Agreement.

4.2 As of the date the Land Code comes into force, and in accordance with the Framework Agreement and section 18 of the Act:

(a) the land management provisions of the *Indian Act*, as listed in clause 21 of the Framework Agreement and section 38 of the Act, cease to apply and Canada retains no powers and obligations in relation to _____First Nation Land under these provisions;

(b) the First Nation shall commence administering _____ First Nation Land pursuant to its Land Code.

5. OPERATIONAL FUNDING

5.1 In accordance with clause 30.1 of the Framework Agreement, and subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Canada shall provide Operational Funding to the _____ First Nation as indicated in Annex "A" in accordance with the Operational Funding Formula as amended from time to time.

5.2 The Operational Funding referred to in clauses 5.1 will be incorporated by the Parties into the _____First Nation's Funding Arrangement in effect in the year in which the payment is to be made. For greater certainty, payment of Operational Funding will be subject to the terms and conditions of the Funding Arrangement into which it is incorporated.

5.3 The _____First Nation acknowledges that all obligations of Canada to fund the _____First Nation, as required by Part V (Environment) and Part VI (Funding) of the Framework Agreement, have been addressed by the Operational Funding Formula.

6. TRANSFER OF REVENUES

6.1 Following the date that the Land Code comes into force, Canada shall transfer the revenue moneys referred to in section 19 of the Act and clause 12.8 of the Framework Agreement to the First Nation in accordance with the provisions set out in Annex "B".

6.2 Revenue moneys transferred pursuant to clause 6.1 shall be deposited in the First Nation's account at such financial institution as the First Nation may direct by notice in writing.

6.3 For greater certainty, the transfer of the revenue moneys does not release the First Nation from its commitment to reimburse Canada for any amount paid as a result of a default under any loan entered into by the First Nation or any of its members and guaranteed by Canada in accordance with the terms and conditions relating to ministerial loan guarantees.

6.4 For greater certainty, all Indian moneys deemed to be capital moneys pursuant to section 62 of the *Indian Act* are not to be transferred to the First Nation pursuant to this Agreement.

7. NOTICE TO THIRD PARTIES OF TRANSFER OF ADMINISTRATION

7.1 Immediately following approval of the Land Code and this Agreement by the members of the First Nation, the First Nation shall give written notice (the "Notice of Transfer of Administration"), by registered mail, to each holder of an interest or a licence in or in relation to _____First Nation Land that is listed or referred to in Annex "C".

7.2 The Notice of Transfer of Administration shall state that

(a) the administration of _____First Nation Land and Canada=s rights in _____First Nation Land, other than title, have been transferred to the First Nation effective the date the Land Code comes into force;

(b) the holder of the interest or license shall pay to the First Nation, all amounts owing, payable or due under the interest or licence on or after that date; and

(c) as of that date, the First Nation shall be responsible for the exercise of the powers and authorities, and the performance of any covenants, terms and conditions, under that instrument which, but for the transfer of administration, would have been Canada's responsibility.

7.3 The _____First Nation shall deliver to Canada a copy of every Notice of Transfer of Administration and a copy of every acknowledgement of receipt of the Notice of Transfer of Administration received by the First Nation within 30 days of the issuance or receipt of the same.

7.4 The Notice obligations set out in this Article do not apply in respect of a holder of an interest or license who is a member of the First Nation.

8. INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to projects on _____ First Nation land until the coming into force of First Nation laws enacted in relation to that subject.

9. AMENDMENTS

9.1 This Agreement may be amended by agreement of the Parties.

9.2 Any amendment to this Agreement shall be in writing and executed by the duly authorized representatives of the Parties.

10. NOTICES BETWEEN THE PARTIES

10.1 Any notice or other official communication under this Agreement between the Parties shall be in writing addressed to the Party for whom it is intended.

10.2 The notice referred to in clause 10.1 shall be effective using any one of the following methods and shall be deemed to have been given as at the date specified for each method:

(a) by personal delivery, on the date upon which notice is delivered;

(b) by registered mail or courier, the date upon which receipt of the notice is acknowledged by the other party; or

(c) by facsimile or electronic mail, the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed or deemed.

10.3 The addresses of the Parties for the purpose of any notice or other official communication are:

Canada:

Director, Lands and Trust Services
Department of Indian Affairs and Northern Development
_____Region

[insert address of regional office]

[insert fax number for regional office]

_____First Nation

[Insert title of recipient]

[insert address of First Nation]

[insert fax number for First Nation]

11. DISPUTE RESOLUTION

11.1 For greater certainty, any dispute arising from the implementation, application or administration of this Agreement may be resolved in accordance with the Dispute Resolution provisions set out in Part IX of the Framework Agreement.

12. DATE OF COMING INTO FORCE

12.1 The Parties acknowledge that, in order to be effective, the Land Code and this Agreement must be approved by the members of the First Nation in accordance with the Framework Agreement and the Act.

12.2 Articles 7, 9 and 10 of this Agreement shall come into force as of the day the First Nation and the Minister sign this Agreement.

12.3 The remainder of this Agreement shall come into full force and effect on the date the Land Code comes into force.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development

_____

Minister of Indian Affairs and Northern Development

[Name of First Nation]

_____

[Name of Chief]

_____

Councillor

_____

Councillor

_____

Councillor

ANNEX "A"

FUNDING PROVIDED BY CANADA[5]

(a) The Operational Funding Formula in effect for Fiscal Years 2012-2013, 2013-2014, 2014-2015, and 2015-2016 is described in the Memorandum of Understanding on Funding dated for reference the 19th day of October, 2011, between the Operational First Nation signatories to the Framework Agreement and Canada (the "MOU").

(b) The MOU sets out three tiers of funding levels. The _____ First Nation has been identified under a Tier _____ funding level. The amount for that Tier for Fiscal Year 2012-2013 is shown in the table below. That amount shall be prorated based on the number of months from the date that the Land Code comes into force to the end of the Fiscal Year, and the _____ First Nation shall be paid the prorated amount for that year.

(c) As part of the Operational Funding, Transitional and Environmental Funding will be provided for the year the Land Code comes into force and for the subsequent Fiscal Year, as shown in the Table below.

(d) The amount of Operational Funding to be paid during each of Fiscal Years 2013-2014, 2014-2015, and 2015-2016 are shown in the table below.

(e) Subject to appropriation by Parliament and the approval of the Treasury Board of Canada, Operational Funding for Fiscal Years after March 31, 2016 will be calculated and provided in accordance with the Operational Funding Formula as amended from time to time.

OPERATIONAL FUNDING	
2012-2013 Fiscal Year	$ [**Insert Tier funding level**] (This amount shall be prorated in accordance with para. (b) above.)
2012-2013 Fiscal Year	$75,000.00 - One Time Transitional and Environmental Funding per 1st Fiscal Year
2013-2014 Fiscal Year	$75,000.00 - One Time Transitional and Environmental Funding per 2nd

5. This Annex is referred to in clause 5 of the Individual Agreement. The authority for funding is Clause 30 of the *Framework Agreement*.

OPERATIONAL FUNDING	
	Fiscal Year
FISCAL years from April 1, 2013 to March 31, 2016	$[**insert Tier funding level**] per Fiscal Year
Subsequent FISCAL Years	Subject to paragraph (e) above, Operational Funding will be calculated and paid each Fiscal Year based on the Operational Funding Formula as amended from time to time.

ANNEX "B"

DETAILS FOR THE REVENUE MONEYS TRANSFER[6]

1. As of the __day of _____, _____, Canada is holding $_____of revenue moneys for the use and benefit of the First Nation or its members. This amount is included for information purposes only and is subject to change.

2. **Initial Transfer.** Within thirty (30) days of the Land Code coming into force, Canada shall transfer to the First Nation all revenue moneys collected, received or held by Canada for the use and benefit of the First Nation or its members.

3. **Subsequent Transfers.** Canada shall, on a semi-annual basis, transfer to the First Nation any interest that is paid into the First Nation's revenue moneys account thereafter pursuant to subsection 61(2) of the *Indian Act*. This includes any interest paid on capital moneys of the First Nation while these moneys, if any, are being held in Canada's Consolidated Revenue Fund. The first such subsequent transfer shall be made in the month of April or October, whichever month comes first after the month of the initial transfer.

6. The authority for this Annex is section 19 of the Act and clause 12.8 of the *Framework Agreement*. This Annex is referred to in clause 6 of the Individual Agreement. Clause 6.1 of the Individual Agreement and this Annex are designed for a situation where the First Nation has included all of its reserves in the land code. Clause 6.1 and this Annex do not deal with the situation where the First Nation has excluded a portion of the reserve or where the First Nation has more than one reserve and has excluded one or more of those reserves from the land code. Clause 6.1 and this Annex will need to be revised to deal with those special situations.

ANNEX "C"

LIST OF INTERESTS AND LICENCES GRANTED BY CANADA[7]

All interests and licenses granted by Canada in or in relation to the _____ First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register are listed in the attached reports.[8]

OR

All interests and licenses granted by Canada in or in relation to the _____ First Nation Land that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register are listed in reports that are available for review at the _____First Nation Land Management Office located at [**enter location of FN office**]:

$ Reserve General Abstract Reports for:
  $ Enter name and Number of reserve(s)

$ Lawful Possessors Reports for:
  $ Enter name and Number of reserve(s)

$ Lease or Permits Reports for:
  $ Enter name and Number of reserve(s)

The above reports identify all interests or licenses granted by Canada that are registered in the Indian Lands Registry System (ILRS).[9] The following is a list of interests granted by Canada that have not been registered or are pending registration in the ILRS. Copies of these interests shall be provided to the First Nation.[10]

[List interests]

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7. As per clause 6.3 of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, "a list of all the interests and licenses, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the *Indian Act*." This Annex is referred to in clauses 2 of the Individual Agreement.

8. Use this clause if you are attaching the ILRS reports to the IA.

10. Use this clause if you are not attaching the ILRS reports to the IA. Please note that not all reserves contain lawful possessors, leases, or permits. Therefore, these reports are limited to reserves where these interests are present.

10. Add this clause if there are interests that have not been registered in the ILRS. The words "granted by Canada" are included so that FNs do not assume that this refers to un-regularized interests.

ANNEX "D"

LIST OF ALL EXISTING INFORMATION IN CANADA'S POSSESSION RESPECTING ANY ACTUAL OR POTENTIAL ENVIRONMENTAL PROBLEMS WITH THE FIRST NATION LANDS[11]

11. As per clause 6.3 of the Framework Agreement, Canada must provide to the First Nation, as soon as practicable, "all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land." Accordingly, the title, date and author of any Environmental Site Assessment Report must be set out in this Annex, such as Phase I and Phase 2 reports. Any other information on actual or potential contamination contained in INAC's files should be provided to the First Nation, and listed in this Annex by title, date, and author. This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX "E"

LIST OF OTHER INFORMATION PROVIDED BY CANADA THAT MATERIALLY AFFECTS INTERESTS AND LICENSES[12]

12. As per clause 6.3(c) of the *Framework Agreement*, Canada must provide to the First Nation, as soon as practicable, "any other information in Canada's possession that materially affects the interests and licenses mentioned in clause 6.3(a)." Accordingly, INAC must identify information in Canada's possession regarding outstanding issues that materially affects the interests and licenses. This information could be compiled into an outstanding issues report (it will be compiled as part of the Community Approval Process Plan (CAPP)). INAC should consult with its Regional Legal Counsel prior to assigning responsibility for any issue to Canada (only if it is an issue that requires legal advice). This Annex is referred to in clause 2 of the Individual Agreement.

ANNEX "F"

INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

(1) In this Annex,

a. "CEAA 1992" means the *Canadian Environmental Assessment Act, S.C. 1992, c. 37* [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;

b. "CEAA 2012" means the *Canadian Environmental Assessment Act, 2012, S.C. 2012, c. 19, s. 52,* as amended from time to time.

(2) The Parties agree that the provisions on environmental assessment in this Annex are without prejudice to any subsequent environmental assessment process they may agree upon in accordance with Clause 25.1 of the Framework Agreement for incorporation in First Nation laws respecting environmental assessment. The provisions in this Annex apply until replaced by First Nation laws respecting environmental assessment.

(3) During the interim period prior to the enactment and coming into force of First Nations Laws with respect to environmental assessment of projects on _____ First Nation Land, the First Nation shall conduct environmental assessments of projects on _____First Nation Land in a manner that is consistent either with the requirements of CEAA 1992 and clause (4) below or with the requirements of CEAA 2012 (or any federal environmental assessment legislation that may replace CEAA 2012 in the future). All assessments shall be conducted at the expense of the First Nation or of the proponent of the project.

(4) The following provisions apply to an environmental assessment process conducted in a manner that is consistent with CEAA 1992:

a. When the First Nation is considering the approval, regulation, funding or undertaking of a project on _____First Nation Land that is not described in the exclusion list as defined in CEAA 1992, the Council of the First Nation shall ensure that an environmental assessment of the project is carried out, at the expense of the First Nation or the proponent, in accordance with a process that is consistent with that of CEAA 1992. Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.

b. The First Nation shall not approve, regulate, fund, or undertake the project unless the Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during

the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.

c. If the First Nation approves, regulates, funds, or undertakes the project, the First Nation shall ensure that all mitigation measures referred to in paragraph b. are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEAA 1992, is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

ANNEX "G"

LEGAL DESCRIPTION OF _____FIRST NATION LAND[13]

13. According to subsection 6(3) of the Act, the Individual Agreement must describe the land that is subject to the Land Code. This Annex is referred to in the definition of First Nation land in clause 1.1 of the Individual Agreement. The Legal Description of the First Nation Land is contained in the First Nations Land Management Legal Description Report prepared by Natural Resources Canada. The final Report can be set out in this Annex or it can be incorporated by reference to the date, title, and author.

LAND CODE SUMMARY

There are 9 Sections in this Land Code:

Part 1: Preliminary Matters

This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

Part 2: First Nations Legislation

This section outlines what law making power the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

Part 3: Community Consultation and Approvals

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a "meeting of members", and the ratification process and approval thresholds are for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

Part 4: Protection of Land

This section outlines some of the key protections the Land Code offers- and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

Part 5: Accountability

This section really has to do with how the Land Code is administered by First Nation including the rules for a "conflict of interest" and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties.

This section also applies to how financial management, audit and financial reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing

authorities, and the adoption of the fiscal year for operations and reporting. This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member- and the coordination and roles responsible for creating and making these documents public (i.e. auditor and council).

Part 6: Land Administration

This section starts off by establishing the Lands Committee - it defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how it is captured through First Nations Land Registry System (FNLRS) and a duplicate register if directed.

Part 7: Interests in Land

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section defines that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

Part 8: Dispute Resolution

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

Part 9: Other Matters

This section defines four (or more) items to address common issues such as:

1. Liability- the need for director and officers insurance for Lands Committee members,
2. Offences and enforcement- what are offences and what is the penalty,
3. Amendments to Land Code- specifically the process for amending this Land Code,
4. Commencement- defines when the actual start date will be.

Law Making Guide: *Framework Agreement* First Nations

First Nations Land Management Resource Centre Inc. | June 2010

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INTRODUCTION

The purpose of this workshop is to provide some guidance to First Nations in developing and drafting laws. The power to make laws is limited to governmental authorities and, in general, the overall approach to the development of laws is similar in all forms of democratic government whether First Nation, provincial, federal or municipal.

The workshop is divided in four parts: Part 1 begins with an outline of the legal system in Canada, followed by a discussion in Part 2 of the authority of governments to make laws with particular emphasis on First Nation government law-making authorities. Part 3 discusses the need for laws, alternatives to laws, the factors to be considered in developing laws and the limits to making a law. Finally, Part 4 of the workshop is concerned with some of the technical aspects of organizing and writing laws. Participants will also develop and draft an outline of a short law during the course of the workshop based on these materials.

What is a Law?

Legislation or statutes are laws made by governments. A law is a rule or rules of conduct which are approved and enforced by governments over a certain territory. Laws are administered by the government and the courts interpret and apply these laws. In addition, courts have developed the “common law”, which consist of rules of conduct based on precedents developed over many centuries by the courts. For example, the law of contracts and negligence are rooted in the common law. Similarly the legal nature of aboriginal and treaty rights is of common law origin.

PART 1: OUTLINE OF THE CANADIAN LEGAL SYSTEM

"If we desire respect for the law, we must first make the law respectable."
– Louis D. Brandeis

Canada is governed by a constitution which is composed of many documents and laws – the Royal Proclamation of 1763 for example. Generally, the structure and authority of government in Canada is found in the *Constitution Act, 1867.* The *Act* distributes the legislative powers of Canada between the Parliament of Canada and the legislatures of the provinces (Part VI, sections 91 to 95). The legislatures of the territories exercise legislative authority through delegation from the Parliament of Canada.

Canada's system of responsible parliamentary government is based on the rule of law. This means that laws must be made in conformity with the Constitution. The Crown retains very few regulatory powers that are not subject to the legislative or law-making process. For example, regulations governing the issuance of passports or medals and honours are still made under the royal prerogative.

Law-making authority in Canada is subject to a number of constraints. Firstly, Parliament and the provincial legislatures are limited by the constitutional distribution of powers under the *Constitution Act, 1867*. Section 91 of the *Act* identifies specific areas over which the federal government has exclusive legislative power (i.e. criminal law and procedure, trade and commerce, copyrights, and national defence etc.). It also provides for federal responsibility over any other areas not exclusively given to the provinces. Section 92 of the *Act* identifies specific areas over which the provincial governments in Canada have legislative power (i.e. property and civil rights, administration of justice, education, health, and welfare, etc.).

These governments are also constrained in their law-making powers by the existing Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and by certain other constitutional provisions. Particularly important to Aboriginal peoples is subsection 91(24) of the *Constitution Act, 1867*, which gave the federal government jurisdiction over "Indians, and Lands reserved for the Indians". The federal government used this authority in the early years of Confederation to conclude a series of numbered treaties in western Canada. This continued the British policy, set out in the Royal Proclamation of 1763, of making treaties with the Indians occupying the land which settlers wished to develop.

Lastly, governmental law making powers can be limited by the *Canadian Charter of Rights and Freedoms* (the Charter). The constitution has been amended several times, most recently by the *Constitution Act, 1982*. Section 25 of the Charter guarantees that its rights and freedoms shall "not be construed so as to abrogate or derogate from any

Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada".

The 1982 amendment also included section 35 which recognizes and affirms "existing Aboriginal and treaty rights". The Supreme Court of Canada has interpreted "existing" as meaning "existing in 1982".

A. A law must conform to the Charter & the Bill of Rights and must not be inconsistent with the Principles of Natural Justice

All legislation in Canada, whether federal, provincial or local, and whether statute, regulation or by-law, must conform to the *Canadian Charter of Rights and Freedoms (The Charter***)**. In addition, all federal legislation enacted after 1971 must conform to the *Canadian Bill Of Rights (*the *Bill of Rights*). Thus, First Nation Council laws must also conform to both the *Charter* and the *Bill of Rights.*

When considering laws, it is useful to be aware of the following rights created by the *Charter* and the *Bill of Rights*.

B. It is unlawful for a law to authorize discriminatory treatment of any individual, particularly on grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

The *Charter* and the *Bill of Rights* limit the authority of all legislatures, including First Nation Councils, to prescribe special treatment for particular groups unless there is a strong justification for doing so.

Section 15 of the *Charter* provides that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination. In particular, it states that there must not be discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

A law cannot, on the grounds set out in the *Charter*, or on "analogous" grounds that relate to the "personal characteristics" of an individual, impose a burden, obligation or disadvantage on one individual or group that is not imposed on others. Nor can it withhold from a particular group or individual access to opportunities, benefits or advantages that are available to others.

With respect to infringements of section 15 of the *Charter*, a First Nations Council may enact a law that imposes a limitation of rights so long as it meets certain requirements. A Council may draw distinctions among various situations or groups of people (virtually all laws do), but not where that would amount to "discrimination". Even where discrimination occurs, a Council may sometimes be able to justify it under section 1 of the *Charter* as a reasonable limitation prescribed by law in a free and democratic society. Any such limitation should be set out in the law as clearly as possible and the

Charter right should be limited only as much as is necessary to accomplish the objectives of the law.

For example, a Council may extend broader rights to band members than to visitors or other residents who are not band members to reside, hunt or fish on a reserve. If this were contested in a court, a prosecutor would submit that the different treatment is based on aboriginal or treaty rights; or, based on constitutional and legislative policy rooted firmly in Canadian history to set aside reserves for the benefit of Indian Bands and their members. As such, the prosecutor would argue, it does not "discriminate" or, alternatively, it is reasonably justified under section 1 of the *Charter*.

On the other hand, it is inappropriate in many other instances to draft laws which distinguish between band members and those who are not members. For example, laws made for the observance of law and order or for the prevention of disorderly conduct and nuisances should treat band members and all others on reserve in a similar manner.

The Bill of Rights

The *Bill of Rights* also recognizes the right of an individual to equality before the law and to the protection of the law without discrimination. This legislation provides a more limited equality protection than does the *Charter*; it identifies only the following grounds of prohibited discrimination: race, national origin, colour, religion and sex. Moreover, it applies only to federal legislation made after 1971 - the date the *Bill of Rights* was passed.

C. A law must respect a person's freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly, and association

These fundamental freedoms are guaranteed by section 2 of the *Charter* and section 1 of the *Bill of Rights*. Courts have clarified the nature of some of these freedoms, while others still require clarification.

As with the equality rights discussed above, these fundamental freedoms are subject to the reasonable limitations of section 1 of the *Charter*.

i. Religion, Thought and Belief

The essence of the concept of freedom of religion is the right for a person:

- to entertain chosen religious beliefs;
- to declare them openly; and

- to demonstrate religious belief by worship and practice or by teaching and dissemination.

If either the purpose or effect of a law is to limit this freedom unreasonably, a court could declare the law null and void.

Laws regulating the sale of wares and merchandise or other commercial activities or prohibiting games or amusements on Sundays could give rise to infringements of the freedom of religion of those who recognize another day as their day of worship.

ii. Expression

Freedom of expression extends to all forms of expression. It includes "political expression", in other words, the right to express one's opinion on public issues. It also includes "commercial expression", such as the right of vendors to advertise their wares.

Restricting access to public institutions, such as band government meetings or administrative hearings, or restricting access to certain gatherings on a reserve, are examples of regulatory action by a First Nation Council in which freedom of expression could become an issue if it were to inhibit comment on the band political process. Laws excluding from the reserve as trespassers, persons who represent a particular point of view on a political issue, or prohibiting as disorderly conduct the making of speeches on political issues, could potentially give rise to infringements of freedom of expression.

Laws controlling how hawkers and peddlers communicate information, or prohibiting certain forms of artistic expression in public games and amusements, may also give rise to infringements of freedom of expression.

Depending on the wording and impact of the provision, courts might consider such laws to unreasonably limit the freedom to communicate thoughts and opinions.

iii. Peaceful Assembly and Association

Freedom of peaceful assembly and freedom of association are related concepts. They permit individuals to join together in a collective purpose, whether it be attendance at a political meeting, or an agreement to belong to and to participate in a political organization or a business or social relationship. Subject to reasonable limits, groups of individuals are free to join together in the pursuit of objectives and activities that any individual may lawfully pursue alone.

First Nation Councils must take these freedoms into consideration when making laws for:

- the observance of law and order;
- preventing disorderly conduct;

- controlling and prohibiting games and public amusements; and
- regulating commercial activities.

Courts could require councils to justify as reasonable any restrictions in their laws that are placed on individuals joining together. Justifications may include public health or safety, public order or some other important public interest.

D. A law must respect people's rights to life, liberty and security of the person, and their rights to the enjoyment of property, and may only deprive people of these in accordance with the Principles of Fundamental Justice

Both section 7 of the *Charter* and section 1 of the *Bill of Rights* protect the right to life, liberty and security of the person. Only the *Bill of Rights* protects the right to enjoyment of property.

i. Life, Liberty and Security of the Person

The protection in section 7 of the *Charter* goes beyond the protection of liberty and security from physical restraint. It can extend to health or even economic interests, as long as the restriction involves a threat to physical or mental integrity.

For example, an affected individual could challenge a zoning or building restriction that has the effect of preventing individuals from adequately securing their own safety or that of their children. In this regard, one court has struck down the manner in which a municipal by-law regulated the height of fences. Similarly, a court might view a by-law that authorizes the use of a dangerous chemical to control noxious weeds as infringing upon a section 7 right.

ii. Property

Although the *Charter* does not protect property interests, section 1(a) of the *Bill of Rights* does. Therefore, it is suggested that a law giving authority to use, confiscate, detain or destroy private property in order to protect the band from a contagious or infectious disease should contain a provision requiring payment of adequate compensation to an affected person for depriving that person of the enjoyment of the property that he or she was lawfully using at the time.

iii. Natural Justice

Finally, laws cannot abolish the **procedural** protections that the law extends to ensure that any decisions depriving people of life, liberty or security of the person, or of property rights, are made in accordance with fundamental justice. The main rules of natural justice to be followed are:

- to act fairly;

- to act in good faith;
- to act without bias;
- to objectively review all facts and circumstances (to use sound judgment);
- to give all parties opportunities to adequately state their cases;
- right to receive notice;
- right to know case against the party; and
- right to be represented by counsel.

Normally, a law should only give a band official the power to refuse or revoke a commercial licence or destroy or damage someone's property (for example, in order to eradicate disease or noxious weeds) if the person affected is given a reasonable opportunity to object, either orally or in writing, before the decision is carried out.

This principle, sometimes referred to as the right to "fundamental justice", "natural justice", or "due process", also requires that the circumstances of a decision must not give rise to a "reasonable apprehension of bias", such as the appearance of conflict of interest. For example, a law should not authorize a person with a financial stake in the matter, or with a family tie to one of the parties, to decide a zoning application or appeal.

Courts will apply these principles even where a law is silent as to procedure. Nevertheless, First Nation Councils should strive as much as possible to make procedural safeguards explicit in their laws for the guidance of those subject to them as well as those who apply or enforce them.

E. A First Nation Council must respect people's rights to be secure against unreasonable search or seizure

When making laws, First Nation Councils must be cautious about matters such as authorizing searches of premises or vehicles, requiring the mandatory inspection or production of documents and authorizing the seizure or removal of any form of property or documentation. This is because section 8 of the Charter gives everyone "the right to be secure against unreasonable search or seizure."

Generally speaking, an entry onto the private property of an individual in order to conduct a search or seizure requires greater procedural protection than when merely demanding that a person produce business records. A warrant issued by a justice of the peace or judge is almost always required. Only in exceptional circumstances, such as for the urgent protection of health or public safety, would an intrusion into a private home be lawful without a warrant.

A First Nation Council law can, to some extent, regulate search or seizure as an aspect of the process of gathering evidence to be used in a prosecution under the law. Evidence gathering is a procedural matter to which the summary conviction provisions of the *Criminal Code* apply exclusively. Under those provisions, an enforcement officer requires a search warrant. There are a few exceptions to this rule, but before any by-law enforcement officer seizes goods or evidence they should check with the First Nation

legal advisor to determine the legality of their actions and to minimize their personal liability for wrongful seizure or detention.

F. A law must respect people's rights not to be arbitrarily detained or imprisoned

Section 9 of the *Charter* protects individuals from arbitrary detention and imprisonment. Detentions for specific reasons, for example, to check drivers' licences, driver sobriety or the mechanical fitness of a vehicle, are not arbitrary detentions as long as persons are not detained for questioning on unrelated matters.

While courts have decided that random checks of motor vehicles infringe upon section 9 rights, courts have also said that they are justified under section 1 of the *Charter* as reasonable measures to achieve safety on highways.

Importance of these legal principles

Respect for the preceding principles becomes particularly important if a law is challenged in court. A law that does not conform to these rules may be vulnerable to such a challenge and may be struck down. This being the case, First Nation Councils will want to keep in mind all of the principles discussed in this session when drafting laws, the subject of the next session.

PART 2: FIRST NATION LAW-MAKING AUTHORITY

"Common sense often makes good law."
– William O. Douglas

As previously mentioned, Section 91 of the Constitution Act identifies specific areas over which the federal government has exclusive legislative power. Under its constitutional authority in section 91(24) of the *Constitution Act, 1867*, the federal government enacted the first *Indian Act* in 1876. It has been revised a number of times since then.

A. Indian Act

Today, the *Indian Act* is the main legislation dealing with the federal government's responsibility to, and jurisdiction over, Indians and lands reserved for Indians. It contains many provisions which are specific to Indians, including:

- a scheme for the holding of land on reserves;
- a Band membership system;
- a succession law system (wills and estates);
- an electoral system for Band Councils;
- an outline of the authority of these councils, including the right to make by-laws in certain areas;
- provisions regarding schools for Indians; and
- many other matters.

Regulations

In addition, the Governor in Council (the federal Cabinet) may make regulations concerning a number of subjects. The primary source of authority for these regulations is found in section 73 of the *Indian Act*.

Examples of regulations you may be familiar with are the *Indian Reserve Traffic Regulations*, the *Indian Band Election Regulations*, the *Indian Reserve Waste Disposal Regulations*, the *Indian Band Council Procedure Regulations* and the *Indian Estates Regulations*.

B. Framework Agreement on First Nation Land Management

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. The *Framework Agreement* sets out the principal components of this new land management process, but it is not a treaty and does not affect treaty or other constitutional rights of the First Nations. The Agreement has been ratified and

implemented by Canada in the *First Nations Land Management Act*, assented to June 17, 1999.

The *Framework Agreement* provides that First Nations who are listed in the Schedule to the federal Act have the option to manage their reserve lands outside the *Indian Act*. The option to regain control of their land can only be taken with the consent of the community. Federal administration of its reserve lands cease under the *Indian Act* when each of these First Nations takes control of its lands and resources under the Agreement by community approval of a land code.

A First Nation signatory to the *Framework Agreement* exercises its land management option by creating its own Land Code, drafting a community ratification process and entering into a further Individual Transfer Agreement with Canada. The specific steps are set out in the *Framework Agreement* and include the following:

The Land Code

A Land Code, drafted by the community, is the basic land law of the First Nation and replaces the land management provisions of the *Indian Act*. The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands. The Land Code does not have to be approved by the Minister.

The Land Code is drafted by each First Nation and provides for following matters:

- identifies the reserve lands to be managed by the First Nation (called "First Nation land");
- sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others;
- provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law);
- provides the procedures for making and publishing First Nation land laws,
- provides conflict of interest rules;
- provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage;
- identifies a dispute resolution process;
- sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes;
- allows the delegation of land management responsibilities; and
- sets out the procedure for amending the Land Code.

<u>The Land Code is the main document that must be referred to before developing and drafting a First Nation land law, as it provides for the authority and procedure to make the law.</u>

Individual Transfer Agreement

An Individual Transfer Agreement between each community and the Minister will be negotiated to deal with such matters as:

- the reserve lands to be managed by the First Nation;
- the specifics of the transfer of the administration of land from Canada to the First Nation; and
- the operational funding to be provided by Canada to the First Nation for land management.

Community Ratification Process

In order for the First Nation to assume control over its lands, the Land Code and the Individual Transfer Agreement must be ratified by the adult members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Transfer Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

A Brief Note on How Provincial Laws May Apply to Reserve Lands

Recall, as well that Section 92 of the *Constitution Act, 1867* identifies specific areas over which the provincial governments in Canada have legislative power. The extent to which provincial laws apply on reserves is also the subject of much legal and judicial debate. The following attempts to summarize the present state of the law, but is not intended to be a complete or conclusive statement.

General Rule

Generally speaking, a provincial law will apply on reserve if the province had the constitutional authority to pass it and if the law is otherwise valid and applicable throughout the province. Examples of provincial constitutional authority are child welfare, labour relations, insurance, contracts, corporations, most aspects of family law and the regulation of professions and trades.

At one time, some judges thought that provincial laws did not apply on reserves. In 1974, the Supreme Court of Canada, in the *Cardinal v. A.G. Alberta* case, changed this view. It declared that, while a province may not legislate on a subject matter given **exclusively** to the federal government, provincial legislation enacted under a heading of section 92 of the *Constitution Act, 1867* does not become invalid just because it affects something which is subject to federal legislation.

In 1986, the Supreme Court of Canada, in the case *Dick v. R.*, stated that provincial laws of general application apply to Indians if they do not affect or touch on their "Indianness". Traffic and family laws are examples of provincial laws which do not touch on "Indianness" in their application.

Extension of the General Rule – Section 88

Even where a provincial law may single out Indians, affect their status or capacity as Indians, or directly affect matters that are "inherently Indian" or "closely related to the Indian way of life", that law may apply on reserve. *Dick v. R.* held that such provincial laws may apply because of section 88 of the *Indian Act*.

Section 88 provides that these provincial laws apply except to the extent that they are inconsistent with the *Indian Act* or any order, rule, regulation or Band by-law made under the authority of the Act and subject to the terms of any treaty and any other Act of Parliament.

Exceptions to the General Rule and its Extensions

(a) Indian Lands:

While *Dick v. R.* held that provincial laws may apply to **Indians on reserves**, it confirmed that they cannot apply to **"*lands* reserved for Indians"**. Thus, courts will not recognize a provincial law which directly affects Aboriginal title, or the use, disposition or manner of holding Indian lands.

Examples of provincial laws of general application that do not touch on Indianness, but that affect reserve lands are landlord and tenant laws, laws regarding the registration of lands and provisions of family laws relating to the possession or sale of the matrimonial home. These laws do not apply on reserve.

(b) S. 35(1) of the *Constitution Act, 1982*:

A provincial (or federal) law may, through the operation of section 35(1) of the *Constitution Act, 1982*, be of no force and effect to the extent that it interferes, without justification, with an existing Aboriginal or treaty right.

The scope of this constitutional protection is still being defined by the courts.

Overlap of Provincial and Federal Jurisdiction

Because many provincial laws apply on reserve, there will be situations where both federal and provincial laws might apply to the same set of circumstances. These laws are said to "co-exist". A good example of this type of overlap is in the regulation of highway traffic.

PART 3: DECIDING IF A LAW IS REQUIRED

"In law, nothing is certain but the expense."
– Samuel Butler

Making a new law is just one of several ways of achieving governmental policy objectives. Alternatives include agreements and guidelines, policies and directives or, more generally, programs for providing services, benefits, or information. In addition, a law may include many different kinds of provisions, ranging from simple prohibitions through a wide variety of regulatory requirements such as licensing or compliance monitoring. Law should be used only when it is the most appropriate. It is up to the First Nation to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

The decision to address a matter through a bill or regulation is made by the First Nation Council on the basis of information usually developed by First Nation officials. The information must be accurate, timely and complete. As a beginning point to determine if a law is required or if another option is available and appropriate, it is important to:

- analyze the matter and its alternative solutions;
- analyze the land code to determine the authorities and processes which permit the First nation to make the law;
- engage in consultation with those who have an interest in the matter, including other First Nation departments, programs or services that may be affected by the proposed solution;
- analyze the impact of the proposed solution; and
- analyze the resources, both human and financial, that the proposed solution would require, including those needed to implement or enforce it.

Related Matters should be in One Bill

When a legislative initiative is being considered, and where it is appropriate and consistent with legislative drafting principles, related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows legislators to make the most effective and efficient use of their time for discussion and study by the Council, a First Nation Land Committee and community members and other stakeholders.

Review and Expiration Clauses

Finally, caution should be taken when considering whether to include a "sunset" or expiration provision in a law, or a provision for mandatory review of the Law within a particular time or by a particular committee such as the Lands Committee or Board.

Alternatives to these provisions should be fully explored before proposing to include them in a bill.

Choose the Right Tools to Meet the Policy Objectives

Law should be used only when it is most appropriate. When a legislative proposal is made, it is up to the sponsor – be it Council, a Land Committee or Board, a member or stakeholder, to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

This discussion provides guidance on meeting this requirement by providing an analytical framework that covers:

- the range of instruments (techniques) available for accomplishing policy objectives;
- how to determine which ones are the most appropriate; and
- how to decide whether a First Nation land law is required.

First Nations are encouraged to adopt a comprehensive approach to developing proposals to accomplish policy objectives. They should focus on achieving a desired outcome, rather than assuming that a particular instrument, particularly a Law or regulation, will be effective. In this discussion some of the factors to consider in law development are reviewed.

Overview

- Instrument-choice should be considered early in the policy development process.
- First Nation governments cannot deal with every situation. Its involvement must be assessed in light of its responsibilities, its resources and the likely effectiveness of its involvement relative to the involvement of other governments or the private sector.
- The range of possible instruments available to accomplish policy objectives is very broad, allowing the First Nation to choose the type and degree of its intervention, if any.
- A law should only be chosen after assessing the full range of possible instruments.
- Instrument-choice has wide-ranging effects and is an important element of many governmental activities.
- Consultation on instrument-choice, both within and outside the First Nation, is essential to making good choices.

Assessment

If a situation may require the First Nation's attention, it should be assessed to determine what, if anything, should be done to address it. This involves determining the

objectives in addressing it and how these objectives can best be accomplished. This determination should be done as early as possible in the policy development process.

The following questions may help you do this:

- What is the situation?
- What are the objectives in addressing the situation and what particular results are desired?
- Is there a role for the First Nation or Council?
- What instruments are available to accomplish the desired results?
- What is involved in putting the instruments in place?
- What effect would the instruments have?
- How will their success be measured?
- Which (if any) instrument(s) should be chosen?

The assessment process does not necessarily follow the order of these questions. Answers reached at one point in the process may have to be re-evaluated in light of answers to other questions.

In order to obtain sound answers, it is also important to conduct appropriate consultations with those affected.

A. Examine the Situation

This step involves defining the key features of a situation that may require the First Nation Council's attention. A situation may present itself in the form of a problem, in which case you should try to get to its source and not define it in terms of its symptoms.

The situation may also be an opportunity for the First Nation Council to do something creative or positive, for example celebrating a First Nation event – Aboriginal Day or a treaty, as opposed to responding to a problem.

A description of the situation is often framed in terms of how people are behaving or how they may behave in future. Their behaviour may be active (doing something) or passive (not doing something). A behavioural approach involves identifying the following elements:

- the behaviour that is, or may be, creating or contributing to the situation;
- who is engaging in the behaviour;
- who is affected by the behaviour and what these effects are;
- whether some behaviour, or behaviour by some persons, is more serious than others;
- what external factors are influencing the behaviour;
- what behavioural changes are desired to address the situation.

B. What Are the Objectives and Desired Results?

This question is intended to help define the objectives as concretely as possible in terms of particular results to be achieved. Objectives and the desired results go hand in hand, but they are not quite the same.

For example, an objective might be to make a particular activity safer – build fences around swimming pools to protect children from drowning in backyard swimming pools, while the desired result might be a 30 percent reduction in the rate of drowning.

Another example is an objective of reducing graffiti on public buildings in the First Nation by the prohibition of the defacing of First Nation public buildings, here again the desired result might be 25 percent reduction in graffiti.

C. The Role of the First Nation

Consider whether the First Nation can or should do something. The *Constitution*, the *Framework Agreement* and the First Nation Land Code limit the authority of the Council through:

- the legislative powers of the First Nation
- limits on the exercise of legislative powers, for example the Canadian Charter of Rights and Freedoms;
- obligations relating to such things as the provision of services to all residents, not only members; or to all members whether resident on or off First Nation lands.

Practical considerations should be addressed as well. Governments have limited resources and they can't deal with every situation: perhaps others are better placed to achieve a desired outcome.

Finally, if the First Nation does become involved, what role should it play? Possible roles include taking the lead, acting in partnership with others or stimulating or facilitating action.

D. Instruments Available to Accomplish the Desired Result

This question looks at the full range of available policy instruments, which can be grouped into five categories:

- information;
- capacity building;
- economic instruments, including taxes, fees and public expenditure;
- rules; and
- organizational structure.

i. Information

Information can be a powerful tool. People act on the basis of the information available to them. By giving them specific information, it may be possible to influence their behaviour. Some examples are:

- consumer information about the quality or safety of products;
- occupational health and safety information;
- anti-drinking and driving advertising and education campaigns;
- "buy-Canadian" promotional campaigns;
- environmental awareness programs (e.g. littering; hazardous substances);
- information about how programs are operated or about administrative practices;
- symbolic gestures (e.g. an apology).

ii. Capacity Building

Capacity-building increases the ability of people or organizations to do things that advance policy objectives. It goes beyond providing information to include transferring to them the means for developing their ability. Some examples are:

- employment skills training programs;
- programs to support scientific research and public education about the results of the research;
- information gathering through consultation or monitoring; and
- working with industry or business to help them develop voluntary codes governing their practices.

iii. Economic Instruments

Many instruments have a mainly economic focus. They affect how people behave in the marketplace or in other economic transactions. These instruments include taxes, fees and First Nation expenditure, which are considered separately below. They also include the creation of exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold. Insurance requirements are another example of economic instruments because they can, for example, force businesses to assess and reduce risks and ensure that their products are priced to cover the costs of insurance or preventive measures.

a) Taxes and Fees

The basic purpose of taxes and fees is to raise revenue. However, they are also capable of influencing how people make choices about the activities to which the taxes or fees apply. In this sense, they can be powerful tools for accomplishing policy objectives. Examples include:

- taxes on income, property or sales;
- fees or charges for licences or services; and
- tax exemptions, reductions, credits or remissions.

b) First Nation Expenditure

The First Nation can act by transferring or spending money in a particular area in order to accomplish policy objectives involving those who receive the money. This makes it a potentially effective instrument for encouraging particular activities that support the policy objectives. Some examples of public expenditure are:

- monetary benefits, grants or subsidies;
- loans or loan guarantees;
- vouchers redeemable for goods or services;
- transfers to other governments or agencies for education or health programs.

iv. Rules

Rules, in the broadest sense, guide behaviour by telling people how things are to be done. However, there are many different types of rules. For example, they differ in terms of how they influence behaviour:

- laws, regulations or directives tend to apply to groups of people and have legal force in that they can be enforced by the courts;
- contracts or agreements also have legal force, but they generally apply only to those who are parties to them; and
- guidelines, voluntary codes or standards and self-imposed rules usually apply to groups of people, but they do not have legal force, relying instead on their persuasive or moral value.

Rules having legal force are generally cast in terms of requirements, prohibitions or rights. A combination of these elements can be seen in rules that create:

- rights that entitle people to do things on an equal footing, such as obtaining goods, services or employment, and corresponding requirements to provide these things to those entitled to them; and
- prohibitions against doing something without a licence that confers a right to do it, for example, exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold.

Rules may also be formulated in different levels of detail, for example:

- as precise requirements that tell people exactly what to do; or
- as performance standards that set objectives that people are responsible for meeting.

Incorporation by Reference

Finally, it is worth noting the drafting technique of incorporation by reference. Rules of one type (for example, Laws or regulations) can sometimes be drafted so that they incorporate rules of the same or another type (for example, other Laws or regulations as well as industry codes or standards) simply by referring to them, rather than restating them. This avoids duplication of the incorporated rules and can be a way of harmonizing the laws of several jurisdictions if they each incorporate the same set of rules.

v. Organizational Structure

Organizational structure is often critical in accomplishing policy objectives. It generally supports the use of other instruments by providing for their administration. Examples of organizational instruments include:

- First Nation structures to deliver programs;
- framework agreements and partnerships with other governments or organizations;
- privatization or commercialization of First Nation government services (e.g. garbage collection); and
- First Nation investment in private enterprises.

vi. Combination and Timing of Instruments

These instruments are not necessarily stand-alone alternatives to one another. In fact, many of them are mutually supportive or otherwise interrelated. For example, information enables organizations to work effectively and organizations are often needed to administer legal rules, such as Laws or regulations, which may, in turn, be needed to support the creation of organizations.

Another important dimension of the range of available instruments is timing. Some instruments are better used in the initial stages of policy implementation while others may only be needed later if circumstances warrant. For example, information campaigns often precede the imposition of legal rules and, if they are effective enough, they may avoid the need for such rules.

E. Putting the Instruments in Place

This question involves the legal, procedural and organizational implications of using each instrument as well as the process requirements for making them operational. It also involves considering in greater detail the role that the First Nation council may play, whether acting alone or as a partner with other levels of government or the private sector.

You should assess:

- whether the use of the instrument is within the general mandate or authority of the First Nation;
- whether some specific legal authority is needed, for example, authority to impose taxes or penal sanctions, and, if so,
    - whether it requires new Laws to be made,
    - whether there is legal authority for the First Nation to make the new laws

It is particularly important to consult legal advisers when considering this legal aspect of the question.

- what the short- and long-term operational requirements, both organizational and financial, of the instruments are, including:
    - organizations and personnel needed to administer the instruments, for example, officials needed to assess benefit claims or conduct inspections,
    - additional resources for court costs;

- who should be consulted before the instruments are put in place (other First Nation departments, other governments, stakeholders);
- what processes are required to put the instruments in place, including processes required for any new laws (e.g. do guides and forms for the process to register documents in the First Nation Law Register need to be developed?);
- what, if any, monitoring or enforcement measures will be needed, such as penalties, inspections and court action (this is closely connected to the next question of what effect the instruments would have).

F. What Effect Would the Law Have?

This question involves assessing how the Law (or other instrument) would work, including:

- whether the Law will bring about the desired results, including whether people will voluntarily do what the instruments encourage or require, or whether some are likely to try to avoid compliance or find loopholes;
- whether the Law will cause any unintended results or impose costs or additional constraints on those affected by them;
- what the scope and nature of any likely environmental effects will be, particularly any adverse environmental effects and how they can be reduced or eliminated;
- what effect the instruments may have on inter-governmental relations, particularly in light of the First Nations' obligations under provincial or federal agreements;
- how the general public will react to the Law and, in particular, whether it will be perceived as being enough (or too much) to deal with the situation.

When deciding whether to choose Laws, you should also keep in mind their strengths and weaknesses. They can often be used to overcome resistance in achieving the desired results because they are binding and enforceable in the courts. However, they may also give rise to confrontational, rights-based attitudes or stifle innovative approaches to accomplishing the policy objectives. It should not be assumed that a legal prohibition or requirement will, by itself, stop people from doing something or make them do it.

G. Measuring the Effectiveness of the Law or Other Instrument?

It is not enough to choose various instruments and use them. Clear and measurable objectives must also be established as well as a means for monitoring and assessing whether they are being achieved. This assessment should be ongoing and include looking at how other governments are addressing the same situation. This is necessary both for determining whether the chosen instruments should continue to be used as well as for providing a better basis on which to make instrument-choice decisions in future.

H. Is a Law the Only Choice?

The final step is to choose the instruments that would be most effective in achieving the policy objective. It is important to realize that a single Law is seldom enough. Usually a combination of instruments is required, often in stages with different combinations at each stage. They should be chosen through a comparative analysis of their costs and benefits, taking into account the answers to the preceding questions.

This is also a good time to consider again whether there is a role for the First Nation Council. It may be that none of the instruments should be chosen if:

- the situation does not justify the First Nation's attention, for example, because there is no problem or the situation is beyond the First Nation's jurisdiction or is not a priority for it;
- the situation will take care of itself or will be addressed by others;
- the First Nation does not have the resources to address the situation;
- the First Nation becoming involved in the situation would lead to unmanageable demands to become involved in similar situations.

Sources of First Nation Legislative Proposals

There are basically five sources of legislative policy:

- the members;
- the Chief and Council;
- First Nation administration or Land Committee;
- courts and administrative agencies; and

- federal legislation (e.g. membership and election codes; matrimonial real property).

I. Guidelines / Checklists for Policy Development of Law (or other Instrument)

These Guidelines or checklists are a set of analytical criteria for use in the assessment and development of policy to propose a law. While the focus of this discussion is on making a law, a similar analysis or approach can be used to develop other instrument such as guidelines, policies, programs etc. These guidelines were originally developed as part of a broader exercise designed to improve policy-making in the federal government and to improve the quality of policy discussions in Departments and Cabinet Committees. The Guidelines have been modified for use by First Nations.

POLICY BASICS TEST

- ✓ Has the problem been adequately identified and are the goals and objectives clearly defined?
- ✓ Are there horizontal considerations and interdependencies with other priorities or issues (e.g. environment, etc.)?
- ✓ Are they in member-focused terms?
- ✓ Does this initiative build on and fill gaps in existing policy and programs (federal, provincial)?
- ✓ Does the proposal replace or overlap any existing program?
- ✓ Will this initiative be sustainable (social, economic, environmental) in the longer term?
- ✓ Have a range of options for the achievement of goals/objectives been considered? The full range and choice of instruments (e.g. legislative, regulatory, expenditures)?
- ✓ Has a feedback mechanism been incorporated into policy and program design to allow for evaluation, fine-tuning, and updating?
- ✓ Is the policy based on sound science advice?

PUBLIC OR COMMUNITY INTEREST TEST

- ✓ How would the proposal meet the needs of community members and other stakeholders?
- ✓ How do the overall societal benefits compare to its costs? Have the full range of risks been assessed?
- ✓ Does the proposal respect the rights of community members and other stakeholders and take into account their diverse needs (e.g. non-member, off reserve members, etc.)?
- ✓ Have community members and other stakeholders been given an opportunity for meaningful input?

FIRST NATION INVOLVEMENT TEST

- ✓ What is the rationale for First Nation involvement in this area (e.g. constitutional, legal, scope of issue)?
- ✓ Have the particular First Nation interests been adequately identified?

QUESTION OF ACCOUNTABILITY TEST

- ✓ Has an adequate accountability framework been developed? (in particular for multi-stakeholder arrangements)
- ✓ Have mechanisms been established for ongoing monitoring, measuring, and reporting to members on outcomes and performance?
- ✓ Have eligibility criteria and First Nation administration commitments been made publicly available?

URGING PARTNERSHIPS

- ✓ Can this initiative benefit from joint planning and collaboration?
- ✓ Has it been designed in a way that complements existing programming and services provided by the First Nation or another level of government?
- ✓ Are the relative roles and contributions of partners clear? How will they be publicly recognized?
- ✓ Have opportunities for partnerships with communities, voluntary sector and private sector been considered?
- ✓ Have mechanisms been established to consult with other governments?

EFFICIENCY AND AFFORDABILITY TEST

- ✓ Will the proposed option be cost-effective?
- ✓ Does the proposal assess non-spending options?
- ✓ Does it consider reallocation options?
- ✓ Would a partnership based effort result in a more efficient or effective program or service?
- ✓ What are the longer term funding issues associated with this proposal - for the First Nation, and for its partners?
- ✓ Are there program integrity issues related to this initiative (e.g. non-discretionary/legal commitments, risks, strategic investments)?
- ✓ Has the initiative considered downstream litigation risks?

PART 4: DRAFTING LAW

"The best way to get a bad law repealed is to enforce it strictly."
– Abraham Lincoln

When drafting laws, First Nation Councils should be aware that laws enacted under the authority of the Framework Agreement on First Nation Land Management and the Land Code ratified by the First Nation will apply only upon the territory over which the Council has jurisdiction, that being the actual reserve or First Nation land territory.

First Nation Councils must also bear in mind the fact that laws are a type of legislation, and, as such can come under the scrutiny of the courts. Accordingly, it is highly recommended that Councils retain the services of a lawyer to be of substantial assistance in the law development process.

When drafting a law it is critical to be logical and organized. A good suggestion for a guideline is to write the law in as simple and straight-forward a manner as the subject area allows.

For organizational purposes the law should be arranged in such a manner that the subject area of the law is divided into major groupings (i.e. administrative setup, administrative procedures, offences and penalties, appeal procedures...), or into whatever groupings are required to be addressed in the law. Then, within each general grouping there is a breakdown of related information pertaining to that specific grouping. Each piece of information that is included should be described separately. What results is a system of parts, sections, subsections and other subdivisions similar to the organization of federal and provincial laws. This will ensure readability and facilitate interpretation. Any law that is vague or ambiguous could be held invalid by a court.

Whether the First Nation Council drafts the law itself or takes the matter to a lawyer, certain basic drafting requirements must be met. There is a structure to every law and each part is important for different reasons.

A law consists of the following parts:

- title and numbering;
- recital;
- enacting clause;
- definition section (optional but strongly suggested);
- main body of the law;
- land code law procedural requirements; and
- schedules and appendices (optional).

A. Title and Numbering

A law should have a title which sufficiently describes its purpose. If the title is lengthy, the law may designate a "short title" for common usage. Using a short title is optional but quite common, and is used for easier reference purposes - for written or oral description.

It is critical to accurately identify laws. Any logical, clear, consistent system to identify laws may be used, however, it is suggested that a consecutive numerical system be used when numbering laws. For example, the year of enactment can form part of the number, i.e. " XX First Nation Law No. 1996.15" would mean the fifteenth law enacted in 1996. For each new year, the numbers would start again at number 1. The identification system is to ensure that when the law is being cited or used by the courts, First Nation Council, or any affected person there will be no reference to, or confusion with anything other than that particular law.

B. Recitals

A recital is not necessary, but may be important because a recital allows the Council to describe the reasons why the law is required. The recital gives the context in which the law can be interpreted. Courts, when interpreting laws may use the recital section to understand the context of the law and this may assist the courts in determining the reasonableness of the provisions.

The recitals to the law are a brief statement of its purpose and reasons why the law is required, and a listing of the authorities in the Land Code upon which the law is based. [Re Caldwell and Galt (1899) 30 O.R. 378]

C. Enacting Clause

An enacting clause is a formality that states that the First Nation Council has enacted the law, and that the law is in fact a law and not simply a Band Council resolution.

D. Definition Section

There is a particular purpose to every law. As laws are a method of addressing your community's needs it is extremely important for the law to be clearly written and understandable, yet precise enough that the law does what you intend it to do, when interpreted by a court.

One of the methods that may be used to ensure that a law is interpreted in a fashion you want it to be interpreted is to use a definition section wherein you define the key words in the law. If this is done then the courts, if they review your law, will use the definition you have assigned to the word and not some other definition which may or may not reflect what you want the law to do.

There are different sources of definitions for key words or concepts;

1. Definitions should be used to define words in a law which might require interpretation in the context of the law. Many words and phrases are defined in the Interpretation Act, R.S.C. 1985, c. I-2, and this Act should be referred to when developing a law.
2. Words used in a law, if defined in the First Nation Land Management Act (FNLMA), have the meaning given to them in the FNLMA unless a contrary intention appears in the law (see: sections 3 and 16, Interpretation Act, R.S.C. 1985, c. I-21). Although it may be possible in some circumstances to define a word in a law more broadly than it is defined in the FNLMA, in most cases to do so could affect the legality of the law. It is especially important not to expand in a law the meaning of any word used in the FNLMA, if that word is defined in there. Although it is usually permissible to define a word in a law more narrowly than it is defined in the FNLMA, the legality of this may also be questioned in some instances.
3. If the words or phrases are not defined in the law, or in other legislation, the courts will look to the generally accepted or established meanings of the words or phrases (i.e. dictionary meaning).

Accordingly, as a matter of practice it is advisable not to define words and phrases differently than they are defined in the FNLMA, unless it is absolutely necessary. If such a situation occurs it is suggested that the First Nation Council seek legal advice on the question.

Once the word, or phrase, is defined then the same word or phrase should be used in the body of the law to ensure the proper interpretation. For example, if one term is defined in the definition section but another term is used in the body the courts may assign a definition to the used word that is different from the word defined in the law.

When you are defining words and phrases, there are some general rules of construction which may be of assistance;

The definition of a word may be introduced by the verb "means" if it is intended to restrict the meaning of the word to the definition that is given. If, however, the intention is to expand the normal meaning of the word to other meanings that the word might not ordinarily bear, or to give examples of the intended meaning, it should be introduced by the verb "includes". For example, "boat" means a motor boat, or "boat" includes a motor boat - the first example using "means" indicates that only a motor boat is considered when the term "boat" is used, whereas in the second example any type of boat (i.e. sail boat, row boat, canoe, sailboard and any other device used to transport persons by water) also includes motor boats.

Words to be defined should be listed in alphabetical order and may be numbered or lettered. If the law is enacted in two or more languages then the words or phrases

should not be numbered or lettered because the alphabetical order would be different between the different languages.

E. Main Body of Law

The main body of a law will include substantive rules of procedure or conduct as well as measures for administering and enforcing the law.

Any format that is clear and understandable is satisfactory, but it is generally accepted that administrative provisions precede the operative or substantive rules.

It is also generally understood that the section or part pertaining to offenses and penalties come towards the end of the law. Offenses and penalties should include the following;

- the law should include a general provision that a person who violates any provision of the law, or a specified provision of the law, commits an offence. A specific offence may be cited wherein a specific penalty for that section may be used, however any penalty must comply with those set out below; and
- the penalties for violation of a First Nation law cannot differ in nature from those set out in Section 22 of the FNLMA. The law may also limit the fines to less than $5,000.00.

F. Law Making Procedures

It is very important to adhere to the procedural requirements of laws pursuant to the Land Code because laws can be successfully challenged in broad general ways in one, or a combination of the following ways, which could result in the law being ruled invalid;

- factually; examples such as "I was not the person who committed the offence" or "the facts as alleged by the law enforcement officer are not correct, and the real facts do not disclose an offence", (losing a case on factual grounds does not mean the law is invalid)
- on substantive or jurisdictional grounds; examples such as "the subject area in the law is beyond the jurisdiction of the First Nation Council to enact under Clause 18 of the Framework Agreement on First Nation Land Management", or "the law infringes the Charter of Rights and Freedoms", and/or,
- procedural deficiencies; examples such as "not holding a special meeting of the band for purposes of considering the law under the Land Code, but enacting the law anyway".

It is essential to comply with the provisions of the Land Code regarding enactment.

A statement to the effect that a law was made by a Council or community at a duly convened meeting on a particular date must be included. As well, the signatures of the

members of the First Nation Council who voted in favour of the law should appear at the end of the law with a statement informing the reader what constitutes a quorum of the band and the number of members of the Council present at the meeting.

G. Schedules and Appendices

There may be attached to the law schedules and appendices that are referred to in the law. These attachments to the law would be used for required forms necessary for application of the law (i.e. application forms to be used when applying to the band, i.e. residency, licenses), or schedules outlining the categories pertaining to the law (i.e. different zones described, or qualifying lists established in zoning laws; traffic zone designations, traffic offence fines, signing...). Reference to the schedules or appendices must be included within the body of the law as being part of the law.

Power to Make Certain Laws

Laws are enacted pursuant to the First Nation's Land Code. The Land Code outlines the power of First Nations to make land laws. The Framework Agreement, section 18.1 provides that:

> The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

To be valid, the subject-matter of the enacted laws must fall within the scope of the areas indicated in the Land Code. If the enacted laws do not fall within the scope of the authority given by the section of the Code then a reviewing court will overturn the laws, or delete from the law the improper portions, as they would be in excess of jurisdiction given to the Bands under the Framework Agreement.

Enforcement of First Nation Laws

First Nation Councils enact laws to encourage or require members/residents/visitors of the community to conduct themselves in particular ways or to avoid certain types of prohibited conduct.

Often the mere existence of a law with a small penalty is enough of a deterrent to stop or prevent undesirable behavior or practices. An example of this is a garbage law where a warning to someone to clean up garbage usually achieves the desired result.

Many people obey laws because they represent the community's collective view of how one should conduct oneself. Others obey laws to avoid the penalties which follow

failures to comply. Nevertheless, some laws may require significant penalties and strict enforcement to bring about the desired conditions in a community.

As First Nations laws are primarily a band's concern, in order to be effective there has to be a penalty and a method of enforcement. It is the obligation of band councils to enforce their own laws. The Department of Indian Affairs does not take responsibility for doing so.

The discussion in this session mainly concerns the enforcement options available to First Nations and the procedures involved in enforcing laws.

Identifying Offenses and Setting Penalties in the Law

Defining what conduct constitutes offenses under the law and setting the maximum amount of penalties for them is a matter of policy for the Council to determine. Above, we discussed the legal principles affecting penalties and the factors a Council might consider in setting maximum penalties, we also discussed the drafting requirements related to penalties and enforcement.

The key points to keep in mind in this session are:

- the by-law must set maximum penalties within the maximums set in the Framework Agreement;
- the law cannot establish minimum penalties; and
- the judge determines the actual sentence, based on input from the prosecutor (who may also include band council or community views or wishes) and from the offender

The Main Methods of Enforcing Laws

There are two main methods of enforcing laws:

- verbal and written warnings or discussions are often sufficient to convince people to modify their behavior to conform to the law requirements; and
- formal charges bringing offenders before the provincial courts may be required in other situations

Some communities have also developed Alternative Justice Mechanisms. These are discussed at the end of this session.

Two Kinds of First Nation Laws

There are generally two kinds of laws:

- those that are **administrative** in nature, such as building code or a zoning law; and

- those that are **quasi-criminal** in nature (dealing with law and order), such as traffic and environmental infractions.

SUMMARY - CHECKLIST FOR PREPARING BILL-DRAFTING INSTRUCTIONS

Getting Started

- Main objectives of the proposal
- Time needed to prepare drafting instructions
- Public commitments

General Legal and Policy Matters

- Legal context
- Policy context
- Resources
- Legal instruments for accomplishing policy objectives

Legal Structure of the Proposal

- Combining matters in a single bill
- Types of legal instruments
- Provisions that should be in the Law
- Provisions that should be in regulations
- Incorporation by reference
- Administrative instruments
- Recipients of powers

Drafting and Organization of a Law

- Titles
- Preambles and purpose clauses
- General application provisions
- Application to the Crown
- Financial provisions
- Information provisions
- Monitoring compliance
- Sanctions for noncompliance
- Enforcement powers
- Appeals and review mechanisms
- Dispute resolution mechanisms
- Extraordinary provisions

Technical legislative matters

- Sunset and review provisions
- Repeals
- Consequential and conditional amendments
- Transitional provisions
- Coming into force

GETTING STARTED

MAIN OBJECTIVES OF THE PROPOSAL

- ✓ What are the main objectives of the proposal?

It is essential to clearly articulate the precise purpose of proposed legislation, so that decision makers and the drafters properly understand what the legislation is supposed to achieve.

For amending bills that are intended to accomplish a number of different purposes, the instructions should explain these purposes separately in relation to the provisions that are to be amended. They should also include a general instruction to make consequential amendments to other provisions.

TIME NEEDED TO PREPARE DRAFTING INSTRUCTIONS

- ✓ Is there enough time to prepare the drafting instructions?

Thinking through the detail of drafting instructions will raise policy issues that were not identified when ideas were expressed in general terms in the policy development stage. Time will be needed to address and resolve these issues. The First Nation must be prepared to spend the time necessary to produce a coherent set of provisions to implement the proposal. Unresolved issues haunt a legislative project until they are resolved and it is wiser and more efficient in the long run to resolve as much as possible before the actual drafting begins.

The time spent in thinking through drafting instructions is well worth it. Good drafting instructions will avoid:

- delays in drafting the bill because of unresolved policy questions;
- having to go back to Council or the community to clarify policy issues that were not adequately resolved in the original proposal;
- having to propose amendments once the draft law has been prepared because the policy was still in flux after the draft law was introduced;
- being left without the necessary legal authority after the Law is passed to draft the regulations required to complete the legislative scheme.

Before establishing the time frames for the proposed law make sure that the legislative drafter has been consulted. The time needed to prepare the draft may be much greater than the expected.

PUBLIC COMMITMENTS

- ✓ Has the Chief and Council made any public commitments, either generally or about the specific legislative proposal, that will affect its contents or timing? These public commitments could affect the timing of the Law or require it to be framed in a certain way

Stakeholders or other governments are sometimes consulted on the draft proposals. When the aim of consultations is a negotiated agreement on wording that is to be proposed in the legislation, drafters should be consulted before specific wording is agreed on

GENERAL LEGAL AND POLICY MATTERS

LEGAL CONTEXT

- ✓ What legal considerations affect the proposal?

This portion of the drafting instructions should be completed by the legal adviser. It involves an assessment of the law related to the proposal in order to ensure that the resulting legislation will operate effectively.

Some areas of particular concern are:

- Does the First Nation have constitutional authority to make the Law?
- Will it affect matters within provincial or federal jurisdiction?
- Is it consistent with the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights?
- Does the proposal distinguish between members and non-members; on-reserve members and off-reserve members?
- Does the proposal raise any gender or other equality issues?
- Is it consistent with the Framework Agreement, the land code and other First Nation Laws?
- Any conflicting legislation should be specifically identified and the conflict should not be resolved by a general "notwithstanding" provision.
- Does the proposal respond effectively to any court decisions or legal opinions that gave rise to the legislation or any of its elements?
- Are there any agreements which the First Nation has signed that relate to the proposal?
- Does the proposal rely on provincial private law (for example, contracts or property) to supplement it? (e.g. Quebec civil law or common law.

POLICY CONTEXT

- ✓ Do any First Nation policies affect the proposal?

RESOURCES

- ✓ Who will incur costs as a result of the new Law?

If the First Nation will incur costs as a result of the legislation, a strategy must be identified for managing their reaction or obtaining their support.

- ✓ Will the proposed law require additional First Nation staff and / or staff training; new facilities or equipment?

If there are new First Nation costs associated with implementing or complying with the proposed legislation, a source of funding will be needed before approval.

LEGAL INSTRUMENTS FOR ACCOMPLISHING POLICY OBJECTIVES

- ✓ How will the policy objectives of the proposal be accomplished?

There are many legal mechanisms available for implementing policy objectives. These include:

- the creation of public bodies and offices;
- the conferral of powers and duties on public officials;
- rules that regulate, prohibit, require or authorize particular activities;
- the creation of sanctions for non-compliance with the rules.

Some particular mechanisms that are often adopted include:

- licensing schemes directed toward controlling particular activities;
- monitoring and enforcement provisions.

As far as possible, the drafting instructions should provide a picture of how the legislation will actually work, describing the type of machinery envisaged and the necessary powers and duties, including how the legislation will be enforced.

LEGAL STRUCTURE OF THE PROPOSAL

COMBINING MATTERS IN A SINGLE BILL

- ✓ What should be included in a single bill?

Related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows the Council to make the most effective and efficient use of their time for debate and study. However, matters should only be combined if it is appropriate and consistent with legislative drafting principles. Titles to Laws are among the most important tools people use to find the law. If very different matters are combined in one Law, it becomes more difficult for people to find the law relating to the matters that concern them.

TYPES OF LEGAL INSTRUMENTS

- ✓ What types of legal instruments should be used?

There are many legal instruments and other related documents available to implement policy. They fall into three categories:

- Laws
- Regulations
- Administrative documents (for example, contracts, internal directives, bulletins, decision documents).

Both Laws and regulations are forms of law, with the same legal effect. Administrative documents do not necessarily have legal effect.

Additional differences among these categories involve the procedures used to make them. First Nation Land Codes provide the process for making Laws. There are no general legislative requirements for other subordinate documents, although they are sometimes subject to particular requirements such as those relating to natural justice.

The provisions of any Law must fit together in a coherent scheme with the administrative documents that it authorizes. This means that the authority to make administrative documents must be established by the Law, either expressly or impliedly.

PROVISIONS THAT SHOULD BE IN THE LAW

- ✓ What should be in the Law?

Generally speaking, the Law contains the fundamental policy or underlying principles of legislation that are unlikely to change. The following additional matters are usually dealt with in the Law:

- provisions that might substantially affect personal rights (search and seizure powers, penalties for serious offences, expropriation);
- provisions establishing the structure of public bodies or providing for appointments;
- controversial matters that should be addressed by the Council;
- amendments to Laws, including the definition of terms used in Laws.

PROVISIONS THAT SHOULD BE IN REGULATIONS

- ✓ What should be in regulations or administrative documents?

Regulations should deal with matters of an administrative (as opposed to legislative) nature that are subordinate to the main principles stated in the Law. As an alternative to regulations, consider delegating authority to Council to pass a resolution(s) to deal with:

- procedural matters, for example, how to apply for a licence;
- matters that are likely to need adjusting often, for example, prescribing interest rates, setting annual fishing quotas;
- technical matters involving scientific or other expertise;
- rules that can only be made after the department gains some experience in administering the new Law, for example, prescribing the time within which certain steps should be taken;
- fees to be paid for services or programs established in a Law.

OTHER MATTERS

The drafting instructions should specifically provide authority to do any of the following things and provide reasons for requesting this authority:

- substantially affect personal rights and liberties;
- determine important matters of policy or principle;
- amend or add to the enabling Law or other Laws;
- exclude the ordinary jurisdiction of the Courts;
- apply retroactively;
- sub-delegate decision-making authority from the First Nation Council;
- impose a charge on public revenue or a tax on the public;

- set the penalties for offences

INCORPORATION BY REFERENCE

✓ Should some matters be dealt with through documents or laws incorporated by reference?

Legislation does not have to spell out all the details of what it requires or provides. It can instead refer to other laws or documents and incorporate their contents without reproducing them. If this is to be done, consideration should be given to whether particular authorizing provisions are needed. Incorporation by reference is also subject to the law-making limits of the First Nation and as well as requirements relating to the accessibility and comprehension of incorporated documents. Legal advisers can provide guidance on these questions.

ADMINISTRATIVE INSTRUMENTS

✓ What should be dealt with through administrative instruments?

Many of the elements of a regulatory scheme should be dealt with in administrative instruments, such as permits, licenses, directives or contracts. These include:

- legal requirements that are to be imposed individually on a case-by-case basis;
- fees non-binding guidelines;
- internal directives on administrative matters.

RECIPIENTS OF POWERS

✓ Who should decision-making powers be given to?

- Chief and Council
- First Nation manager or program head
- Land Committee
- Other?

Judicial and quasi-judicial powers

- Judicial and quasi-judicial powers must be exercised with impartiality and the delegates who exercise them should have the qualifications and security of tenure to ensure their impartiality (dispute resolution rules).

Administrative powers

- Most administrative powers are given to Chief and Council who, in turn, have implied authority to authorize officials in the First Nation administration to exercise them.
- Law registries or other public registries can be given to specific officials – a Registrar
- Inspection and enforcement powers are usually given to classes of officials created to exercise these powers.

DRAFTING AND ORGANIZATION OF A LAW

TITLES

- ✓ What will be the title of the Law?

Each bill has a long title, which sets out the scope of the bill and gives a brief description of its purpose. The wording of this title should be left to the bill-drafting stage.

A bill to enact a new Law also has a short title, which is used to identify the Law when discussing it or referring to it in other legislation. A short title is also sometimes included in an amending Law that is likely to be referred to in other Laws. A short title should succinctly indicate the Law's subject matter. The following are examples of the long and short titles of an Law:

- An Law to provide for the regulation of traffic and vehicles on roads on First Nation lands;
- The Road Traffic Law.

Finalizing the short title should also be left to the bill-drafting stage. However, a working title is needed from an early stage and care should be taken to establish an appropriate title since it often becomes more difficult to change as the proposal moves forward.

Try to avoid words such as "First Nation", "Canadian," "National," "Federal" and "Government" because they make it harder to find the Law by its subject matter in a table of statutes.

PREAMBLES AND PURPOSE CLAUSES

- ✓ Should there be a preamble or purpose clause?

Preambles and purpose clauses should not be included in a Law without carefully thinking about what they would add to the Law and what they would contain. They should not be used to make political statements. They can have a significant impact on how the legislation is interpreted by the courts.

Preambles and purpose clauses perform different, but overlapping functions.

Preambles:

- often provide important background information needed for a clear understanding of the Law, or to explain matters that support its constitutionality;

- are placed at the front of the Law;
- should be drafted sparingly to avoid creating confusion about the meaning of the legislation.

Purpose clauses:

- indicate what the intended results of the legislation are;
- should highlight only the principal purposes;
- are included in the body of the legislation; and
- generally have a greater effect on the interpretation of legislation than preambles.

When a bill amends an existing Law, only the amendments themselves are added to the text of the Law when it is reprinted in a consolidated form. The preamble is not included. In order to ensure public awareness of, and access to, background information for an amending bill, a purpose clause may be considered as an alternative because it can be integrated into the consolidated legislation. Both preambles and purpose clauses must be carefully reviewed by legal advisors for appropriate language and content.

GENERAL APPLICATION PROVISIONS

- ✓ Should the application of the Law be confined or expanded in any way?

You should consider whether the Law should be applied to the First Nation itself, taking into account the following:

- binding the First Nation may entail additional legal liability for government activities;
- not binding the First Nation may render the legislation less effective if it governs an activity that the First Nation carries on to a significant degree;
- agents of the First Nation (for example, First Nation corporations) generally benefit from First Nation immunity, which may give them an advantage over private sector competitors.

An example is a building law. Does the First Nation have to comply with its own Building Law – obtain a permit, abide by building restrictions, zoning etc.?

FINANCIAL PROVISIONS

- ✓ Will there be provisions involving the collection or disposition of First Nation money?

A law may require that the First Nation pay from its own funds money to support a program or service. Once the money is allocated by Law, the First Nation has a legal obligation to spend that money and must amend the law to avoid non-compliance.

INFORMATION PROVISIONS

- ✓ Will the legislation restrict or require the disclosure of information?

The disclosure of information is affected by legal concepts of confidentiality and privilege. Provisions affecting the disclosure of information should be reviewed in light of these requirements and discussed with legal advisors.

The laws of other governments may also restrict the release or disclosure of personal or confidential information such as a Social Insurance Numbers.

SANCTIONS FOR NON-COMPLIANCE

- ✓ Will penalties or other sanctions be needed to ensure compliance with the legislation?

Most legislation is enforced by the imposition of sanctions for non-compliance. They range from penal sanctions, such as fines and imprisonment, to administrative sanctions, such as licence suspensions or disqualifications.

There are three basic methods of imposing sanctions:

- through the prosecution of offences in the courts;
- through offence ticketing schemes, such as the Contraventions Act;
- through the imposition of administrative monetary penalties or other administrative sanctions.

Provisions for the imposition of penal sanctions should reflect the principles set out in (sections 718 to 718.2 of) the Criminal Code. They should be reviewed to ensure that:

- they will be effective in obtaining compliance;
- there will be effective enforcement mechanisms, such as powers to conduct inspections or searches;
- the sanctions are appropriate for the seriousness of the noncompliant behaviour;
- the sanctions are variable enough to reflect the circumstances of the accused person in order to ensure that they receive equal treatment under the Law.

If administrative sanctions are to be imposed, a mechanism will be needed for their imposition. The creation of this mechanism raises many legal and policy choices to be considered, including choices about

- strict or absolute liability;
- the processes by which liability for and the amount of a sanction will be determined;

- the relationship of the administrative sanctions to criminal prosecution;
- the institutional structure of required impartial review.

It is essential that legal advisors be consulted in the development of sanctions and penalties to make certain the Law can be adequately enforced.

ENFORCEMENT POWERS

- ✓ Should the Law authorize searches, seizures and other action to support the prosecution of offences?

The Criminal Code provides a basic set of powers for the enforcement of legislation, including powers to make arrests, conduct searches and seize things. However, these powers may not be sufficient or they may have to be supplemented.

APPEALS AND REVIEW MECHANISMS

- ✓ Should there be procedures for appealing or reviewing decisions of administrative bodies created or authorized to make decisions under the Law?

Judicial Review

The Federal Court Act provides that the Federal Court may review the decisions of any "federal board, commission or tribunal." A First Nation decision can be reviewed as a result of this definition. This review concerns the legality of the decisions, as opposed to their merits. In most cases, applications for review are heard by the Trial Division of the Court. However, section 28 of that Act specifies bodies whose decisions are reviewed by the Court of Appeal.

Appeals

Appeals generally concern the merits as well as the legality of decisions. A right of appeal (or judicial review) exists only if it is granted expressly by the Act. Appeals may be taken to the courts (usually the Federal Court) or to an administrative tribunal created by the Act. A decision is not generally subject to judicial review if it is subject to appeal.

Review

It may also be appropriate to create other review mechanisms (in addition to judicial review and appeal). A decision-making body may be authorized to review its own decisions. Another body may be created to review the decision or an existing body (for example, the Chief and Council) may be authorized to review them.

DISPUTE RESOLUTION MECHANISMS

- ✓ Should there be mechanisms for the resolution of disputes arising under the legislation?

Consideration should be given to including provisions for the resolution of disputes instead of relying on the courts, whose procedures are usually costly and involved. Some examples of dispute resolution mechanisms are negotiation, mediation and neutral evaluation.

Alternative Dispute Resolution is provided for under the Framework Agreement.

EXTRAORDINARY PROVISIONS

- ✓ Does the proposal include any extraordinary provisions requiring specific Council attention and consideration?

Certain types of provisions should be specifically identified because they may be controversial. These sorts of provisions involve:

- the retroactive application of legislation;
- broad powers to grant exemptions from the legislation;
- power to sub delegate regulation-making powers;
- excluding the jurisdiction of the courts;
- expropriation of property;
- emergency powers;
- substantial restrictions on fundamental rights or freedoms; and
- regulation-making powers dealing with matters that are usually provided for in Laws

These matters are technical in nature and require that legal counsel provide opinions on the use of any of these matters having regard to the object of the proposed Law and compliance with laws of general application. For example, criminal legislation cannot be made retroactive.

TECHNICAL LEGISLATIVE MATTERS

SUNSET AND REVIEW PROVISIONS

- ✓ Should provisions be included for the expiry or review of the Law?

Caution should be taken when considering whether to include a "sunset" or expiration provision in a bill, since these provisions may result in a gap of legal authority if the new legislative regime cannot be brought into force in time. Similarly caution should be taken when considering inclusion of a provision for mandatory review of the Law within a particular time or by a particular committee given that this limits flexibility. Alternatives to these provisions should be fully explored before proposing to include them.

REPEAL

- ✓ Are there any Laws or regulations that have to be repealed as a result of the legislation?

If a new Law is proposed to replace an existing Law, the existing Law will have to be repealed. It may also be necessary to repeal particular provisions of related Laws as well as regulations.

CONSEQUENTIAL AND COORDINATING AMENDMENTS

- ✓ Are there any Laws or regulations that will have to be amended as the result of the legislation?

New legislation often affects provisions in other Laws. One of the most common examples of this occurs when the name of an Law is changed. References to the Law in other legislation must be amended to reflect the change.

You should also determine whether any other legislation amends the same provisions. If so, amendments will be needed to co-ordinate the amendments so that one does not undo the other.

TRANSITIONAL PROVISIONS

- ✓ Will any transitional provisions be needed to deal with matters arising before the Law comes into force?

Whenever changes are made to the law, consideration should be given to matters that arose under the previous law, but which are still ongoing after the new law comes into force. These matters include:

- regulations made under the previous law;
- rights or benefits granted under the previous law;
- appointments to offices;
- offences committed under the previous law; and
- judicial or administrative proceedings involving the application of the previous law.

COMING INTO FORCE

- ✓ When should the Law come into force?

When a Law comes into force, it begins to operate as law. A First Nation Law must include a provision concerning when it comes into force. There are a number of options. It may come into force:

- on a specified day;
- on a day dependent on a specific event (for example, the coming-into-force of another Law).

A Law may also provide that different provisions may come into force on different days.

CONCLUSION

Over the course of this workshop we have covered numerous law-making principles and practices. Through our brief dissemination of the Canadian Legal System, First Nation Law-Making Authorities, and the new abilities granted to First Nations under the *Framework Agreement on First Nation Land Management*, as well as our discussions on the need for, and drafting of, laws on reserve land, it is our hope that we have helped in that first step towards the creation of your individual laws.

Please note that at the end of this Law Making Guide, we have provided a summary of important points that you may want to consider when contemplating the creation of a new law. This summary includes a list of general legal and policy concerns, the process of drafting and organizing a proposed law, and technical points to consider prior to a law coming in to force. It reiterates that a law is not always the only instrument at your disposal. There are other legal instruments that you may find work better in varying situations, with the same legal effect.

It is important to remember that you are not alone when going through the process of developing new laws. The First Nations Land Management Resource Centre is available to help if you have any questions or concerns. We are here to assist you. Please feel free to contact us at:

First Nations Land Management Resource Centre

Address:
350 Terry Fox Drive, Suite 106
Kanata, Ontario
K2K 2W5

Telephone: (613) 591-6649
Facsimile: (613) 591-8373
E-mail: webadmin@labrc.com

You may also contact your workshop administrator, Chris Angeconeb, directly at:

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E-mail: chris.angeconeb@labrc.com

NOTES


FRAMEWORK AGREEMENT
OPERATIONAL PHASE
EXERCISING GOVERNANCE OVER LANDS & RESOURCES
EFFECTIVE DATE
CODE IS IN FORCE
Revisit readiness plan?
Develop one?
Do a needs assessment?
SET UP LAND OFFICE
- ADMIN PROCEDURES
- INSTRUMENTS
- SYSTEMS
- FINANCIAL ADMIN.
Concerned with:
INDIVIDUAL AGREEMENT
FRAMEWORK AGREEMENT
- Development
- Management
- Protection
- Conservation
- Use
- other land matters
DEVELOP & PASS MATRIMONIAL REAL PROPERTY & ENVIRONMENTAL MGMT. LAW
Concerned with:
LAW ADMIN
LAW MAKING
ENFORCEMENT
ARRANGEMENTS
IMPLEMENT LANDS GOVERNANCE AUTHORITY
- LANDS COMMITTEE?
- OTHER?
ATTENTION
MATRIMONIAL LAW MUST BE PASSED BY year 1
CREATE
INPUT
LAND USE PLAN
LAND
COMMUNITY
3RD PARTY
GOVERNANCE
OFFICE
CONSULTANT?
AUTHORITY
IMPLEMENT
LAND USE PLAN
-AS PER LAND CODE
- Develop zoning laws
- Subdivision control & land development
- Interests & licences
- Environmental assessment & protection
- Provision of local services: equitable user charges
- Resolution outside courts
- Enforcement
NOTE: CANADA HAS YET TO PROVIDE resources
BETTER QUALITY OF LIFE
CONTROL
SELF SUFFICIENCY
REBUILDING OUR GOVTS
HOPE
CONSTANT INTERACTION BETWEEN LAND OFFICE & GOVERNANCE AUTHORITY
WE'RE GOVERNING OUR LANDS & RESOURCES!!!
DEVELOPING AND IMPLEMENTING A land code
DEVELOPMENTAL PHASE
VOTE
YES
NO
EFFECTIVE DATE
OPERATIONAL PHASE
TRANSITION
LAND CODE roles & responsibilities
NOTE: EACH BAND HAS ITS OWN GOVERNANCE STRUCTURE BASED ON LAND CODE & TRADITIONS
COMMUNITY
INPUT & APPROVAL
• BE INFORMED!
• PARTICIPATE!!
• PROVIDE DIRECTION
LINK COMMUNITY WITH CHIEF & COUNCIL
LANDS GOVERNANCE AUTHORITY
• ADVISE COUNCIL & STAFF
• MEET REGULARLY TO DISCUSS & RECOMMEND
• ASSIST WITH DEVELOPMENT OF LAND ADMIN. & COMMUNICATION OF LAND ISSUES
• OVERSEE COMMUNITY APPEALS
INTERACTION
MANAGE & COORDINATE
LAND OFFICE
• RELATIONSHIP BUILDING
- 1ST POINT OF CONTACT
- 3RD PARTY RELATIONSHIPS
• COMMUNICATIONS
• NEGOTIATION
• PROJECT MGMT.
• FINANCIAL MGMT.
• REPORTING
• PLANNING
• ENVIRONMENT
• INFO MGMT
• TRANSACTION MGMT
• MONITORING & COMPLIANCE
CHIEF & COUNCIL
LAW ENACTING AUTHORITY
• ENSURE DUE DILIGENCE
• PROVIDE POLITICAL SUPPORT & DIRECTION
• GOV'T TO GOV'T RELATIONSHIP