

# Laws & Regulations Affecting Water Management & Planning

Course Workbook



 **FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

 **Training, Mentorship &  
Professional Development**

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## Laws and Regulations Affecting Water Management & Planning

Course link: [https://labrc.com/public/courselet/Laws-and-Regulations-Affecting-Water-Management-and-Planning/presentation\\_html5.html](https://labrc.com/public/courselet/Laws-and-Regulations-Affecting-Water-Management-and-Planning/presentation_html5.html)

Welcome to Laws and Regulations Affecting Water Management and Planning courselet.

This courselet's focus is on:

- Applicable Laws and regulations that affect water management and planning
- Federal Agencies and their legislation
- Provincial legislation

The material provided in this courselet is current to the date of the courselet. Thank you to the resource management experts and Lands Advisory Board Resource Centre (LABRC), for aiding in the development of this courselet.

### Overview

Water resource management laws and regulations can be grouped into the following main categories:

- Conservation of water supplies
- Protection of water supplies against pollution and degradation
- Storage of water
- Habitat protection and rehabilitation

For example, a government creates a water protection law that protects its water supply against degradation and pollution as it is a high priority for its community. This law could include streamside corridor protection and require permits and or environmental impact assessments. These protection laws and regulations can prevent water contamination from pollutants (e.g. agricultural waste).

### Big Picture

Water is an important natural resource that benefits from management and protection. A First Nation (FN) has an opportunity to effectively manage water resources to protect the health of the environment for current and future generations and to ensure adequate quantities of high-quality water for use on reserves and for functioning ecosystems.

A FN doing resource management and planning of its First Nation will Lands under a [Land Code](#) (LC) have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation Land.

Some of the main objectives of laws and regulations for water resources are to protect, control, maintain, prevent discharge and ensure sufficient water resources are available to humans, vegetation and wildlife.

## **Framework Agreement and Land Code**

### Framework Agreement

The Framework Agreement on First Nation Land Management ([Framework Agreement](#)) provides signatory FNs with the option of governing their reserve lands, resources and environment pursuant to their own laws rather than be governed by the *Indian Act*. That option is exercised when a FN enacts its own LC and ratifies its [Individual Agreement](#) with Canada.

### Land Code

A FN under a LC will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation Land.

Therefore, a FN may have relevant provisions in its LC, or a provision authorizing Chief and Council to make laws or regulations about resource use or extraction. A FN, under its enacted LC, can also adopt or adapt laws and regulations to manage and protect natural resources on its First Nation Land.

### Lands Governance Director

A Lands Governance Director (LGD) should become aware of what federal and provincial laws and regulations for water are out there. For example, a FN can adopt conservation laws and regulations that restrict water use during certain times of the year or specify that low flow devices must be installed in all new construction.

## **Laws and Regulations Affecting Water Management and Planning**

### Introduction

The federal government, provincial authorities and local governments provide a variety of laws and regulations that govern water resources to ensure that water is protected and is managed properly. The federal government has jurisdiction related to such things as fisheries, navigation, federal lands etc. For the most part water lies solely within a province's boundaries.

### On Reserve

Although regulation of water resources in Canada is generally complex and uncertain, it is certain that water resources on a FNs reserve will in many circumstances be a component of the land base which a FN can govern under its LC.

Picture: Dokis FN, Picture

Source: [INAC](#)



## Off Reserve

The management of off-reserve water resources, for example the upstream and downstream portions of a river or the ocean, requires that a FN work with the relevant local, provincial, and federal governments or environmental advocacy groups.

## **Applicable Laws**

### Introduction

Federal water legislation applies to reserve lands. Provincial water legislation applies to land within the provinces jurisdiction. A FN will need to determine what applies to them on reserve and what affects them indirectly (off reserve).

### Federal Jurisdiction

The [Constitution Act 1867](#) established a federation based on the sharing Of powers between the federal and provincial governments. Under Section 91 (24) the federal government has exclusive responsibility for Indians and Lands Reserved for Indians. See the [First Nation Jurisdiction Under the Framework Agreement Map and Narrative](#) for more information.

### Provincial Jurisdiction

For the most part, waters that lie solely within a province's boundaries are under the constitutional authority of that province. However, provincial jurisdiction over water does not generally apply to water bodies on federal lands, such as reserves.

### Streams and Lakes

The portion of streams and lakes that are actually part of reserve lands are considered federal jurisdiction and therefore not regulated by provincial laws but in many cases, water bodies were excluded when designating reserve boundaries.

### Land Description Report

It is very important to understand that a LGD must review the FN's survey plans and land description prepared as part of the developmental phase and will be found in a FN's [Land Description Report](#) (LDR). The LDR identifies whether or not specific water bodies are included or excluded from the reserve. It may be necessary to seek legal counsel to determine the ownership status and responsibility for specific bodies of water. A LGD should be familiar on this level for all Of the FN's reserves. The LDR identifies the extent of the Reserve (to be managed under a LC), and where there is question as to the Status of certain lands, it may be necessary to exclude them from the LC until ownership is confirmed. In some instances, the ownership issue may need to be determined by the Courts. A LGD should be familiar with the lands that form part of the LC and those that do not, for all of the FN's reserves.

### Water Bodies Changing Course

To further complicate the issue, rivers and streams Can change course over time, either in response to human induced changes, such as damming, or through natural processes. Changes to stream locations may result in streams moving into reserve boundaries and becoming federal jurisdiction or moving off reserve land and becoming subject to provincial jurisdiction.

Picture Source: [Vancouver Sun](#)



### Erosion and Accretion

As well, erosion or deposition (“accretion”) of soil can change natural boundaries over time and either reduce or add to reserve lands. As always, it is necessary to know precisely how the boundaries of a particular reserve are described, but as a general rule, eroded lands are lost to the FN and accreted lands are gained. Most boundaries are described in reference to the high-water mark, in other words, the edge of the normal banks of the water body. If the land is eroded, the high-water mark moves back to a point of stable land and the reserve boundary retreats accordingly. However, if new land is added through accretion, the high-water mark moves forward and the new land comes within the land owner's jurisdiction. Different considerations would apply if the reserve boundary included subsurface land, in which case erosion or accretion would be irrelevant and the FN would refer only to the applicable survey point. However, those circumstances would be exceedingly rare.

### Legal Advice

The LGD should seek legal advice about legislation that applies to specific reserve lands and how legislation that applies to adjacent areas may affect a FN's water management laws, plans, and policies. Activities that affect the quality and quantity of water off-reserve are generally under provincial jurisdiction.

## **Federal Agencies and Legislation**

In regard to water governance in Canada, the federal government has jurisdiction related to fisheries, navigation, federal lands, and international relations, including responsibilities related to the management of boundary waters shared with the United States.

To fully understand the federal government's role in water management in Canada, it is important to first understand the interests and mandates of the departments involved in program delivery and the relevant water laws for their Department. We will take a look at:

- [Environment and Climate Change Canada](#)
- [Fisheries and Oceans Canada](#)
- [Transport Canada](#)
- Other Federal Agencies

### **Environment and Climate Change Canada**

#### Environment and Climate Change Canada

Environment and Climate Change Canada (ECCC) is the lead federal agency responsible for fresh water (i.e., lakes, rivers, streams, but not the ocean) within federal jurisdiction. ECCC works closely with other federal departments to develop a more strategic approach to addressing nationally significant freshwater issues.

#### Federal Legislation and ECCC

Legislation administered by ECCC in its water-related activities includes:

- [Canada Water Act](#), which contains provisions for formal consultation and agreements with the provinces about water regulation
- [International River Improvements Act](#), which provides for licencing of activities that may alter the flow of rivers flowing into the United States
- [Department of the Environment Act](#), which assigns the national leadership for water management to the Minister of the Environment.

More information about these Acts is available by clicking this link: [ECCC](#).

Waters that are shared with the United States are subject to a 1909 Boundary Waters Treaty which establishes a six-member International Joint Commission to resolve air and water conflicts in those areas.

## **Fisheries and Oceans Canada (DFO)**

[Fisheries and Oceans Canada](#) (DFO) is the primary agency responsible for marine waters and fish habitat in all Canadian waters. DFO administers the [Fisheries Act](#) which prohibits damage to fish habitat and the deposit of deleterious substances in fish bearing waters.

### Fisheries Act

The *Fisheries Act* applies to all fishing zones, territorial seas and inland waters of Canada and is binding on all federal land which includes FN reserve lands (First Nation Land under a LC). as well as fish and fisheries in areas that are under the jurisdiction of provincial and territorial governments. DFO primarily regulates these activities under Section 35 of the *Fisheries Act*.

The Resource Management and Planning for Fish and Wildlife courselet further examines relevant portions of the *Fisheries Act*.

### Framework Agreement and Fisheries Act

Clause 18.5 of the Framework Agreement makes it clear that a FN with a LC does not acquire any law-making rights or powers to manage fisheries.

The FN continues to have limited authority to enact fisheries bylaws under section 81 (o) of the *Indian Act* but for all intents and purpose must simply carry out its operations in compliance with the *Fisheries Act* and not enact other legislation that is inconsistent with the *Fisheries Act*.

Therefore, all of the Fisheries Act's habitat protection provisions must be considered when assessing the adverse effects of a project or policy on fish habitat.

### Additional Sections

Additional sections of the *Fisheries Act* that frequently apply to activities that might affect water are sections 20, 22, 30, 32.35.36(3) and 37 which are summarized below:

- S. 20 deals with fish passage and fishways
- S. 22 protects stream flow volumes that are adequate for fish
- S. 30 provides for guards and screens to protect fish from being drawn into water intakes
- S. 32 prohibits the unauthorized killing of fish by means other than fishing
- S. 35 prohibits the unauthorized destruction of fish habitat
- S. 36(3) prohibits the deposition of deleterious substances in fish- bearing waters. It is important to emphasize that enforcement of the provisions of section 36 of the *Fisheries Act* which are related to water quality has ECCC
- S. 37 enables the Minister of Fisheries to request plans and other information for proposed projects that have the potential to affect fish habitat

Click on [Summary](#) document for more information on each of the above sections.

## Transport Canada

### Transport Canada

Transport Canada is the department within the Government of Canada which is responsible for developing regulations, policies and services of transportation in Canada, including navigable waters. Transport Canada has a [Navigation Protection Program](#) that specializes in the administration and enforcement of the *Navigation Protection Act* (NPA). Their main activity is reviewing and the authorization of works in navigable waters.

### NAVIGATION PROTECTION ACT (NPA)

The [NPA](#) (formerly Navigable Waters Protection Act) is intended to minimize interference with navigation on navigable waters throughout Canada. The NPA applies to any interference of navigation - in, on, over, under, through or across - Canadian navigable waterways. The NPA is meant to balance the public's right to navigate and the need to build works such as bridges, dams or docks in navigable waters.



Picture Source: [CBC News](#)

### MINISTRY APPROVAL UNDER NPA

Unless the work or the waterway qualifies as a [minor work](#), the Ministry of Transport requires an approval work under the NPA for:

- Construction in navigable waters
- The removal of wrecks and other obstacles to navigation
- The throwing or depositing of any material into navigable waters

### REVIEW OF NAVIGATION PROTECTION

There is currently a review of [navigation protection](#), as of June 20, 2016. This review is one part of a broader strategy to review [environmental and regulatory processes](#) that apply to resource development and processes infrastructure investment projects. The strategy aims to restore lost protections and introduce modern safeguards to the *Fisheries Act* and the NPA.

## Other Federal Agencies

[Indigenous and Northern Affairs Canada](#) (INAC) has the mandate to manage water resources on Indian reserves and in the Northwest Territories. A [Nunavut Water Board](#) manages water resources under the Nunavut Land Claims Agreement and the government of the [Yukon](#) is responsible for the management of water resources in the Yukon.

## Provincial Legislative Powers

For streams on provincial land, provincial legislative powers include, but are not restricted to:

- Flow regulation
- Authorization of water use
- Water supply projects
- Pollution control
- Thermal and hydroelectric power development

## Introduction

Provincial water regulations do not generally apply on reserve land, but they do apply upstream and downstream, so a LGD should be aware of provincial water regulations.

Picture: Wabigoon River

Picture Source: [The Star](#)



## Alberta

Act

- [Water Act](#)

Ministry

- Alberta Environment

## British Columbia

Acts

- [Water Sustainability Act \(WSA\) February 29 2016](#)
- [New Rules in Effect](#)

## Ministry

- [Ministry of Environment](#)

## Manitoba

### Act

- Water Acts and Regulations Manitoba

### Ministry

- [Manitoba Sustainable Development](#)
- Manitoba Water Stewardship

## New Brunswick

### Act

- [Clean Water Act](#)

### Ministry

- [New Brunswick Environment and Local Government](#)
- [New Brunswick Energy and Resource Development](#)

## Newfoundland and Labrador

### Act

- [An Act Respecting the Control and Management of Water Resources in the Province](#)
- [Water Act and Subordinate Legislation](#)

### Ministry

- Department of Environment and Conservation

## Northwest Territories

### Act

- [Waters Act \(Mirrored Legislation\)](#)

Mirroring is the process of preserving the substance and intent of existing federal acts and regulations, changing only what is necessary to make them functional in the NWT.

### Ministry

- [NWT Environment and Natural Resources](#)
- [Government of the NWT Public Works and Services](#)

## Nova Scotia

### Act

- [Water Act](#)
- [Water Resources Protection Act](#)

### Ministry

- [Nova Scotia Environment](#)
- [Nova Scotia Natural Resources](#)

## Nunavut

### Act

- [Nunavut Waters and Nunavut Surface Rights Tribunal Act \(Federal\)](#)

### Ministry

- [Department of Environment](#)

## Ontario

### Act

- [Ontario Water Resources](#)
- [Clean Water Act](#)

### Ministry

- [Ministry of the Environment and Climate Change](#)
- Ministry of Natural Resources and Forestry

## Prince Edward Island

### Act

- [Proposed Water Act 2017](#)

### Ministry

- [Communities Land and Environment](#)

## Quebec

### Loi

- [Loi affirmant le caractère collectif des ressources en eau et visant renforcer leur protection](#)

### Ministere

- [Ministere du Développement durable de l'Environnement et de la Lutte contre les changements climatiques](#)
- [Ministere de l'Énergie et des Ressources naturelles](#)

## Saskatchewan

### Act

- [Saskatchewan Water Corporation Act](#)
- [Saskatchewan Water Security Agency Act](#)

### Ministry

- [Saskatchewan Environment](#)
- [Saskatchewan Water Corporation](#)
- [Saskatchewan Water Security Agency](#)

## Territories

For the most part, waters that lie solely within a province's boundaries fall within the constitutional authority of that province. As far as Canada's three territories are concerned has, as one of its functions [INAC](#) in the north, the mandate to manage water resources in the Northwest Territories and Nunavut. On April 1, 2003, responsibility for the management of water resources in Yukon was transferred from the federal government to the [Government of the Yukon](#).

## Yukon

### Act

- [Waters Act](#)

### Ministry

- [Environment Yukon](#)
- [Yukon Health and Social Services](#)

## **Provincial Administrative Structure**

Each province has its own legislation and administrative structure to manage water resources.

Water rights are obtained by licence or permit in most provinces. Often, domestic uses are exempt from licensing requirements.

In most provinces, groundwater and surface water are part of the same management regime.

## **Summary**

### Introduction

It is important for a LGD to understand how the federal and provincial government's water resource laws, regulations and agencies affect their First Nation Land.

### FEDERAL GOVERNMENT

Several federal agencies are involved in the management of water resources. Environment Canada is the lead agency responsible for fresh water and water quality and Fisheries and Oceans Canada is the lead agency responsible for marine waters and fish habitat.

### PROVINCIAL GOVERNMENT

There are provincial agencies involved in the management of water resources. Provincial governments are generally responsible for managing waters that are solely within a province's boundaries. Provincial jurisdiction does not generally apply to water bodies on federal lands, such as reserves but most rivers are excluded from reserves and are managed by a province. It is always necessary to approach this issue on a case by case basis.



## ACRONYM LIST

DFO	-	Fisheries and Oceans Canada
ECCC	-	Environment and Climate Change Canada
FN	-	First Nation
<i>Framework Agreement</i>	-	<i>Framework Agreement on First Nation Land Management</i>
INAC	-	Indigenous and Northern Affairs Canada
HADD	-	harmful alternation, disruption or destruction
LABRC	-	Lands Advisory Board Resource Centre
LC	-	Land Code
LGD	-	Land Governance Director
NPA	-	Navigation Protection Act
NWT	-	Northwest Territories
WSA	-	Water sustainability Act



## **GLOSSARY OF TERMS** **RESOURCE MANAGEMENT & PLANNING FOR WATER**

### **CONSERVATION**

Conservation means “the management or control of human use of resources...in an attempt to restore, enhance, protect, and sustain the quality and quantity of a desired mix of species and ecosystem conditions and processes for present and future generations.

### **ECOSYSTEMS**

Ecosystems are the plants, animals, and non-living components of the environment that function together as a system.

### **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.

### **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.

### ***FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT***

The *Framework Agreement on First Nation Land Management (Framework Agreement)* 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.

## **GROUNDWATER**

Groundwater is the water beneath the surface of the ground, found in cracks and spaces in soil, sand and rock, consisting largely of surface water that has seeped down: the source of water in springs and wells.

## **INDIAN ACT**

The *Indian Act* is Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws.

## **INDIVIDUAL AGREEMENT**

An Individual Agreement between each First Nation and Canada will be concluded to deal with such matters as: the reserve lands to managed by the First Nation, the specifics of the transfer of 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.



## LANDS ADVISORY BOARD RESOURCE CENTRE

Under the *Framework Agreement*, the First Nations have established a LABRC to assist the First Nations in implementing their own land management regimes. The LABRC is the technical body intended to support First Nations in the developmental and operational phases implementing the *Framework Agreement*

The LABRC'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

## NATURAL RESOURCE

The World Bank defines natural resources as "gifts of nature – air, land, water, forests, wildlife, topsoil, minerals – used by people for production or for direct consumption" ([www.worldbank.org/depweb/](http://www.worldbank.org/depweb/)).

## 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.

## RESOURCE MANAGEMENT

Resource management can be defined as the responsibility of governments to ensure that natural resources under their jurisdiction are used wisely or conserved (Canadian Encyclopaedia, 2010).

## SURFACE WATER

Surface water flows on the surface of the ground. Surface water includes the water in lakes, rivers and wetlands.

## WORK

Under the *Navigable Protection Act (NPA)* work includes any structure, device or thing, whether temporary or permanent, that is made by humans. It also includes the dumping of fill or the excavation of materials from the bed of any navigable water. Section 3 Works of the *NPA* states: It is prohibited to construct, place, alter, repair, rebuild, remove or decommission a work in, on, over, under, through or across any navigable water that is listed in the schedule except in accordance with this Act or any other federal Act.

# FIRST NATION JURISDICTION UNDER FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

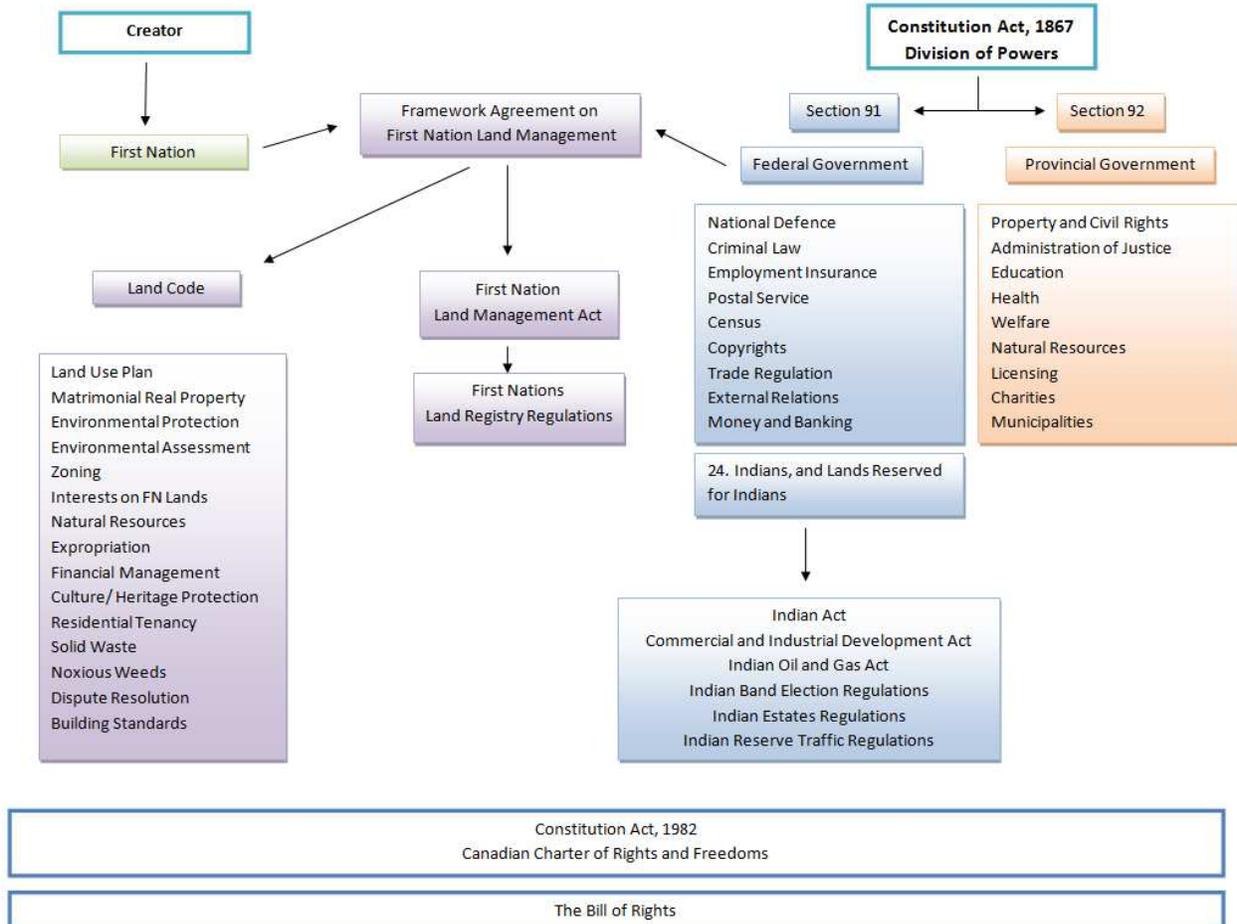


Figure 1 AUTHORITY TO ENACT LAWS

## 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.

# 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 whose 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<sup>(a)</sup>

### 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<sup>(b)</sup>
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

## **(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 the First Nation 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.



## 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.



## **LAWS, REGULATIONS AND POLICIES**

Laws, regulations and policies are critical components of our society and government. They establish public priorities, help maintain order and safety, and play an important role in shaping the political and social fabric of communities at every level - from towns and cities to provinces and the nation.

### **LAWS**

**Laws** are enacted by government bodies (First Nation, federal, provincial and municipal). Laws are a set of rules or norms of conduct, in other words, they describe what can or cannot be done and they must be obeyed by everyone including private citizens, groups and companies. Laws have a specific enactment procedure and are administered and enforceable through our system of courts. Laws are not easily changed or amended.

### **LAWS BY FIRST NATION COUNCILS**

**Framework Agreement on First Nation Land Management** – Pursuant to the *Framework Agreement* First Nations Councils may enact laws respecting the development, conservation, protection, management, use and possession of First Nation reserve land and interests or land rights and licences in relation to those reserve lands. This includes any matter necessary or ancillary to the making of laws in relation to First Nation land.

For example, a First Nation may enact laws respecting zoning, land use, subdivision control and land development, environmental assessment and protection, the provision of local services, provision of services for the resolution of disputes in relation to land decisions. The *Framework Agreement* specifies laws that can be enacted by the Chief and Council acting alone but it also specifies laws that require community support (i.e. matrimonial real property, land use planning).

**Indian Act** – Even if a First Nation has a land code in effect, a First Nation may choose to enact bylaws under section 81 of the *Indian Act*. Pursuant to that section, a Council may make by-laws in a number of areas including traffic, observance of law and order, prevention of disorderly conduct and nuisances, removal and punishment of persons trespassing upon the reserve, etc.

The laws are enacted by the Chief and Council but must be approved by the Minister of Indian Affairs, even where the First Nation has a land code in effect. An intoxicant by-law can also be passed by Council pursuant to section 85.1 of the *Indian Act*; these laws do not require Ministerial approval but rather need community approval. Lastly, Councils may also pass a taxation by-law, with the consent of the Minister, pursuant to section 83 of the *Indian Act*.



## REGULATIONS

**Regulations** – are a form of law or rule that are authorized under a law and subordinate to that law. Departments and administrators generally write regulations to implement and support the requirements of the law. Regulations deal with the details or technical matters that are not found in a law. Regulations can be easier to change and amend. Regulations are made by federal or provincial Departments of government and approved by Cabinet.

For example there are Regulations under the *Indian Act* concerning Band Council elections, timber, referendums. There are many Regulations under the *Fisheries Act* which set quotas and seasons for different species of fish and which are different in each of the provinces and territories. The *Canada Environmental Protection Act* also has many regulations concerning pollutants, emissions from various industries and similar subjects. Lastly, the First Nations Land Registry Regulations were established pursuant to the *First Nations Land Management Act*.

## POLICIES

**Policies** – are a less stringent set of rules or strategies set in place by a government to improve standards. They are set in place to achieve certain objectives that are within the law or that need to comply with the law. Policies are easier to change and amend.



## Summary of Select Sections of the *Fisheries Act*

Additional sections of the *Fisheries Act* that frequently apply to activities that might affect water are sections 20, 22, 30, 32, 35, 36(3) and 37 which are summarized below:

### **Section 20**

Section 20 deals with fish passage around obstructions and contains two subsections dealing with fishways. According to Subsection 20(1) the owner-occupier of a stream must provide for the safe passage of fish around an obstruction. The requirement for a fishway or canal is at the discretion of the Minister. When the Minister determines, it is in the public's interest, the owner-occupier of the obstruction needs to provide a fishway. [Fisheries and Oceans Canada](#) (DFO) has the option to include Section 20 requirements in a Section 35(2) Authorization.

### **Section 22**

This section provides for minimum streamflow past obstructions.

Subsection 22(1) requires sufficient flow over the spillway or crest of an obstruction for the safe descent of fish.

Subsection 22(2) requires the owner of an obstruction to provide sufficient flow for free upstream and downstream passage of fish during the construction of an obstruction.

Subsection 22(3) requires sufficient flow downstream of an obstruction to support fish spawning and egg incubation. The requirement for sufficient flow over an obstruction (Subsection 22(1)) is at the Minister's discretion). The Minister also establishes measures to accommodate fish movement during construction of an obstruction and the quantity of water to be maintained downstream of an obstruction for fish spawning and egg incubation.

### **Section 30**

Subsection 30(1) requires that every water intake, ditch, channel or canal constructed for irrigation, manufacturing or power generation must have a fish guard or screen to exclude fish if the Minister believes it is in the public interest.

Furthermore, according to Subsection 30(2), the size of the screen is specified by the Minister, and the screen must be maintained in a way that is satisfactory to the Minister.



### **Section 32**

Section 32 prohibits the unauthorized killing of fish by means other than fishing. This section normally applies to the detonation of explosive in or near water.

DFO's [Guidelines for the Use of Explosives In or Near Water \(1998\)](#) provide information to proponents that are proposing works or undertakings involving the use of explosives in or near Canadian fisheries waters, and to which Sections 32 and 35, in particular, may apply. DFO has the option to include Section 32 requirements in a section 35(2) Authorization.

### **Section 35**

Subsection 35(1) is a general prohibition of harmful alteration, disruption or destruction (HADD) of fish habitat. Any work or undertaking that results in HADD is a contravention of Subsection 35(1). The only relief from this general prohibition is when a Subsection 35(2) Authorization is issued for the HADD.

The 35(2) Authorization authorizes the HADD and not the project resulting in the HADD. A project does not need a 35(2) Authorization to proceed. However, if a project causes a HADD and an Authorization was not issued, the proponent may be guilty of an offence. Many proponents prefer to obtain an Authorization before they proceed, because the penalties for violating Subsection 35(1) include fines of up to \$1,000,000, up to 6 months' imprisonment, or both.

### **Section 36**

Subsection 36(3) prohibits the deposit of deleterious substances. Environment Canada is responsible for administering this subsection. Unlike Subsection 35(2), there is no provision to authorize the deposit of deleterious substances except by Regulation or an Order in Council.

A deleterious substance is defined by the Fisheries Act as any substance that, if added to water, makes the water deleterious to fish or fish habitat or any water containing a substance in such quantity or concentration or has been changed by heat or other means, that if added to water makes that water deleterious to fish or fish habitat. Currently there are regulations that authorize the deposit of pulp and paper liquid effluent, metal mining liquid effluent, petroleum liquid effluent, and effluents from other industrial sectors.



### **Section 37**

Subsection 37(1) allows the Minister to request plans, specifications, studies or any other information that will allow the Minister to determine if the deposit of deleterious substances or a HADD is likely to occur.

Subsection 37(2) empowers the Minister, after reviewing the plans, studies or other information requested under Section 37(1), to modify or add to the work or undertaking to avoid or mitigate the deposit of a deleterious substance or a HADD to fish habitat. Furthermore, the Minister can restrict the operation of the work or undertaking and direct the closing of the work. Ministerial orders can only be made pursuant to a regulation or with the approval of the Governor in Council.

Source: [Fisheries and Oceans Canada website](#)



## **LAND DESCRIPTION REPORT SUMMARY**

### **WHAT IS A LAND DESCRIPTION?**

A land description is the textual reference to existing survey plans (or direction and distance measurements), describing the extent of the reserve lands that will be subject to the Land Code (LC) of the First Nation (FN). A land description is a requirement under Section 6.1(a) of the *First Nations Land Management Act (FNLMA)* and fulfills part of Canada's obligation in implementing the *FNLMA* regarding FN reserves. In the situations where a portion of a reserve is to be excluded under Section 7 of the *FNLMA* (and where possible), the land description will reference both the lands that will be subject to the LC, and those lands that will remain under the management of the *Indian Act*.

The reference to the land description contained in the Individual Agreement and the LC should be the same, and should reference the Canada Lands Surveys Records (CLSR) number assigned to the Land Description Report (LDR).

The LDR is a document (certified by a Canada Lands Surveyor) that contains the land description, administrative sketch (a visual aid to understanding the description), a photo overlay of the reserve (where available) and any outstanding issues relating to the exterior boundaries of the reserve (that have not been resolved).

### **WHY IS A LAND DESCRIPTION REQUIRED IN THE DEVELOPMENTAL PROCESS?**

As per Section 6.1(a) of the *FNLMA*, a land description must be included in the LC, and must be suitable to the Surveyor General of Canada.

a description of the land that is to be subject to the land code that the Surveyor General may prepare or cause to be prepared or any other description that is, in the Surveyor General's opinion, sufficient to identify those lands;

The land description is intended to provide certainty to the boundaries of the FN lands that the LC will be administered over.

### **WHO CARRIES OUT THE LDR WORK FOR CANADA?**

As the Surveyor General is responsible to determine the suitability of a land description for a LC, the Surveyor General Branch of the Department of Natural Resources Canada (NRCan) prepares the LDRs. NRCan has the resources (original plans, field notes, other survey related documents), expertise and experience required to prepare the LDR. Click on [Natural Resources Canada](#) website to find more information on NRCan.



## HOW ARE THE LDRs PREPARED?

NRCan has developed Guidelines to ensure the land description used for this transfer is based upon solid research of the historical extent of the reserve, the present extent of the reserve, and the transition between the two. The Guidelines also ensure quality and consistency of the land descriptions prepared for FN lands across Canada.

## WHAT IS THE FIRST NATION'S ROLE REGARDING THE LDR?

As part of the due diligence required by a FN in the developmental process, the FN must:

- Review the LDR prepared for each of its reserve lands
- Internally discuss the draft LDR and provides comments (where necessary)
- Provide approval for the LDR (enabling the LDR to be finalized and recorded in the CLSR)

## WHO TO CONTACT

Any questions on the interpretation/understanding of the LDR can be directed to the [Lands Advisory Board Resource Centre](#), the local NRCan office or the local Indigenous and Northern Affairs Canada office.

For more information on LDR review the following courselets: [Developmental Phase](#), [Individual Agreement](#), [Implementation Document](#).