

Framework Agreement Amendments & Matrimonial Real Property



Matrimonial Real Property Workshop
Kelowna, January, 2018

Framework Agreement Amendments

- The Lands Advisory Board's strategic plan sets a 2020 target for amendments to make the Framework Agreement even stronger.
- Lands Advisory Board held a May 2017 Special Meeting of Framework Agreement First Nations and agreed to the following objectives:
 1. amendments to voting procedures to make it easier for more First Nations to opt out of the Indian Act;
 2. **clarifying self government authority** of FA Nations;
 3. new provisions for additions to reserve; and
 4. updating the Framework Agreement in light of UNDRIP.
- **Clarifying self government authority** include amendments to matrimonial real property (MRP) provisions and related enforcement of law powers



Amendments – Two Phase Approach

- INAC has proposed a two phase approach to the Framework Agreement amendments.
- Phase 1 for subjects within authority of Ministers Bennett and Philpott
- Phase 2 for complex subjects involving other federal departments.
- Canada targeting February 2018 for federal Cabinet approval of Phase 1 amendments
- First Nation approval of Phase 1 amendments targeted for March 2018
- Lands Advisory Board would like to see Canada table legislation to ratify the Phase 1 Framework Agreement amendments in spring-summer 2018



Federal Review of Laws & Split of INAC

- The Prime Minister established a Working Group of Ministers to examine federal laws affecting Indigenous peoples and announced the split of INAC into two new departments.
- The Lands Advisory Board has submitted recommendations to the Working Group, including a recommendation to replace the federal legislation which ratifies the Framework Agreement with much shorter legislation exclusively focused on ratifying the Framework Agreement.....and adopting a new UNDRIP clause
- Timing of legislation is not yet clear - Phase 1 FA Amendments, INAC split legislation and changes recommended by federal Working Group of Ministers potentially in Parliament at the same time in spring-summer 2018?



Phase 1 Framework Agreement Amendments

UNDRIP clause

- an introductory clause to acknowledge Canada's commitment to UNDRIP.....may help guide the courts on interpretation of the Framework Agreement

Changes to voting

- eliminate the minimum 25% threshold of yes votes
- verifier is only required to confirm that the land code and voting process comply with the Framework Agreement.....not monitor the actual vote or appeals
- individual First Nations can still set a minimum threshold and use the verifier for the whole process if they want

Expanded list of self government law making powers

- the Framework Agreement sets broad powers to make laws regarding lands, natural resources and environment – a new list of examples of environmental law making powers will be added



Phase 1 Framework Agreement Amendments (continued)

Publishing land codes

- eliminate the current requirement for Lands Advisory Board to maintain land code amendments – replace with individual First Nations publishing on website or other means their land codes and amendments

Limitation of liability for First Nation governments

- provisions to limit liability of employees and volunteers working for First Nations
- must be within the limits typical under provincial law of the province within which a First Nation is located



Phase 1 Framework Agreement Amendments (continued)

Indian moneys

- provisions for transfer of all “capital moneys” – in addition to the transfer of “revenue monies” already provided for in the Framework Agreement
- First Nations opting into the Framework Agreement in future would automatically receive both capital and revenue moneys – existing operational First Nations would have to request a transfer of capital moneys

First Nations lands registry

- authority for new First Nation led registry – potentially several years down the road – requires new regulations, informatics systems and cost discussions....



Phase 1 Framework Agreement Amendments (continued)

Additions to reserve

- additions to reserve by Ministerial order rather than federal Order-in-Council (potential to cut off part of the delay in current process)
- lands added to reserve automatically become “First Nation land” over which Framework Agreement First Nations have authority
- discretion for First Nations to accept third party interests and provide for replacement interests before reserves are created – First Nation discretion – no obligation to do so
- discretion for First Nations to impose land use restrictions (eg zoning laws) in advance of reserve creation – First Nation discretion – no obligation to do so

Indian Act designations

- provision to clarify that protection of existing interests do not block a First Nation and affected third parties from agreeing to arrangements different from a previous Indian Act designation



Matrimonial Real Property - Phase 1 Framework Agreement Amendments

- eliminates the current requirement to deal with MRP in land codes (5.4 of FA) – instead a discretion to deal with MRP in land codes and laws if desired.
- eliminates the 12 month period for First Nations to make MRP rules and eliminates dispute resolution with Canada regarding land code provisions.
- new law making powers in respect of MRP – expansion beyond “breakdown of marriage” to full range of MRP such as “death of a spouse”
- land code First Nations will be able to deal with all MRP issues – some previously could only be dealt with under the federal First Nations Family Homes and Matrimonial Interests on Reserve Act (FHRMIRA)
- new notice requirement to provinces or territories when proposing to make MRP laws



Matrimonial Real Property - January DRAFT

- 5.3 A land code may also contain the following provisions:
- (e) provisions respecting matrimonial interests or rights, or provisions to obtain community input on the subject of matrimonial interests or rights;
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- 18.2A A First Nation may make matrimonial real property laws on First Nation land that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner, respecting:
 - (a) use, occupation and possession of family homes on its First Nation land;
 - (b) the division of the value of any interests or land rights held by spouses or common-law partners in or to structures and lands on its First Nation land; and
 - (c) the period of cohabitation in a conjugal relationship to qualify as a common-law partner.
- 18.2B Matrimonial real property laws on First Nation land may include provisions for:
 - administering those laws;
 - despite subsection 89(1) of the Indian Act, provisions for enforcing, on First Nation land, an order of a court or a decision made or an agreement reached under those laws; and
 - procedures for amendment and repeal of those laws
- 18.2C The council of a First Nation will provide, to the Attorney General of any province or territory in which its First Nation land is situated, notice of its intent to make matrimonial real property laws and, upon enactment, provide a copy of those laws to the Attorney General.



Enforcement - Phase 1 Framework Agreement Amendments

- authority to enter agreements with other governments and bodies to perform duties or exercise powers under First Nation laws – no obligation to do so
- potentially useful for policing agreements, appointing experts dealing with building codes.....
- expanded list of enforcement measures - authority to establish liens, garnishment or similar remedies to collect debts and authority to add non-tax debts to property taxes



Enforcement – January DRAFT

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, restitution, community service, and alternative means for achieving compliance;
- (c) establish comprehensive enforcement procedures consistent with federal, provincial or territorial law, including inspections, searches, seizures and compulsory sampling, testing and the production of information;
- (d) create liens on reserve lands and interests in reserve lands;
- (e) impose and recover interest and penalties on an amount payable pursuant to the land code or a First Nation law, where the amount is not paid when it is due, and the rate of interest or the amount of the penalty, as the case may be;
- (f) seize and sell personal property located on reserve lands, other than property located in a dwelling;
- (g) discontinue services;
- (h) recover costs that are incurred by the First Nation for the enforcement of the land code or a First Nation law; and
- (i) provide for the collection of non-tax debts, fees or charges owed to the First Nation using taxation collection remedies made under any First Nation taxation laws made by the First Nation in accordance with federal laws addressing taxation on reserve.
- 19.1A To enforce its land code and its First Nation laws off reserve, a First Nation may enter into agreements with other governments.

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- NOTE: (other enforcement provisions regarding justices of the peace etc.... unchanged)



Next Steps

- Canada is targeting February for Cabinet approval of drafting instructions for FA amendments
- French and English text of draft FA amendments almost complete as of January 2018
- Assuming positive signals from federal Cabinet, an FA amendment package will be sent to FA First Nations for approval – target March 2018
- Canada cannot unilaterally change the Framework Agreement - amendments must be approved by at least 2/3 of FA First Nations

