

Framework Agreement Amendments



2018 Annual General Meeting

Framework Agreement Amendments

- The Lands Advisory Board's strategic plan sets a 2020 target for amendments to make the Framework Agreement even stronger.
- May 2017 Special Meeting of Framework Agreement First Nations and 2017 AGM set 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.
- Amending Agreement #6 has been negotiated with Canada which meets all of the above objectives.



Amending Agreement # 6

- LAB letter of May 2018 to operational First Nations:
 - Amending Agreement # 6 – for signature
 - Sample BCR for approval
- FA amendments will only be adopted if at least 2/3rds of operational First Nations approve.
- No specific deadline for approval of Amending Agreement # 6 but Canada is taking no further steps in respect of the FA amendments.
- Canada will not sign Amending Agreement # 6 until First Nations decide and drafting of FNLMA amendments has not started.
- Delays could put at risk completing required amendments to the FNLMA – federal election looms in 2019.



Canada's Approval – Amending the FNLMA and other Federal Laws

- 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.
- Lands Advisory Board recommended replacing the FNLMA (which ratifies the Framework Agreement) with much shorter legislation exclusively focused on ratifying the Framework Agreement.
- Timing of federal Bills of interest to land code First Nations not yet clear: FA Amendments, INAC split legislation, Prime Minister's "recognition framework" – federal election looms in 2019.



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



Phase 1 Framework Agreement Amendments (continued)

Matrimonial Real Property

- 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.
- 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 under land code governance authority – 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



Phase 1 Framework Agreement Amendments (continued)

Enforcement of laws

- 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 - Phase 1 Framework Agreement Amendments

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Next Steps

- Canada cannot unilaterally change the Framework Agreement
- Canada will not sign Amendment Agreement # 6 or draft legislation to amend the FNLMA unless at least 2/3rds of operational First Nations sign Amending Agreement # 6
- Your decision counts – not signing Amending Agreement # 6 is equivalent to a no vote

