

## SUMMARY OF THE *FRAMEWORK AGREEMENT*

### History

The *Framework Agreement on First Nation Land Management (Framework Agreement)* recognizes that First Nations (FN) have an inherent right to manage their reserve lands and resources. The *Framework Agreement provides FNs with the option to govern their reserve lands and resources under their own Land Codes (LC)*, free from constraints imposed by the Minister and federal officials under the *Indian Act*.

The Lands Advisory Board and a national group of 14 dedicated Chiefs, developed and negotiated this historic government-to-government arrangement with Canada in 1996.

The *Framework Agreement* identifies the:

- **jurisdiction** assumed by the FNs, which includes decision-making authority over their lands and resources,
- **power to design and enforce FN laws** over these reserve lands and resources.

A *Framework Agreement* FN is unconditionally recognized as exercising all of the rights, powers and privileges of a land owner.

Parliament ratified the *Framework Agreement* in 1999 by passing the *First Nations Land Management Act*. Three FNs implemented their LCs on January 1, 2000 – day on of the new millennium. During the sixteen (16) years since these historic beginning fifty-eight (58) other FNs have implemented their LCs. The Lands Advisory Board and the Resource Centre have worked diligently during this period to provide support services to the *Framework Agreement* signatories.

*As a result, the Framework Agreement is proving to be, without a doubt, a major success story because FNs are in the driver's seat.*

### Taking Control of Land Governance

A FN signatory to the *Framework Agreement* exercises its reserve land governance option by creating its own LC, drafting a Community Ratification Process (CRP) and entering into a further Individual Agreement with Canada. The specific steps are set out in the *Framework Agreement* and include the following:

**Land Code (LC):** A LC, drafted by the community, will be the basic land law of the FN and will replace the land management provisions of the *Indian Act*. The Minister of Aboriginal Affairs and Northern Development Canada (AANDC) will no longer be involved in the management of the FN's reserve lands. The LC does not have to be approved by the Minister.

**Individual 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 FN,
- The specifics of the transfer of the administration of land from Canada to the FN,
- Operational Funding to be provided by Canada for governing the reserve lands.

**Community Ratification Process (CRP):** In order for the FN to assume control over its lands, the LC and the Individual Agreement must be ratified by the adult members of the FN. All members of the FN who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the LC and the Individual Agreement. The procedure for the CRP is developed by the community in accordance with the *Framework Agreement*.

**Federal Legislation:** Canada agreed to ratify the *Framework Agreement* by enacting federal legislation consistent with the *Framework Agreement*. An Act for this purpose was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill was re-introduced as Bill C-49 in June of 1998. The *First Nations Land Management Act* was enacted and given royal assent on June 17, 1999.

**Verification:** An independent person selected jointly by the FN and Canada, called a Verifier, will confirm that the CRP and LC are consistent with the *Framework Agreement*. The Verifier will monitor the CRP to ensure that the rules are followed.

**Transfer of Land Management:** If the Community ratifies the LC and the Individual Agreement, control over FN land and resources is transferred from under the *Indian Act* to the FN's land laws and administration.

## 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 FN. 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 FN's land will be protected against surrender for sale.

## Legal Status and Powers of First Nations

The *Framework Agreement* provides these FNs with all the legal status and powers needed to manage and govern their lands and resources. While FNs 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 in laws and LCs.

**Law-Making Powers:** A FN managing its lands under a LC will have the power to make laws in respect of the development, conservation, protection, management, use and possession of FN land. The LC 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 FN's Council can continue to make by-laws under section 81 of the *Indian Act*.

**Land Management:** The *Framework Agreement* provides the FN with all the powers of an owner in relation to its FN land, except for control over title or the powers to sell it. The FN's Council can manage land and resources, as well as revenues from the land and resources, in accordance with its LC.

**Third Party Interests:** Interests in FN land held by third parties, or by Canada, will continue in effect according to their terms and conditions under a LC. No new interests or licences may be acquired or granted except in accordance with the LC.

**First Nation Expropriation:** The FN will have the power to acquire lands for community purposes upon payment of fair compensation to those whose interests are affected.

**Accountability:** A LC will make provision for a FN to report to its members and to be accountable for its management of lands, resources and revenues.

**Marriage Breakdown:** A FN will finally be able to deal with the rights of spouses to interests in FN land if their marriage breaks down. This is not currently addressed under the *Indian Act*. The community must, within 12 months of passage of its LC, 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:** The main registrar will be that of the FN. All documents pertaining to land matters of a reserve will be recorded there. Canada will maintain a duplicate First Nations Land Register to record all documents respecting interests in the reserve lands of *Framework Agreement* FNs.

## Protection of First Nation Land

The preserving of the quantity and quality of existing FN 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 provision of the *Indian Act*.

**Environmental Protection:** A FN will have the power to make environmental protection and assessment laws.

**Voluntary Exchange of Lands:** A FN may decide that it is advantageous to exchange some of its FN lands for other lands. Provision can be made in its LC for a procedure to negotiate and approve such exchanges. An exchange of land cannot occur without the consent of the FN community.

**No Provincial Expropriation:** Under the *Framework Agreement* there can be no expropriation of FN land by a provincial or municipal government or agency.

**Restricted Federal Expropriation:** Canada's power to expropriate FN land is 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 FN is not diminished.

**Enforcement:** The FN 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 FN can appoint its own Justice of the Peace to try offences created under a LC or a FN law, and can appoint its own prosecutor. FN 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 FN for losses suffered as a result of any act or omission by Canada, or its agents, that occurred before the LC comes into effect. After that date, the FN is responsible for its own acts or omissions in managing its lands.

### **Dispute Resolution**

The FN 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 FNs and Canada on the meaning or implementation of the *Framework Agreement*, there are provisions in the *Framework Agreement* to resolve the dispute outside of the courts.

### **Lands Advisory Board Resource Centre**

The FNs established a Lands Advisory Board Resource Centre to assist them in implementing their own land governance regimes, including developing model LCs, laws, documents, agreements and management systems.