

THE FIRST NATIONS LANDS MANAGEMENT ACT
S.C 1999, c 24

EXECUTIVE SUMMARY

INTRODUCTION

The Act was required under the Framework Agreement on First Nation Land Management for two purposes: to ratify the Framework Agreement on the part of the federal government, and to implement those clauses of the Framework Agreement that effect third parties or other federal laws, or that are considered important enough to be repeated in the legislation.

The *First Nation Land Management Act* is intended to be consistent with the Framework Agreement and to apply to the First Nations that are parties to the Framework Agreement as set out in the schedule to the Act. The Act was 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. It was finally enacted and given royal assent on June 7, 1999. The Act was emended in May, 2003 to add additional First Nations to the initiative.

RATIFICATION

The Framework Agreement is the document that sets out the terms and conditions under which a First Nation can establish its own land management regime and remove its own reserve lands from the Minister's control under the *Indian Act*. Nineteen First Nations have ratified the Agreement to date. And Canada has fulfilled its obligation by enacting the *First Nations Land Management Act*.

IMPEMENTATION OF THE FRAMEWORK AGREEMENT

Ratification Process A Large portion of the Act relates to the "opting-in-process" for First Nations. It repeats many of the clauses of the Framework Agreement on what a land code must contain, how a land code is approved by the community, the role of the independent Verifier and so on.

First Nations Lands The Act states that title to First Nation Lands will not be affected by the Act and that these lands will continue to be reserves and to be constitutionally protected. First Nations lands are also protected against surrender for sale. If land is ever voluntarily exchanged by a First Nation for other land, the new land received by the First Nation would be protected the same way.

Land Code The Clauses of the Framework Agreement on the legal effect of the Land Code are implemented by the Act. The Land Code will have the effect of law and will be recognized by the courts.

First Nation Powers The Powers of a First Nation to manage its reserve lands and resources, receive and use land revenues, and its legal capacity for land purposes are included in the Act. These powers are to be exercised for the use and benefit of the First Nation.

Transfer of Revenue The Act provides that revenue moneys of the First Nation previously collected and held by Canada will be transferred to the First Nation when its land code comes into effect.

First Nations Laws The Law-making powers of a First Nation under its land code are set out in the Act. The laws may cover any matter related to First Nation land, including the granting of interests in land, land use, environment, and possession of a matrimonial home. Provisions relating to the enforcement of First Nation laws prosecutions and evidence are also included.

Register for First Nation land The act authorizes Canada to set up a separate register to record interests granted by First Nations under their Land codes.

First Nation Expropriation The Act recognized the right of a First Nation to expropriate interests in its own First Nation land for community works or other First Nation community purposes. The basic principles of this are included in the Act, for example of how any community expropriation would work.

No Provincial Expropriation First Nation land is immune from any expropriation by a provincial or municipal government or by provincial agencies.

Limited Federal Expropriation The protections against the expropriation of First Nation land by the federal government, which were negotiated in the Framework Agreement, are set out in the act. These include provisions on limiting expropriation to cases where it is justifiable and necessary for a federal public purpose that serves the national interest. The Act also requires Canada to provide alternate land to the First Nation, which would become First Nation land, in order to protect the land base of the First Nation. The Legislation contains provisions on compensation and the resolution of disputes over expropriation.

Liability Protection Canada will remain liable for actions taken before the Land Code takes effect. The First Nation will assume responsibility for its land management actions after that date.

Application to other First Nations The Act only applies to the original 14 First Nation signatories and the additional First Nations added to the schedule in May 2003. If other First Nation becomes signatories to the Framework Agreement, the Governor in Council may add them to the schedule. The Agreement may be opened up to other First Nations in the future.

EFFECT ON OTHER FEDERAL LEGISLATION

Indian Act The Act ensure that the land management provisions of the *Indian Act* do not apply to any of the First Nations that adopt a Land Code, their members or their First Nations lands.

Expropriation Act The Act makes it clear that the new rules for protection of First Nation land from expropriation over-ride other legislation like the Expropriation Act.

Indian Oil and Gas Act The Indian Oil and Gas Act will continue to apply to any First Nation oil and gas interests and revenue.

Environment *The Canadian Environmental Assessment Act* will no longer require a First Nation to follow future federal regulations for environmental assessments on reserves. The First Nation can proceed to enact its own laws on this topic if it so chooses. The federal legislation will apply until that time.