



# First Nations Land Management Act

1999, c. 24

F-11.8

[Assented to June 17th, 1999]

An Act providing for the ratification and the bringing into effect of the Framework Agreement on First Nation Land Management.

## ***Preamble***

WHEREAS Her Majesty in right of Canada and a specific group of first nations concluded the Framework Agreement on First Nation Land Management on February 12, 1996 in relation to the management by those first nations of their lands; AND WHEREAS the ratification of the Agreement by Her Majesty requires the enactment of an Act of Parliament;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## **SHORT TITLE**

Short title

1. This Act may be cited as the First Nations Land Management Act.

## **INTERPRETATION**

### **Definitions**

2. (1) The definitions in this subsection apply in this Act.
  - "council" , in relation to a first nation, has the same meaning as the expression "council of the band" in subsection 2(1) of the Indian Act.
  - "eligible voter" means a first nation member who is eligible to vote under subsection 10(2).
  - "first nation" means a band named in the schedule.

- "first nation land" means reserve land to which a land code applies and includes all the interests in and resources of the land that are within the legislative authority of Parliament.
- "first nation law" means a law referred to in section 20.
- "first nation member" means a person whose name appears on the band list of a first nation or who is entitled to have their name appear on that list.
- "Framework Agreement" means the Framework Agreement on First Nation Land Management concluded between Her Majesty in right of Canada and the first nations on February 12, 1996, and includes any amendments to the Agreement made pursuant to its provisions.
- "individual agreement" means an agreement with a first nation entered into under subsection 6(3).
- "interest" , in relation to first nation land, means any estate, right or interest of any nature in or to the land but does not include title to the land.
- "land code" means a land code of a first nation referred to in subsection 6(1).
- "licence" , in relation to first nation land, means any right of use or occupation of the land other than an interest in that land.
- "Minister" means the Minister of Indian Affairs and Northern Development.
- "project" has the same meaning as in subsection 2(1) of the Canadian Environmental Assessment Act.

### **Words and expressions in Indian Act**

(2) Unless the context otherwise requires, words and expressions used in this Act have the same meaning as in the Indian Act.

### **Not land claims agreement**

(3) For greater certainty, neither the Framework Agreement nor this Act is a land claims agreement referred to in section 35 of the Constitution Act, 1982.

## HER MAJESTY

### **Binding on Her Majesty**

3. This Act is binding on Her Majesty in right of Canada and any reference in this Act to Her Majesty means Her Majesty in right of Canada.

## GENERAL

### ***Ratification and effect***

4. (1) The Framework Agreement is hereby ratified and brought into effect in accordance with its provisions.

### ***Deposit of copies***

(2) The Minister shall cause a copy of the Framework Agreement and of any amendment made to the Agreement, certified by the Minister to be a true copy, to be deposited in the library of the Department of Indian Affairs and Northern Development situated in the National Capital Region and in such regional offices of that Department and other places as the Minister considers advisable.

Title to first nation land

5. For greater certainty, except for first nation land exchanged in accordance with section 27,

(a) title to first nation land is not affected by the Framework Agreement or this Act;

(b) first nation land continues to be set apart for the use and benefit of the first nation for which it was set apart; and

(c) first nation land continues to be land reserved for the Indians within the meaning of Class 24 of section 91 of the Constitution Act, 1867.

## **ESTABLISHMENT OF LAND MANAGEMENT REGIME**

### **Land Code and Individual Agreement**

#### **Adoption of land code**

6. (1) A first nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the first nation, which land code must include the following matters:

- (a) a legal description of the land that will be subject to the land code;
- (b) the general rules and procedures applicable to the use and occupancy of first nation land, including use and occupancy under
  - (i) licences and leases, and
  - (ii) interests in first nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the first nation;
- (c) the procedures that apply to the transfer, by testamentary disposition or succession, of any interest in first nation land;
- (d) the general rules and procedures respecting revenues from natural resources obtained from first nation land;
- (e) the requirements for accountability to first nation members for the management of first nation land and moneys derived from first nation land;
- (f) a community consultation process for the development of general rules and procedures respecting, in cases of breakdown of marriage, the use, occupation and possession of first nation land and the division of interests in first nation land;
- (g) the rules that apply to the enactment and publication of first nation laws;
- (h) the rules that apply to conflicts of interest in the management of first nation land;

- (i) the establishment or identification of a forum for the resolution of disputes in relation to interests in first nation land;
- (j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests in first nation land;
- (k) the general rules and procedures for the delegation, by the council of the first nation, of its authority to manage first nation land;
- (l) the procedures that apply to an approval of an exchange of first nation land; and
- (m) the procedures for amending the land code.

### **Land management regime**

(2) For greater certainty, if more than one reserve has been set apart for the use and benefit of a first nation, the first nation may establish a land management regime for any or all of its reserves.

#### Individual agreement

(3) A first nation that wishes to establish a land management regime shall, in accordance with the Framework Agreement, enter into an individual agreement with the Minister describing the land that will be subject to the land code and providing for

- (a) the terms of the transfer of administration of that land;
- (b) a description of the interests and licences that have been granted by Her Majesty in or in relation to that land, and the date and other terms of the transfer to the first nation of Her Majesty's rights and obligations as grantor of those interests and licences;
- (c) the environmental assessment process that will apply to projects on that land until the enactment of first nation laws in relation to that subject; and
- (d) any other relevant matter.

### **Excluded land**

7. (1) Notwithstanding subsection 6(1), a portion of a reserve may be excluded from the application of a land code if it has been surveyed under Part II of the Canada Lands Surveys Act and if

- (a) it is in an environmentally unsound condition that cannot be remedied by measures that are technically and financially feasible before the date that the land code is to be submitted for community approval under subsection 10(1);
- (b) it is the subject of litigation that is unlikely to be resolved before the date referred to in paragraph (a);
- (c) it is uninhabitable or unusable as a result of a natural disaster; or
- (d) the first nation and the Minister agree that, for any other reason, its exclusion is justifiable.

### **Condition**

(2) A portion of a reserve may not be excluded from a land code if the exclusion would have the effect of placing the administration of a lease or other interest in land in more than one land management regime.

### **Exclusion no longer valid**

(3) A first nation shall amend the legal description of first nation land in its land code to include a portion excluded under subsection (1) if the first nation and the Minister agree that the condition that justified the exclusion no longer exists, and the individual agreement shall be amended accordingly.

### **Verification**

#### **Appointment of verifier**

8. (1) The Minister and a first nation shall jointly appoint a verifier, to be chosen from a list established in accordance with the Framework Agreement, who shall

- (a) determine whether a proposed land code and the proposed process for the approval of the land code and an individual agreement are in

accordance with the Framework Agreement and this Act and, if they are in accordance, confirm them;

(b) determine whether the conduct of a community approval process is in accordance with the process confirmed under paragraph (a); and

(c) certify the validity of a land code that has been approved in accordance with the Framework Agreement and this Act.

### **Disputes**

(2) The verifier shall determine any dispute arising between a first nation and the Minister before a land code comes into force regarding the terms of the transfer of administration of land or the exclusion of a portion of a reserve from the application of a land code.

### **Notice of determination**

9. (1) The verifier shall, within thirty days after receiving a first nation's documents, as required by the Framework Agreement, make a determination under paragraph 8(1)(a) and give notice of the determination to the first nation and the Minister.

### **Reasons**

(2) If the verifier determines that a proposed land code or a proposed community approval process is not in accordance with the Framework Agreement or this Act, the verifier shall give written reasons to the first nation and the Minister.

Community Approval and Certification

### **Submission to members**

10. (1) If the verifier determines that a proposed land code and a proposed community approval process of a first nation are in accordance with the Framework Agreement and this Act, the council of the first nation may submit the proposed land code and the individual agreement to the first nation members for their approval.

### **Eligibility to vote**

(2) Every person who is eighteen years of age or over and a first nation member, whether or not resident on the reserve of the first nation, is eligible to vote in the community approval process.

Information to be provided

(3) The council shall, before proceeding to obtain community approval, take reasonable measures, such as those described in the Framework Agreement, to locate voters and inform them of their right to vote, the means of exercising that right and the content of the Framework Agreement, this Act, the proposed land code and the individual agreement.

Third parties

(4) If other persons have an interest in the land that is to be subject to the proposed land code, the council shall, within a reasonable time before the vote, take appropriate measures to inform those persons of the proposed land code, this Act and the date of the vote.

### **Publication of notice**

11. (1) The verifier shall publish a notice of the date, time and place of a vote.

### **Role of the verifier**

(2) The verifier, and any assistants that the verifier may appoint, shall observe the conduct of a vote.

### **Report**

(3) Within fifteen days after the conclusion of a vote, the verifier shall send to the first nation and the Minister the verifier's report on the conduct of the vote.

### **Approval by members**

12. (1) A proposed land code and an individual agreement that have been submitted for community approval are approved if

(a) a majority of eligible voters participated in the vote and a majority of those voters voted to approve them;

(b) all those eligible voters who signified, in a manner determined by the first nation, their intention to vote have been registered and a majority of the registered voters voted to approve them; or

(c) they are approved by the community in any other manner agreed on by the first nation and the Minister.

### **Minimum participation**

(2) Notwithstanding subsection (1), a proposed land code and an individual agreement are not approved unless more than twenty-five per cent of the eligible voters voted to approve them.

### **Increased percentage**

(3) A council may, by resolution, increase the percentage of votes required under subsection (2).

### **Copy and declaration**

13. (1) If a first nation votes to approve a land code and an individual agreement, its council shall, after the conclusion of the vote and without delay, send to the verifier a copy of the approved code and a declaration that the code and agreement were approved in accordance with section 12.

### **Report of irregularity**

(2) The Minister or an eligible voter may, within five days after the conclusion of a vote, report any irregularity in the voting process to the verifier.

### **Certification**

14. (1) The verifier shall, after receiving a copy of the land code and the declaration, certify the validity of the land code unless the verifier, after giving the first nation and the Minister a reasonable opportunity to make submissions on the matter but within ten days after the conclusion of the vote, is of the opinion that

- (a) the community approval process confirmed under paragraph 8(1)(a) was not followed or the community approval was otherwise irregular; and
- (b) the land code might not have been approved but for that irregularity.

### **Transmittal**

(2) The verifier shall, without delay, send a copy of the certified land code to the first nation and the Minister.

### **Presumption**

(3) A certified land code is deemed to have been validly approved by the first nation.

### **Coming into Force of Land Code**

#### **Coming into force**

15. (1) A land code comes into force and has the force of law on the day it is certified or on any other later date that may be specified in or under the land code and judicial notice shall thereafter be taken of the land code in any proceedings.

### **Access to land code**

(2) A copy of the land code of a first nation shall be maintained by the council for public inspection at a place designated by the council.

## **Effect**

16. (1) After the coming into force of a land code, no interest in or licence in relation to first nation land may be acquired or granted except in accordance with the land code of the first nation.

## **Interests of third parties**

(2) Subject to subsections (3) and (4), interests in and licences in relation to first nation land that exist on the coming into force of a land code continue in accordance with their terms and conditions.

## **Transfer of rights of Her Majesty**

(3) On the coming into force of the land code of a first nation, the rights and obligations of Her Majesty as grantor in respect of the interests and licences described in the first nation's individual agreement are transferred to the first nation in accordance with that agreement.

Interests of first nation members

(4) Interests in first nation land held on the coming into force of a land code by first nation members pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the first nation are subject to the provisions of the land code governing the transfer and lease of interests in first nation land and sharing in natural resource revenues.

## **Rules on Breakdown of Marriage**

### **Obligation of first nation**

17. (1) A first nation shall, in accordance with the Framework Agreement and following the community consultation process provided for in its land code, establish general rules and procedures, in cases of breakdown of marriage, respecting the use, occupation and possession of first nation land and the division of interests in first nation land.

### **Establishment of rules and procedures**

(2) The first nation shall, within twelve months after its land code comes into force, incorporate the general rules and procedures into its land code or enact a first nation law containing the general rules and procedures.

### **Disputes**

(3) The first nation or the Minister may refer any dispute relating to the establishment of the general rules and procedures to an arbitrator in accordance with the Framework Agreement.

## **LAND MANAGEMENT REGIME**

### **First Nation Powers**

#### **Power to manage**

18. (1) A first nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage first nation land and, in particular, may

- (a) exercise the powers, rights and privileges of an owner in relation to that land;
- (b) grant interests in and licences in relation to that land;
- (c) manage the natural resources of that land; and
- (d) receive and use all moneys acquired by or on behalf of the first nation under its land code.

#### **Legal capacity**

(2) For any purpose related to first nation land, a first nation has the legal capacity necessary to exercise its powers and perform its duties and functions and, in particular, may

- (a) acquire and hold real and personal property;
- (b) enter into contracts;
- (c) borrow money;
- (d) expend and invest money; and

(e) be a party to legal proceedings.

### **Exercise of power**

(3) The power of a first nation to manage first nation land shall be exercised by the council of a first nation, or by any person or body to whom a power is delegated by the council in accordance with the first nation's land code, and that power shall be exercised for the use and benefit of the first nation.

### **Management body**

(4) A body established to manage first nation land is a legal entity having the capacity, rights, powers and privileges of a natural person.

### **Transfer of moneys**

19. On the coming into force of the land code of a first nation, all revenue moneys collected, received or held by Her Majesty for the use and benefit of the first nation or its first nation members cease to be Indian moneys and shall be transferred to the first nation.

### **First Nation Laws**

#### **Power to enact laws**

20. (1) The council of a first nation has, in accordance with its land code, the power to enact laws respecting

- (a) interests in and licences in relation to first nation land;
- (b) the development, conservation, protection, management, use and possession of first nation land; and
- (c) any matter arising out of or ancillary to the exercise of that power.

#### **Particular powers**

(2) Without restricting the generality of subsection (1), first nation laws may include laws respecting

- (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
- (b) subject to section 5, the creation, acquisition and granting of interests in and licences in relation to first nation land and prohibitions in relation thereto;
- (c) environmental assessment and environmental protection;
- (d) the provision of local services in relation to first nation land and the imposition of equitable user charges for those services; and
- (e) the provision of services for the resolution of disputes in relation to first nation land.

### **Enforcement measures**

(3) A first nation law may provide for enforcement measures, consistent with federal laws, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

### **Inconsistency**

(4) In the event of any inconsistency or conflict between the land code of a first nation and the provisions of a first nation law or of a by-law made by its council under section 81 of the Indian Act, the land code prevails to the extent of the inconsistency or conflict.

### **Environmental protection**

21. (1) Before enacting any first nation law respecting environmental protection, a first nation shall enter into an agreement with the Minister and the Minister of the Environment in relation to environmental protection in accordance with the Framework Agreement.

### **Minimum standards**

(2) For the purposes of an agreement entered into under subsection (1), the standards of environmental protection established by first nation laws and the

punishments imposed for failure to meet those standards must be at least equivalent in their effect to any standards established and punishments imposed by the laws of the province in which the first nation land is situated.

### **Environmental assessment**

(3) First nation laws respecting environmental assessment must provide for the establishment, in accordance with the Framework Agreement, of an environmental assessment process applicable to all projects carried out on first nation land that are approved, regulated, funded or undertaken by the first nation.

### **Offences and punishment**

22. (1) A first nation law may create offences punishable on summary conviction and provide for the imposition of fines, imprisonment, restitution, community service and any other means for achieving compliance.

Incorporation by reference

(2) A first nation law may adopt or incorporate by reference the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time.

### **Prosecution**

(3) A first nation may, in relation to prosecutions of contraventions of first nation laws,

- (a) retain its own prosecutors;
- (b) enter into an agreement with Her Majesty and a provincial government for the use of provincial prosecutors; or
- (c) enter into an agreement with Her Majesty for the use of agents engaged by Her Majesty.

## **Evidence**

23. In any proceedings, a copy of a first nation law appearing to be certified as a true copy by an officer of the first nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

### **Appointment of justices of the peace**

24. (1) A first nation or, if Her Majesty and the first nation have entered into an agreement for that purpose in accordance with the Framework Agreement, the Governor in Council, may appoint justices of the peace to ensure the enforcement of first nation laws including the adjudication of offences for contraventions of first nation laws.

## **Judicial independence**

(2) A justice of the peace appointed for a first nation shall have tenure and remuneration, and be subject to conditions of removal, that reflect the independence of the office of justice of the peace in the province in which the first nation land is situated.

## **Powers**

(3) Justices of the peace have all the powers necessary for the performance of their duties and functions.

## **Appeals**

(4) An appeal lies from a decision of a justice of the peace in the manner in which an appeal lies in summary conviction proceedings under Part XXVII of the Criminal Code and the provisions of that Part relating to appeals apply to appeals under this section.

### **Courts of a province**

(5) If no justices of the peace are appointed for a first nation, its first nation laws shall be enforced through a court of competent jurisdiction of the province in which its first nation land is situated.

### **First Nation Land Register**

#### **Establishment**

25. (1) The Minister shall establish a register to be known as the First Nation Land Register.

#### **Administration of Register**

(2) The First Nation Land Register is to be administered, subject to this section, in the same manner as the Reserve Land Register established under the Indian Act.

#### **Regulations**

(3) The Governor in Council may, on the recommendation of the Minister and in accordance with the Framework Agreement, make regulations respecting the administration of the First Nation Land Register, the registration of interests in it and the recording of any other matter, including but not limited to regulations respecting

- (a) the effects of registering interests, including priorities;
- (b) the payment of fees for the registration of interests and for any other service in relation to the Register;
- (c) the appointment, remuneration, powers, functions and duties of officers and employees who administer the Register; and
- (d) the keeping, by officers and employees, of documents that are not registrable.

## **Limitations on Alienation of First Nation Land**

### **Alienation of land**

26. (1) First nation land may not be alienated except where it is exchanged for other land in accordance with the Framework Agreement and this Act.

### **Expropriation**

(2) Interests in first nation land may not be expropriated except by Her Majesty or a first nation in accordance with the Framework Agreement and this Act.

### **Restrictions on exchange**

27. (1) A first nation may exchange first nation land only if

- (a) compensation for the first nation land includes land that Her Majesty has agreed will be set apart as a reserve and that is to become first nation land; and
- (b) the Minister has approved the form of the exchange.

### **Additional compensation**

(2) In addition to land referred to in subsection (1), other compensation may be provided including land that will not become first nation land.

### **Terms and conditions**

(3) An exchange of first nation land may be made subject to other terms and conditions.

### **Community approval**

(4) The exchange of first nation land must be approved by first nation members in accordance with the land code of the first nation and must be completed in accordance with the Framework Agreement.

### **Expropriation by a first nation**

28. (1) A first nation may, in accordance with the general rules and procedures contained in its land code, expropriate any interest in its first nation land that, in the opinion of its council, is necessary for community works or other first nation community purposes.

### **Exception**

(2) An interest in first nation land obtained under section 35 of the Indian Act or held by Her Majesty is not subject to expropriation by a first nation.

### **Effective date**

(3) An expropriation takes effect from the day on which a notice of expropriation is registered in the First Nation Land Register or the thirtieth day after the day on which the notice is served on the person whose interest is expropriated, whichever is the earlier.

### **Effect of expropriation**

(4) An expropriated interest becomes the property of the first nation free of any previous claim or encumbrance.

### **Compensation**

(5) A first nation shall pay fair compensation to the holder of an expropriated interest and, in determining that compensation, the first nation shall apply the rules set out in the Expropriation Act, with such modifications as the circumstances require.

### **Resolution of disputes**

(6) Any dispute concerning compensation shall be determined according to the system for the resolution of such disputes established by a first nation in accordance with the Framework Agreement.

### **Expropriation by Her Majesty**

29. (1) An interest in first nation land may be expropriated by Her Majesty for the use of a federal department or agency and with the consent and by order of the Governor in Council.

### **Consent of Governor in Council**

(2) The Governor in Council may consent to an expropriation only if it is justifiable and necessary for a federal public purpose that serves the national interest.

### **Matters to be considered**

(3) The Governor in Council may consent to an expropriation only if the Governor in Council is satisfied that, in addition to any other legal requirements that may apply, the following requirements have been met:

- (a) there is no other reasonably feasible alternative to the expropriation, such as the use of land that is not first nation land;
- (b) reasonable efforts have been made to acquire the interest through agreement with the first nation;
- (c) the most limited interest necessary is expropriated for the shortest time possible; and
- (d) information relevant to the expropriation is provided to the first nation.

### **Report to be made public**

(4) Before the Governor in Council consents to the expropriation, the department or agency referred to in subsection (1) shall provide to the first nation, and make available to the public, a report stating the justifications for the expropriation and describing the steps taken to satisfy the requirements of subsection (3).

## **Disputes**

(5) If a first nation objects to a proposed expropriation, it may, within sixty days after the report has been made public, refer the matter to a neutral evaluator in accordance with the Framework Agreement.

## **Time of consent**

(6) The Governor in Council may not consent to the expropriation before the expiration of the period referred to in subsection (5) or, if the first nation has referred the matter to a neutral evaluator, before the neutral evaluator has reported on the matter.

## **Partial expropriation**

30. If less than the full interest of a first nation in first nation land is expropriated by Her Majesty,

(a) the land in which an interest is expropriated continues to be first nation land and subject to the provisions of the land code and first nation laws that are not inconsistent with the expropriation; and

(b) the first nation continues to have the right to use and occupy that land except to the extent that the use and occupation is inconsistent with the expropriation.

## **Compensation**

31. (1) Where an interest in first nation land is expropriated by Her Majesty, compensation shall be provided to the first nation consisting of

(a) land that, when accepted by that first nation, will become first nation land; and

(b) any additional compensation required to achieve the total compensation determined under subsection (3).

**Land of a lesser area**

(2) Land provided to a first nation as compensation may be of an area that is less than the area of the land in which an interest has been expropriated if the total area of the land comprised in a reserve of the first nation is not less following the expropriation than at the coming into force of its land code.

**Determination of compensation**

(3) The total compensation shall be determined taking into account the following factors:

- (a) the market value of the expropriated interest or of the land in which an interest has been expropriated;
- (b) the replacement value of any improvement to the land;
- (c) any expenses or losses resulting from a disturbance attributable to the expropriation;
- (d) any reduction in the value of any interest in first nation land that is not expropriated;
- (e) any adverse effect on any cultural or other special value of the land to the first nation; and
- (f) the value of any special economic advantage arising out of or incidental to the occupation or use of the land to the extent that that value is not otherwise compensated.

**Interest**

(4) Interest is payable on compensation from the effective date of an expropriation at the prejudgment interest rate that is paid in civil proceedings in the superior court of the province in which the land is situated.

**Dispute**

(5) If an agreement on compensation cannot be reached, the first nation or the expropriating department or agency may refer the matter to an arbitrator in accordance with the Framework Agreement.

**Limit**

(6) Any claim or encumbrance in respect of an interest expropriated by Her Majesty may only be made or discharged against the compensation paid under this section.

**Restitution**

32. (1) An interest in first nation land expropriated by Her Majesty that is no longer required for the purpose for which it was expropriated shall revert to the first nation and, if the full interest of the first nation was expropriated, it shall be returned to the first nation in accordance with terms and conditions negotiated by the first nation and the expropriating department or agency.

**Improvements**

(2) When an interest reverts or is returned to a first nation, the minister responsible for the expropriating department or agency shall determine the disposition of any improvements made to the land.

**Dispute**

(3) If the first nation and the expropriating department or agency cannot agree on the terms and conditions of the return of the full interest, the first nation or the department or agency may, in accordance with the Framework Agreement, refer the matter to an arbitrator.

## **Expropriation Act**

33. Without limiting the generality of section 37, in the event of any inconsistency or conflict between this Act and the Expropriation Act in relation to the expropriation of interests in first nation land by Her Majesty, this Act prevails to the extent of the inconsistency or conflict.

## **LIABILITY**

### **First nation not liable**

34. (1) A first nation is not liable in respect of anything done or omitted to be done before the coming into force of its land code by Her Majesty or any person or body authorized by Her Majesty to act in relation to first nation land.

Indemnification of first nation

(2) Her Majesty shall indemnify a first nation for any loss suffered by the first nation as a result of an act or omission described in subsection (1).

Her Majesty not liable

(3) Her Majesty is not liable in respect of anything done or omitted to be done after the coming into force of the land code of a first nation by the first nation or any person or body authorized by the first nation to act in relation to first nation land.

### **Indemnification of Her Majesty**

(4) The first nation shall indemnify Her Majesty for any loss suffered by Her Majesty as a result of an act or omission described in subsection (3).

## **IMMUNITY AND JUDICIAL REVIEW**

### **Immunity**

35. No criminal or civil proceedings lie against an arbitrator, mediator, neutral evaluator or verifier appointed under the Framework Agreement or this Act or any member of a board established by section 38 of the Framework Agreement who is, in good faith, exercising a power or performing a duty or function in accordance with the Framework Agreement or this Act for anything done or omitted to be done during the course of the exercise or purported exercise of any power or the performance or purported performance of any duty or function of that person in accordance with the Framework Agreement or this Act.

### **Determinations final**

36. (1) Every determination under this Act or the Framework Agreement by a verifier or arbitrator is final, and no order shall be made, process entered or proceedings taken in any court, whether by way of injunction, certiorari, prohibition, mandamus, quo warranto or otherwise, to question, review or prohibit such a determination.

### **Actions final**

(2) No order shall be made, process entered or proceedings taken in any court, whether by way of injunction, certiorari, prohibition, mandamus, quo warranto or otherwise, to question, review or prohibit any other action under this Act or the Framework Agreement by a verifier or arbitrator or any action under the Framework Agreement by a neutral evaluator.

### **Review by Federal Court**

(3) Notwithstanding subsections (1) and (2), the Attorney General of Canada or anyone directly affected by the matter in respect of which relief is sought may make an application under the Federal Courts Act on any of the grounds referred to in paragraph 18.1(4)( a) or ( b) of that Act for any relief against a verifier,

arbitrator or neutral evaluator by way of an injunction or declaration or by way of an order in the nature of certiorari, prohibition, mandamus or quo warranto.

1999, c. 24, s. 36; 2002, c. 8, s. 182.

## **OTHER ACTS**

### **Other Acts**

37. In the event of any inconsistency or conflict between this Act and any other federal law, this Act prevails to the extent of the inconsistency or conflict.

#### **Indian Act**

38. (1) On the coming into force of the land code of a first nation, the following cease to apply to the first nation, first nation members and first nation land:

(a) sections 18 to 20, 22 to 28, 30 to 35, 37 to 41 and 49, subsection 50(4) and sections 53 to 60, 66, 69, 71 and 93 of the Indian Act;

(b) any regulations made under section 57 of that Act; and

(c) to the extent of any inconsistency or conflict with the Framework Agreement, the land code or first nation laws, any regulations made under sections 42 and 73 of that Act.

### **Leasehold interests**

(2) Subsection 89(1.1) of the Indian Act continues to apply to leasehold interests in any first nation land that was designated land on the coming into force of a first nation's land code.

### **Application**

(3) A land code may extend the application of subsection 89(1.1) of the Indian Act, or any portion of it, to other leasehold interests in first nation land.

### **Indian Oil and Gas Act**

39. (1) The Indian Oil and Gas Act

(a) continues to apply in respect of any first nation land that was subject to that Act on the coming into force of the land code of a first nation; and

(b) applies in respect of an interest in first nation land that is granted to Her Majesty for the exploitation of oil and gas pursuant to a land code.

#### Royalties

(2) For greater certainty, the provisions of the Indian Oil and Gas Act respecting the payment of royalties to Her Majesty in trust for a first nation apply, notwithstanding any other provision of this Act, in respect of first nation land referred to in subsection (1).

#### **Environmental laws**

40. (1) For greater certainty, in the event of any inconsistency or conflict between a land code or a first nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict.

#### Migratory birds, endangered species, fisheries

(2) For greater certainty, this Act does not extend or limit any right or power in relation to migratory birds, endangered species or fisheries.

#### **Canadian Environmental Assessment Act**

41. Section 10 of the Canadian Environmental Assessment Act does not apply to a project carried out on first nation land.

#### **Emergencies Act**

42. The Emergencies Act continues to apply to first nation land except that any appropriation, requisition or use of first nation land required under that Act must be expressly authorized by order of the Governor in Council.

#### Acts respecting nuclear energy

43. (1) Subject to subsection (2), nothing in this Act limits the application of the Nuclear Safety and Control Act and the Nuclear Energy Act to first nation lands.

### **Expropriation provisions**

(2) In the event of any inconsistency or conflict between the provisions of this Act relating to expropriation and the Nuclear Energy Act, the provisions of this Act prevail to the extent of the inconsistency or conflict.

1999, c. 24, ss. 43, 47.

Non-application of Statutory Instruments Act

44. The Statutory Instruments Act does not apply in respect of a land code or first nation laws.

## **AMENDMENT OF SCHEDULE**

### **Addition of band to schedule**

45. The Governor in Council may, by order, add the name of a band to the schedule if the Governor in Council is satisfied that the signing of the Framework Agreement on behalf of the band has been duly authorized and that the Framework Agreement has been so signed.

## **TRANSITIONAL PROVISION**

### **Validity**

46. (1) Any action taken or determination or decision made under the Framework Agreement before the coming into force of sections 6 to 14, 35 and 36 is deemed, to the extent that it would have been valid under those sections, to have been validly taken or made under this Act.

Coming into force of land code

(2) Notwithstanding subsection (1), a land code may not come into force before the coming into force of this section.

## **CONDITIONAL AMENDMENT**

47. [Amendment]

## **COMING INTO FORCE**

Order of Governor in Council

\*48. Section 45 comes into force on a day to be fixed by order of the Governor in Council after the completion of a review of the Framework Agreement in accordance with its provisions and any consultations that the Governor in Council may require.

\* [Note: Section 45 in force May 20, 2003, see SI/2003-108.]

## **SCHEDULE**

(Sections 2 and 45)

### **FIRST NATIONS**

1. Westbank
2. Musqueam
3. Fort George (also known as Lheit-Lit'en and Lheidli T'enneh)
4. Anderson Lake (also known as N'Quatqua)
5. Squamish
6. Siksika Nation
7. John Smith (also known as Muskoday)
8. Cowessess
9. The Pas (also known as Opaskwayak Cree)
10. Nipissing Band of Ojibways (also known as Nipissing)
11. Scugog (also known as Mississaugas of Scugog Island)
12. Chippewas of Rama (also known as Chippewas of Mnjikaning)
13. Chippewas of Georgina Island
14. Saint Mary's
15. Garden River
16. Moose Deer Point
17. Whitecap No. 94
18. Kinistin
19. Mississauga
20. Whitefish Lake
21. Songhees

22. Beecher Bay
23. Pavilion
24. Tsawwassen
25. Tsawout
26. Kingsclear
27. Skeetchestn
28. Muskeg Lake
29. Burrard
30. Sliammon
31. Osoyoos
32. Chippewas of Kettle and Stony Point
33. Dokis
34. Chippewas of the Thames
35. Kitselas
36. McLeod Lake
37. Shxwhá:y Village (also known as Sqay Village)
38. T'Sou-ke (also known as Tsouke)
39. Leq'á:mel (also known as Leqamel)
40. Flying Dust
41. Swan Lake
42. Henvey Inlet
43. Matsqui
44. Seabird Island
45. Squiala
46. Tzeachten
47. Pasqua

1999, c. 24, Sch.; SOR/2003-178; SOR/2006-216.

## AMENDMENTS NOT IN FORCE

-- 2007, c. 17, s. 1:

1.(1) The definition in subsection 2(1) of the French version of the First Nations Land Management Act is repealed.

(2) The definitions "first nation land" and "licence" in subsection 2(1) of the Act are replaced by the following:

"first nation land"

"first nation land" means reserve land to which a land code applies and includes all the interests or rights in, and resources of, the land that are within the legislative authority of Parliament.

"licence"

"licence" , in relation to first nation land, means

(a) in Canada elsewhere than in Quebec, any right of use or occupation of the land other than an interest in that land;

(b) in Quebec, any right to use or occupy the land other than a right as defined in this subsection.

(3) The definition "interest" in subsection 2(1) of the English version of the Act is replaced by the following:

"interest"

"interest" , in relation to first nation land in Canada elsewhere than in Quebec, means any estate, right or interest of any nature in or to the land, but does not include title to the land.

(4) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

"right"

"right" , in relation to first nation land in Quebec, means any right of any nature in or to that land, including the rights of a lessee, but does not include title to the land.

(5) Subsection 2(1) of the French version of the Act is amended by adding the following in alphabetical order:

«intérêt » "interest"

«intérêt » S'agissant des terres de la première nation situées au Canada mais ailleurs qu'au Québec, tout domaine, droit ou autre intérêt portant sur celles-ci; est cependant exclu le titre de propriété.

-- 2007, c. 17, s. 2:

2. (1) Paragraphs 6(1)(b) and (c) of the Act are replaced by the following:

(b) the general rules and procedures applicable to the use and occupancy of first nation land, including use and occupancy under

(i) licences and leases, and

(ii) interests or rights in first nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the first nation;

(c) the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or right in first nation land;

(2) Paragraph 6(1)(f) of the Act is replaced by the following:

(f) a community consultation process for the development of general rules and procedures respecting, in cases of breakdown of marriage, the use, occupation and possession of first nation land and the division of interests or rights in first nation land;

(3) Paragraphs 6(1)(i) and (j) of the Act are replaced by the following:

(i) the establishment or identification of a forum for the resolution of disputes in relation to interests or rights in first nation land;

(j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests or rights in first nation land;

(4) Paragraph 6(3)(b) of the Act is replaced by the following:

(b) a description of the interests or rights and licences that have been granted by Her Majesty in or in relation to that land, and the date and other terms of the transfer to the first nation of Her Majesty's rights and obligations as grantor of those interests or rights and licences;

-- 2007, c. 17, s. 3:

3. Subsection 7(2) of the Act is replaced by the following:

Condition

(2) A portion of a reserve may not be excluded from a land code if the exclusion would have the effect of placing the administration of a lease, other interest or a right in that land in more than one land management regime.

-- 2007, c. 17, s. 4:

4. Subsection 10(4) of the Act is replaced by the following:

Third parties

(4) If other persons have an interest or right in the land that is to be subject to the proposed land code, the council shall, within a reasonable time before the vote, take appropriate measures to inform those persons of the proposed land code, this Act and the date of the vote.

-- 2007, c. 17, s. 5:

5. Section 16 of the Act is replaced by the following:

Effect

16. (1) After the coming into force of a land code, no interest or right in or licence in relation to first nation land may be acquired or granted except in accordance with the land code of the first nation.

Interests or rights of third parties

(2) Subject to subsections (3) and (4), interests or rights in and licences in relation to first nation land that exist on the coming into force of a land code continue in accordance with their terms and conditions.

Transfer of rights of Her Majesty

(3) On the coming into force of the land code of a first nation, the rights and obligations of Her Majesty as grantor in respect of the interests or rights and the licences described in the first nation's individual agreement are transferred to the first nation in accordance with that agreement.

Interests and rights of first nation members

(4) Interests or rights in first nation land held on the coming into force of a land code by first nation members pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the first nation are subject to the

provisions of the land code governing the transfer and lease of interests or rights in first nation land and sharing in natural resource revenues.

-- 2007, c. 17, s. 6:

6. Subsection 17(1) of the Act is replaced by the following:

Obligation of first nation

17. (1) A first nation shall, in accordance with the Framework Agreement and following the community consultation process provided for in its land code, establish general rules and procedures, in cases of breakdown of marriage, respecting the use, occupation and possession of first nation land and the division of interests or rights in first nation land.

-- 2007, c. 17, s. 7:

7. (1) Paragraph 18(1)(b) of the Act is replaced by the following:

(b) grant interests or rights in and licences in relation to that land;

(2) Paragraph 18(2)(a) of the Act is replaced by the following:

(a) acquire and hold property;

-- 2007, c. 17, s. 8:

8. (1) Paragraph 20(1)(a) of the Act is replaced by the following:

(a) interests or rights in and licences in relation to first nation land;

(2) Paragraph 20(2)(b) of the Act is replaced by the following:

(b) subject to section 5, the creation, acquisition and granting of interests or rights in and licences in relation to first nation land and prohibitions in relation thereto;

-- 2007, c. 17, s. 9:

9. (1) The portion of subsection 25(3) of the Act before paragraph (b) is replaced by the following:

Regulations

(3) The Governor in Council may, on the recommendation of the Minister and in accordance with the Framework Agreement, make regulations respecting the administration of the First Nation Land Register, the registration of interests or rights in it and the recording of any other matter, including but not limited to regulations respecting

(a) the effects of registering interests or rights, including priorities;  
(2) Paragraph 25(3)(b) of the English version of the Act is replaced by the following:

(b) the payment of fees for the registration of interests or rights and for any other service in relation to the Register;

-- 2007, c. 17, s. 10:

10. Subsection 26(2) of the Act is replaced by the following:

Expropriation

(2) Interests or rights in first nation land may not be expropriated except by Her Majesty or a first nation in accordance with the Framework Agreement and this Act.

-- 2007, c. 17, s. 11:

11. (1) Subsections 28(1) and (2) of the Act are replaced by the following:

Expropriation by a first nation

28. (1) A first nation may, in accordance with the general rules and procedures contained in its land code, expropriate any interest or right in its first nation land that, in the opinion of its council, is necessary for community works or other first nation community purposes.

Exception

(2) An interest or right in first nation land obtained under section 35 of the Indian Act or held by Her Majesty is not subject to expropriation by a first nation.

(2) Subsection 28(3) of the English version of the Act is replaced by the following:

Effective date

(3) An expropriation takes effect from the day on which a notice of expropriation is registered in the First Nation Land Register or the thirtieth day after the day on which the notice is served on the person whose interest or right is expropriated, whichever is the earlier.

(3) Subsections 28(4) and (5) of the Act are replaced by the following:

Effect of expropriation

(4) An expropriated interest becomes the property of the first nation free of any previous claim or encumbrance. In Quebec, a first nation becomes the holder of an expropriated right free of any previous right, charge or claim.

#### Compensation

(5) A first nation shall pay fair compensation to the holder of an expropriated interest or right and, in determining that compensation, the first nation shall apply the rules set out in the Expropriation Act, with such modifications as the circumstances require.

-- 2007, c. 17, s. 12:

12. (1) Subsection 29(1) of the Act is replaced by the following:

#### Expropriation by Her Majesty

29. (1) An interest or right in first nation land may be expropriated by Her Majesty for the use of a federal department or agency and with the consent and by order of the Governor in Council.

(2) Paragraphs 29(3)(b) and (c) of the Act are replaced by the following:

(b) reasonable efforts have been made to acquire the interest or right through agreement with the first nation;

(c) the most limited interest or right necessary is expropriated for the shortest time possible; and

-- 2007, c. 17, s. 13:

13. (1) The portion of section 30 of the Act before paragraph (a) is replaced by the following:

#### Partial expropriation

30. If less than the full interest of a first nation, or less than the entire right of a first nation, in first nation land is expropriated by Her Majesty,

(2) Paragraph 30(a) of the English version of the Act is replaced by the following:

(a) the land in which an interest or right is expropriated continues to be first nation land and subject to the provisions of the land code and first nation laws that are not inconsistent with the expropriation; and

-- 2007, c. 17, s. 14:

14. (1) The portion of subsection 31(1) of the Act before paragraph (a) is replaced by the following:

#### Compensation

31. (1) Where an interest or right in first nation land is expropriated by Her Majesty, compensation shall be provided to the first nation consisting of

(2) Subsection 31(2) of the English version of the Act is replaced by the following:

#### Land of a lesser area

(2) Land provided to a first nation as compensation may be of an area that is less than the area of the land in which an interest or right has been expropriated if the total area of the land comprised in a reserve of the first nation is not less following the expropriation than at the coming into force of its land code.

(3) Paragraph 31(3)(a) of the Act is replaced by the following:

(a) the market value of the expropriated interest or right or of the land in which an interest or right has been expropriated;

(4) Paragraph 31(3)(d) of the Act is replaced by the following:

(d) any reduction in the value of any interest or right in first nation land that is not expropriated;

(5) Subsection 31(6) of the Act is replaced by the following:

#### Limit

(6) Any claim or encumbrance in respect of an interest expropriated by Her Majesty may only be made or discharged against the compensation paid under this section. In Quebec, any right, charge or claim in respect of a right expropriated by Her Majesty may only be made or discharged against the compensation paid under this section.

-- 2007, c. 17, s. 15:

15. (1) Subsections 32(1) and (2) of the Act are replaced by the following:

#### Restitution

32. (1) An interest or right in first nation land expropriated by Her Majesty that is no longer required for the purpose for which it was expropriated shall revert to the first nation and, if the full interest or the entire right of the first nation was expropriated, it shall be returned to the first nation in accordance with terms and

conditions negotiated by the first nation and the expropriating department or agency.

#### Improvements

(2) When an interest or right reverts or is returned to a first nation, the minister responsible for the expropriating department or agency shall determine the disposition of any improvements made to the land.

(2) Subsection 32(3) of the English version of the Act is replaced by the following:

#### Dispute

(3) If the first nation and the expropriating department or agency cannot agree on the terms and conditions of the return of the full interest or of the entire right, the first nation or the department or agency may, in accordance with the Framework Agreement, refer the matter to an arbitrator.

-- 2007, c. 17, s. 16:

16. Section 33 of the Act is replaced by the following:

#### Expropriation Act

33. Without limiting the generality of section 37, in the event of any inconsistency or conflict between this Act and the Expropriation Act in relation to the expropriation of interests or rights in first nation land by Her Majesty, this Act prevails to the extent of the inconsistency or conflict.

-- 2007, c. 17, s. 17:

17. Subsections 38(2) and (3) of the Act are replaced by the following:

#### Leasehold interests or leases

(2) Subsection 89(1.1) of the Indian Act continues to apply to leasehold interests or leases in any first nation land that was designated land on the coming into force of a first nation's land code.

#### Application

(3) A land code may extend the application of subsection 89(1.1) of the Indian Act, or any portion of it, to other leasehold interests or leases in first nation land.

-- 2007, c. 17, s. 18:

18. Paragraph 39(1)(b) of the Act is replaced by the following:

(b) applies in respect of an interest or right in first nation land that is granted to Her Majesty for the exploitation of oil and gas pursuant to a land code.