
Briefing Note: First Nations Land Management Act

Opportunity

There is an opportunity to improve the First Nation Lands Management Act (FNLMA) and to better align the FNLMA with the Framework Agreement on First Nation Land Management (Framework Agreement). This opportunity would require the replacement of the FNLMA with an amended version to make it more consistent with the Framework Agreement. First Nation communities are in full support of this and it would considerably advance Reconciliation and encourage more First Nations to opt into the process. This opportunity would save time, resources and monies for both Canada and the First Nations and allow more First Nations to resume control over their lands, environment and resources. It is a “win win” opportunity.

Liberal Commitments

Speech From the Throne:

- Continue to move forward together to ensure that Indigenous Peoples are in control of their own destiny and making decisions about their communities;
- Take new steps to ensure the Government is living up to the spirit and intent of treaties, agreements, and other constructive arrangements made with Indigenous Peoples;

2019 Liberal Platform

- We need to continue to move forward, to a place where Indigenous Peoples in Canada are in control of their own destiny, making their own decisions about their future.
- We will also continue to support Indigenous-led processes for rebuilding and reconstituting their nations, advancing self-determination and, for First Nations, the transition away from the Indian Act.

Budget 2018

- \$143.5 million over five years, beginning in 2018–19, and \$19 million per year ongoing [to] allow an additional 50 First Nations to enter into the Framework Agreement process, while providing pre-readiness support and capacity development to ensure their successful participation.

Background

The Framework Agreement is a government to government agreement between First Nations and Canada which recognizes First Nations Inherent Right to exercise First Nation jurisdiction and law making over their lands by opting out of the Indian Act land management provisions and replacing it with their own laws. The Framework Agreement was signed in February 1996 and the FNLMA was passed in June 1999. The restrictive land management provisions of the Indian Act no longer apply to those signatory First Nations to the Framework Agreement who pass their Land Codes and subsequent laws.

Once the First Nation Land Code is enacted, the First Nation governs their reserve lands, resources and environment according to their cultural values and priorities. It enables First Nation communities to process land transactions more quickly and encourages a more attractive climate for business and investment to occur, thus creating more jobs and economic opportunities. The first three First Nation Land Codes took effect on January 1, 2000. Since then, those First Nations with Land Codes and law making powers have flourished.

The Framework Agreement has a proved track record, having taken roughly 12.5% of First Nations out of the colonial Indian Act lands system, while enhancing environmental protection and facilitating increased economic development through modern systems of governance, lawmaking and policies, and timely decision making. Unlike under the Indian Act, First Nations completing the Framework Agreement process enjoy a regulation-backed lands registry system that is priority based, paperless, and instant. This means greater land certainty, reduced or eliminated transaction costs and increased financing options for infrastructure, housing, capital and economic development projects. [See 2010, 2014 Benefits Review and 2016 KPMG FNLM Partial-Benefit Cost study.](#)

Currently, 94 First Nations have ratified the Framework Agreement and enacted their own land codes, another 35 First Nations are in development phase, and there are 62 First Nations on the waiting list.

Unfortunately, the Framework Agreement was ratified by a cumbersome legislative statute (FNLMA) that doesn't adequately reflect the full intent of the Framework Agreement, which now needs to be updated.

Proposed Solution

Replacing the FNLMA with legislation that ratifies the Framework Agreement “as amended” would establish one authoritative legal text, saving time and avoiding confusion for both First Nations and Canada. It would better respect the “government to government” dynamic of reconciliation and decolonization.

Results

- Eliminating the parallel amendment process will facilitate future amendments to the Framework Agreement that will foster a spirit of true reconciliation – a more respectful nation to nation consensus and partnership.
- Consistency of written materials will be strengthened and locked in without the danger of agreement wording being subsequently redrafted or omitted, reducing confusion and misinformation.
- It will be significantly easier for First Nations to go through the Agreement process which will ramp up job creation and economic development for these communities and encourage more First Nations to become involved.
- There will be significant time, resources and monies saved for both Canada and the First Nations.

Support Considerations

- There is strong support for this within ISC/CIRNA departmental officials.
- The Framework Agreement only applies to First Nations who are Signatories to it, which limits the potential for opposition.
- We are confident there will be support from several opposition parties and the AFN. Passage of FNLMA was supported by the AFN in 1999, and there has been no resistance from any political party or National Indigenous Political Organization to previous amendment efforts over the years.