

THE 6th AMENDMENT

2018 Amendments to the First Nations Lands Management Act

EFFECTS TO OPERATIONAL FIRST NATION COMMUNITIES

ON NOVEMBER 26, 2018 THE *FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT (FA)* AMENDMENTS #6 NEGOTIATED BY THE LANDS ADVISORY BOARD AND FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE WERE SIGNED BY MINISTER CAROLYNN BENNETT. CANADA PROVIDED ITS RATIFICATION OF THESE AMENDMENTS THROUGH BILL C-86, DIVISION 11 AND ROYAL ASSENT TOOK PLACE ON DECEMBER 13, 2018. THE FOLLOWING IS A BRIEF HIGHLIGHT OF THESE AMENDMENTS.

1. UNDRIP Clause

Introductory clauses stating commitment of both Canada and First Nations to the principles of UNDRIP. These are brief introductory provisions added because the FA was finalized before UNDRIP.

2. Jointly Held Reserves (section 2 of FA)

New provision that clarifies the ability of multiple First Nations to collectively govern jointly held reserve lands.

3. Changes to Land Code Requirements and Options (section 5 of FA)

Minor change to what land codes must contain:

- In particular broader options regarding matrimonial real property (see also the new matrimonial real property law making power in section 18 of FA described below)

First Nations rather than LAB to publish land codes and amendments (sections 11 and 40 of FA)

First Nations must make available to the public their land codes and laws and can choose to publish on their websites

5. First Nations Monies (section 12 of FA)

“Capital” monies as well as “revenue” monies will automatically be transferred to new land code First Nations. Existing Operational First Nations would have to request a transfer of their Capital monies.

6. Additions to Reserve (section 14A of FA)

New provisions to speed up additions to reserve:

- Land can be added to reserve and come under land code authority in a single Ministerial Order instead of an order of council
- Options for First Nations to accept third party interests and provide for replacement interests before reserves are created.
- An option to impose land use restrictions (eg zoning laws) in advance of reserve creation. There is no obligation to take these measures, but they may speed up reserve creation.

7. Third Party Interests (section 16 of FA)

A new provision that will clarify that First Nations and third parties can agree to leasing arrangements that differ from previous Indian Act designation terms and conditions.

8. Matrimonial Real Property Laws (section 18 of FA)

The intention is to provide in the FA for the full range of matrimonial real property authority currently available under Canada's Family Homes on Reserves and Matrimonial Rights or Interests Act (FHRMIRA).

- New provisions to expand upon the current authority to deal with “breakdown of marriage” to include “death of a spouse”.
- Elimination of the current 12-month period for First Nations to make MRP rules and elimination of dispute resolution with Canada regarding land code provisions.

- A new provision is established to require that provinces (or territories) be notified when proposing to make MRP laws. This is similar to a requirement in FHRMIRA and may possibly help First Nations seeking provincial assistance in enforcing MRP laws.

9. Limitation of Liability & Intergovernmental Agreements (section 18 of FA)

Provisions to limit liability of employees and volunteers working for First Nations, within the limits typical under provincial law of the province within which a First Nation is located.

- Option for First Nations to enter into agreements with other governments regarding the performance of duties by professions such as building inspectors or firefighters

10. Environment Law Making Powers (section 23 of FA)

An updated list of examples of environmental law-making powers will be added such as contaminants, emergencies, nuisances, waste management and recycling

11. Liability (section 50 of FA)

A new provision will be added to clarify that Canada is no longer responsible for the management of revenue and capital monies following their transfer to an Operational First Nation.

12. First Nations Lands Registry (section 51 of FA)

Elimination of the current requirement that a lands registry has to be operated by Canada. This would pave the way for an agreement to develop regulations for a new Indigenous controlled registry.

THOUGH WE SUPPORT THE AMENDMENTS TO THE FNLM IN BILL C-86, THE LANDS ADVISORY BOARD HAS RAISED THE NEED FOR FUTURE REFORMS TO REPLACE THE FNLM WITH A MORE APPROPRIATE AND EFFICIENT APPROACH, ONE THAT BETTER RESPECTS OUR GOVERNMENT TO GOVERNMENT AGREEMENT.

“We are pleased that another important step forward has been made for First Nation advancement of our inherent rights in the governance of our lands as well as being first for the expression of our joint commitment to UNDRIP. This is another historic and ground-breaking achievement in our 22 year partnership with Canada.”

Robert Louie,
Chairman, Lands Advisory Board

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EFFECTS TO DEVELOPMENTAL FIRST NATION COMMUNITIES

SPECIFICALLY, DIVISION 11 OF BILL C-86 ARE AMENDMENTS TO THE EXISTING FNLMA AS THEY REPRESENT CHANGES TO THE SPIRIT AND INTENT OF THE FRAMEWORK AGREEMENT ON FIRST NATIONS LANDS MANAGEMENT (FA). WITH THESE AMENDMENTS, THERE ARE A NUMBER OF TECHNICAL IMPROVEMENTS TO HOW THE FA IS IMPLEMENTED.

1. UNDRIP Clause

Introductory clauses stating commitment of both Canada and First Nations to the principles of UNDRIP. These are brief introductory provisions are added because the FA was finalized before UNDRIP.

2. Jointly Held Reserves (section 2 of FA)

New provision that clarifies the ability of multiple First Nations to collectively govern jointly held reserve lands.

3. Yukon lands (section 4A of FA)

Making the FA available as an option to Yukon First Nations which have "lands set aside" rather than reserves

4. Changes to Land Code Requirements and Options (section 5 of FA)

Minor change to what land codes must contain:

- Adding requirement that land codes will come into force within six months of an affirmative ratification vote
- Eliminating current obligation to provide for matrimonial real property in land codes

Changes to what land codes may contain:

- In particular broader options regarding matrimonial real property (see also the new matrimonial real property law making power in section 18 of FA described below)

5. Changes to Voting (section 7 and 8 of FA)

Changes to ratification voting on land code are proposed to make it easier for new First Nations to opt out of the Indian Act:

- Eliminating the current minimum 25% threshold of yes votes of all eligible voters. The majority of participating voters would decide, consistent with other important votes in Canada.
- For new First Nations, a Verifier is only required to confirm that the land code and voting process comply with the Framework Agreement, not to monitor the actual vote or hear appeals.
- For new First Nations, option to have their own Ratification Officer conduct and affirm votes (rather than the verifier)
- Option for Individual First Nations to set their own minimum threshold and use the Verifier for the whole voting process.

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FOR A FULL COPY OF THE AMENDMENTS, [CLICK HERE](https://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent#enH1-4071) OR FOLLOW:
<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent#enH1-4071>

"This is the 6th successful amendment to the Framework Agreement on First Nations Land Management and the FNLMA. The Framework Agreement continues to be a rewarding option for First Nations interested in replacing the Indian Act lands provisions with their own recognized governance jurisdiction."

Chief Austin Bear, Chair
First Nations Land Management Resource Centre Inc.