

EXPLANATORY NOTES
SAMPLE FIRST NATION PROPERTY ASSESSMENT LAW
(QUEBEC)

The *First Nations Fiscal Management Act* (“FMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FMA and include, under section 5, the authority to make laws respecting taxation for local purposes, including matters such as assessment, setting tax rates, authorizing expenditures and providing for the enforcement of these laws. As part of its real property taxation regime, each First Nation will require an assessment law and a taxation law, as well as annual tax rates and expenditure laws.

The assessment law creates the framework for conducting assessments of interests in land on reserve, including the duties of the assessor, the applicable assessment rules and practices, and the establishment and conduct of the Assessment Review Board.

Laws enacted under the FMA must comply with all statutory requirements, any regulations made under paragraph 36(1)(d) of the FMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FMA. Canada has made the *First Nations Assessment Appeal Regulations* (“Assessment Appeal Regulations”) and the *First Nations Assessment Inspection Regulations* (“Assessment Inspection Regulations”). The Commission has established Standards for First Nation Property Assessment Laws (“Assessment Law Standards”) that provide further requirements for the form and content of assessment laws.

The sample First Nation Property Assessment Law (“sample law”) complies with the FMA requirements, the Regulations and the Assessment Law Standards. It provides a comprehensive assessment law that reflects assessment practices on reserve lands and incorporates components of the Quebec provincial assessment scheme. It provides a best practices sample for use and adaptation by First Nations in drafting their own FMA assessment laws.

These Explanatory Notes provide a brief synopsis of each Part of the sample law and highlight issues for further consideration by First Nations. There are some aspects of the sample law that are required, but there are also aspects that are left to the discretion of the First Nation. In some cases, the sample law sets out examples of the types of provisions that a First Nation may wish to consider in its law.

PART I
CITATION

This Part sets out the legal name for the First Nation’s law. Proper citation of the law should be used when referencing it in literature, forms or other laws.

PART II
DEFINITIONS

The definitions used are the same as set out in the *Indian Act*, the FMA and the Regulations. Where terms are not defined in those statutes or regulations, definitions reflect Quebec provincial legislation.

The definition of “interest in land” includes any occupation or right to occupy any land or improvements (or both) in the reserve. The definition of “holder” includes all occupiers of reserve land. Taken together, these definitions are intended to capture all occupiers of reserve land for taxation purposes. The definition of “improvement” incorporates buildings, fixtures, structures and similar things that are included in the definition of “immovable” in the *Quebec Act Respecting Municipal Taxation*. This ensures consistency with the provincial approach.

PART III ADMINISTRATION

Section 3 requires Council to appoint one (1) or more assessors to undertake assessments and any other duties specified by Council. Assessors must be qualified to assess real property for taxation purposes in Quebec, and must be a member in the Order of Chartered Appraisers. The assessor has certain mandatory duties under the FMA and the Regulations, such as conducting assessments, inspections and reconsiderations. There are other duties that could be undertaken by either the assessor or the tax administrator, depending on how the First Nation organizes its tax administration scheme.

Section 4 is required by subsection 5(5) of the FMA. The law must include a “third-party management” provision that appoints the Financial Management Board as the First Nation’s agent under a property taxation law, in certain defined circumstances under the FMA.

Under subsection 5(1), the law applies to all interests in land in the reserve. Subsection 5(2) clarifies that the law also applies to partial interests.

PART IV ASSESSMENT AND VALUATION

Under subsection 6(1), all interests in land that are subject to taxation or for which payments-in-lieu may be accepted must be assessed. First Nations may decide whether to conduct assessments for interests that are not taxable.

Subsections 6(2) through (7) reflect practices in Quebec provincial assessments, including the requirement to verify the accuracy of assessment data at least every nine (9) years. Subsections 6(8) through (13) allow the First Nation to provide for averaging of the variation of assessed values that arise from the coming into force of a new assessment roll. This is common practice in the province, and First Nations can choose for each new assessment roll whether to apply the averaging rules. Averaging means that taxpayers won’t see large variations in assessments in the first year of a new assessment roll.

Subsection 6(14) provides for the assessor to use the provincial assessment valuation methods, rates, rules and formulas in conducting assessments, except where otherwise provided in the law. This ensures assessors can apply the same methodology without having to specifically set out detailed assessment rules and practices. Following provincial assessment methods is required by the Assessment Law Standards.

Section 7 sets out rules for assessing interests in land that reflect the rules in Quebec for determining units of assessment. Section 8 sets out a number of rules for determining the value of property, which is based on a determination of the actual value of the interest in land. Actual value is defined as its exchange value on the free and open market. Where property is not likely to be sold by agreement, the assessor must determine the price a purchaser would be justified in paying. Under subsection 8(7), the assessor must determine the actual value of an interest in land on July 1 of the second taxation year preceding the first of the taxation years for which the assessment roll is made. This is the valuation and condition date used in Quebec, and Assessment Law Standards require the assessment law to set the same valuation date as the relevant provincial valuation date.

Section 9 establishes property classes for assessment and taxation purposes. Property classes are the categories used to classify properties, such as non-residential immovables and industrial immovables. The Assessment Law Standards require a First Nation to establish the same property classes and use the same classification rules as are applied in the relevant province.

PART V REQUESTS FOR INFORMATION AND INSPECTIONS

Section 10 allows the assessor to request information respecting a property for the purposes of assessment or the administration of the law. While these provisions are not required, it is useful to have a process for

requesting information from property holders and former property holders to assist in the assessment process.

Section 11 sets out the required procedure for the assessor to conduct inspections. These provisions are required by the Assessment Inspection Regulations and a form of notice of assessment inspection is set out in Schedule III.

PART VI ASSESSMENT ROLL AND ASSESSMENT NOTICE

Subsection 12(1) requires the assessor to prepare a new assessment roll every three (3) years. An assessment roll containing a list of every interest in land liable to assessment must be completed and certified by the assessor. The assessor certifies that the roll is complete and has been prepared in accordance with the assessment requirements set out in the law. A form of certification is set out in Schedule XI of the sample law. Although not Quebec provincial practice, certification is required by the Assessment Law Standards.

Following provincial practice, the Assessment Law Standards require the assessor to complete the roll on or after August 15 and no later than September 15 in the year preceding the first taxation year for which the roll is made. There are additional provisions for extending the date to November 1, failing which the existing roll can be used.

Subsection 12(5) sets out the information to be included on the assessment roll, as required by the Assessment Law Standards. First Nations may include additional information on the assessment roll, keeping in mind that the assessment roll is a publicly available document.

For First Nations whose laws are replacing transitioned section 83 assessment by-laws, subsection 12(8) clarifies that an assessment roll made under the previous law is valid and may be used under this assessment law until the next assessment roll is prepared and certified. This subsection should be deleted if it is not applicable.

Section 13 provides for alterations to the assessment roll to be made by way of a certificate signed and dated by the assessor. The assessor then initials the alterations made to the roll and delivers them to Council. Alterations can be made under sections 20, 21 or 22, or pursuant to reconsideration decisions or decisions of the Assessment Review Board. Section 14 provides for the validity of the assessment roll.

Section 15 provides for the ownership, use and inspection of the roll. Subsection 15(1) provides that the roll is the property of the First Nation. Subsection 15(2) requires the roll to be available for inspection by any person. The Assessment Law Standards require the law to provide for assessment roll inspection. The Standards also require the law to contain a prohibition on using the information in an assessment roll for solicitation purposes. The assessor (or tax administrator) may require a person to complete a declaration before inspecting the roll. A form of declaration is attached as Schedule IV.

Section 16 allows a person to have their personal information omitted or obscured from any assessment roll available for public inspection. These provisions are required by the Assessment Law Standards.

Section 17 allows chargeholders (for example, banks holding mortgages) to have their names added to the assessment roll in respect of an assessable property. Once added to the roll, the chargeholder will receive copies of all assessment notices sent in respect of the property.

Section 18 requires assessment notices to be mailed to every person named in the assessment roll in respect of a property, on or before March 1 of the first taxation year for which the roll is made, as required by the Assessment Law Standards. The Assessment Law Standards require notices to contain the following information: the name and address of the holder of the property; a description of the property; the classification of the land and the improvements; the assessed value by classification of the land and the improvements; the total assessed value of the property; and the total assessed value of the property subject to taxation. A form of Assessment Notice is set out in Schedule V.

Section 19 provides for an advance assessment procedure for single-use industrial or institutional property that is used in Quebec. The procedure involves an advance notice by the assessor to the holder indicating the assessor's determination of the cost of improvements that are part of the property and the depreciation from that cost. The holder then has an opportunity to disagree with the assessor's valuation, and provide the holder's determination of those amounts. The assessor must then meet with the holder before delivering the assessment roll, and the final amounts used must be within the parameters specified by the assessor and the holder. This process gives more certainty to taxing authorities for large, single use assessments.

PART VII

ALTERING THE ASSESSMENT ROLL

The procedures for the alteration of the assessment roll follow provincial practice. The Assessment Law Standards require the law to include procedures for the correction of errors and omissions, but do not specify the procedures that must be included.

Section 20 allows the assessor to propose an alteration to a property after the roll is certified but before the following May 1. The proposal must be in writing and delivered to the First Nation, the holder, and everyone named on the assessment roll. Those persons then have sixty (60) days to appeal the proposal to the Assessment Review Board. If there is no appeal within this timeframe, the assessor may proceed with the alteration and send a new assessment notice once the alteration is made.

Section 21 provides for the assessor keeping the roll up to date and requiring the assessor to alter the roll in certain circumstances. These circumstances include to give effect to a change in the holder, to correct errors, to reflect changes in taxable status, to reflect a change in classification and to reflect subdivisions and consolidations. Subsection 21(5) specifies when each alteration takes effect. Subsection (7) requires the assessor to send an assessment notice stating the alteration and the right to appeal. Alterations can be appealed (except those made to implement an alteration under section 20) and the appeal provisions in Part X apply.

Section 22 requires the assessor to alter the roll to comply with a decision of the Assessment Review Board, or a court judgment. The assessor must send a new assessment notice stating the alteration, and advising that no request for reconsideration and no appeal may be made in respect of the alteration.

Section 23 deals with a situation where the entire assessment roll is quashed or set aside by a court. In such cases, the assessor must prepare a new roll and deliver it to Council in accordance with section 12. In the interim, the preceding assessment roll remains in force.

PART VIII

RECONSIDERATION OF ASSESSMENT

This Part provides for a reconsideration procedure by the assessor, as required by the Assessment Appeal Regulations and the Assessment Law Standards. The reconsideration procedure provides a less formal means by which a person named on the assessment roll in respect of an assessable property can ask the assessor to reconsider the assessment of that property. The process is structured to provide short time frames for both the requester to make the request (thirty (30) days from the assessment notice) and for the assessor to undertake the reconsideration (fourteen (14) days from request). A form for a reconsideration request is provided in Schedule VI.

Where the assessor agrees that the property should have been assessed differently, the assessor offers to modify the assessment and, where the requester consents, the assessment is modified. If there is no agreement, the requester can appeal the assessment to the Assessment Review Board. Where an assessment is modified, the assessor sends amended assessment notices to all persons who received the original assessment notice for the property. Reconsideration decisions may be appealed to the Assessment Review Board.

PART IX

ASSESSMENT REVIEW BOARD

Subsection 5(4) of the FMA requires assessment laws to include an appeal procedure in respect of assessments and to fix the rate of remuneration and the term of office for members of the appellate body. The Assessment Appeal Regulations require every assessment law to incorporate either the appeal procedures set out in the Regulations, or assessment appeal procedures that are *the same as* those set out in the province in which the property is situated. The sample law incorporates the procedures set out in the Assessment Appeal Regulations.

Subsection 25(1) requires Council to establish an Assessment Review Board to hear and determine assessment appeals. The Assessment Review Board must have at least three (3) members, one (1) of whom must be a member of the Barreau du Quebec and one (1) of whom must have experience in assessment appeals in Quebec.

The First Nation can decide whether to have an Assessment Review Board comprised of more than three (3) members, and whether it wishes to maintain a roster of members from which it selects a panel to hear appeals. The First Nation could also impose additional requirements or limitations on members, such as requiring at least one (1) member to be a member of the First Nation.

Subsection 25(3) sets the term of office for Assessment Review Board members. First Nations can decide on the length of the term of office, provided it is at least two (2) years as required by the Assessment Law Standards.

Section 26 sets out the remuneration and reimbursement of Assessment Review Board members. The law provides for three levels of remuneration. The chair is paid the highest rate because of the chair's additional administrative responsibilities, which generally include coordinating hearing dates, chairing the hearing and writing the decision. The middle rate is paid to members who meet the qualifications of being a lawyer or a person with assessment experience, to reflect the expertise that person brings to the tribunal. A slightly lower rate is paid to a member who is not the chair and does not have the specified qualifications. The First Nation can choose to set only one rate, or two rates with one for the chair and one for all other members. First Nations may want to consider the rates paid by the Province to members of similar administrative tribunals when setting rates.

Section 27 prohibits certain persons from sitting as members of the Assessment Review Board for conflict of interest reasons. This section incorporates and expands on the provisions set out in the Assessment Appeal Regulations.

Section 28 requires Council to appoint the chair and defines the chair's powers, duties and functions. The Assessment Appeal Regulations require the appointment of a chair and the Assessment Law Standards require the powers, duties and functions of the chair to be set out in the law. The First Nation must decide what powers and responsibilities it wishes to give to the chair of its Assessment Review Board. At a minimum, the chair would typically be responsible for chairing appeal proceedings, administering oaths and directing the work of the Assessment Review Board.

Section 29 provides for Council to appoint a secretary to the Assessment Review Board. Providing for the appointment of a secretary is optional; however, if there is no secretary the First Nation may wish to assign these responsibilities to someone else, such as the chair or a staff person.

Section 30 allows the removal of Assessment Review Board members from office. The Assessment Law Standards require the law to set out when and how members may be removed, but do not require specific wording. First Nations may determine the substance of these provisions in their law.

Section 31 requires Assessment Review Board members to act faithfully, honestly and impartially in performing their duties. This type of provision is typical for administrative tribunal members.

PART X

APPEAL TO ASSESSMENT REVIEW BOARD

This Part sets out the procedures and requirements for assessment appeals to the Assessment Review Board. These provisions are largely dictated by the Assessment Appeal Regulations.

Section 32 gives the Assessment Review Board the power to hear and determine assessment appeals.

Section 33 requires an appeal to be commenced by submitting a Notice of Appeal to the assessor. A form of Notice of Appeal is set out in Schedule VII. The Assessment Appeal Regulations require a First Nation to allow not less than sixty (60) days from the mailing of the assessment notice for filing an appeal. The law may provide for the payment of a fee to initiate an appeal, provided the fee does not exceed the thirty dollars (\$30) limit set by the Assessment Law Standards.

Subsection 33(3) sets out the grounds for an appeal. The Assessment Law Standards require at least the following grounds for an appeal: the assessed value of the assessed property; the assessment classification of the assessed property; the applicability of an exemption to the assessed property; and an alleged error or omission in the assessment. The sample law also provides wording for appeals respecting the liability of a holder to taxation under the taxation law.

Section 35 provides for the scheduling of hearings and the delivery of a notice of hearing, as required by the Assessment Appeal Regulations. A form of notice of hearing is set out in Schedule IX.

Section 36 defines the parties to a hearing. The Assessment Law Standards require, at a minimum, that the complainant, the assessor and the holder of the property be parties to an appeal. It is important to define the parties to a hearing because the parties are entitled to notices and to be heard and represented at a hearing.

Section 38 reflects the Assessment Appeal Regulations requirement that hearings be held within ninety (90) days of a notice of appeal, except where all parties consent otherwise or where there is a court proceeding that relates to the appeal.

Section 39 requires the creation and posting of a daily schedule for Assessment Review Board hearings.

Section 40 sets out the Assessment Review Board procedures for hearings, as required by the Assessment Law Standards. These include a party's right to be heard, have representation, present evidence and call witnesses, the manner by which hearings will be conducted (i.e., oral, electronic, written) and the evidentiary rules that apply.

Sections 42 provides for the summary dismissal of an appeal. These provisions are not required; however, it may be helpful for the Assessment Review Board to have the ability to dismiss an appeal in certain situations.

Section 43 requires a majority of the members of the Assessment Review Board to constitute a quorum, provided that there cannot be less than three (3) members present at any time. This is because the Assessment Appeal Regulations require the Assessment Review Board to be comprised of at least three (3) members. Where the Assessment Review Board is comprised of only three (3) members, all members must therefore be present at all times during a hearing. If a member is unable to complete a hearing, the First Nation would need to appoint a replacement member and the Assessment Review Board would conduct a new hearing.

Section 46 gives the Assessment Review Board the power to determine its own procedures that will apply during a hearing, subject to the provisions set out in the law. Subsection 46(2) specifically allows the Assessment Review Board to make rules respecting pre-hearing conferences, including requiring the parties to attend. These conferences are used in some provinces, and can assist the Assessment Review Board in settling reviews without a hearing, and in ensuring the parties are prepared for a hearing. First Nations can decide to what extent they wish to set out detailed procedures in the law (as long as the matters required by the Assessment Law Standards are included) and to what extent the Assessment Review Board will be

permitted to set its own procedures. At a minimum, First Nations may wish to consider allowing the Assessment Review Board to set its own procedures that will apply during the conduct of a hearing, as situations will invariably arise that are not specifically addressed in the law.

Section 47 provides for the Assessment Review Board to compel the delivery of documents and the attendance of witnesses.

Section 49 provides that the Assessment Review Board may order costs against a party to an appeal where the party's conduct has been improper, vexatious, frivolous or abusive.

Section 50, which provides for appeals to be stayed pending court actions, is required by the Assessment Appeal Regulations.

The document delivery provisions in section 52 are required by the Assessment Appeal Regulations.

Section 54 provides for a right of appeal to a court of competent jurisdiction on a question of law.

PART XI GENERAL PROVISIONS

Section 55 provides that the records gathered or prepared by the assessor are the property of the First Nation and no person has a right of access to them except as provided in the law. A holder has a right of access where a record has been used as a basis for an entry on the assessment roll. Section 56 sets out additional circumstances under which information or records obtained or created under the law can be disclosed. Section 57 provides for the disclosure of information for research purposes. A decision to disclose information for research purposes must be made by Council, and Council must take steps to protect the confidentiality of the information. These provisions are required by the Assessment Law Standards.

Section 61 provides for the repeal of the First Nation's existing property assessment law. If the First Nation does not have an existing assessment law then this section is not required.

Section 62 provides for when the law will come into force. This is on the approval of the Commission unless a later date is specified in the law.