

EXPLANATORY NOTES
SAMPLE FIRST NATION PROPERTY ASSESSMENT LAW
(MANITOBA)

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 Manitoba provincial assessment scheme under *The Municipal Assessment Act* (including recent amendments that took effect on January 1, 2009). 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 generally reflect provincial legislation, with necessary changes.

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 assessment purposes.

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 the relevant province. 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 section 5, the law applies to all interests in land in the reserve.

PART IV ASSESSED VALUE

Under subsection 6(1), a general assessment must be made in 2010 and thereafter in each year as prescribed by provincial regulation. Subsection 6(2) provides that the general assessment applies until the next general assessment, subject to amendments made in accordance with the law. Manitoba has recently moved from a four-year assessment cycle to a two-year cycle and has changed from using a reference year to a specific reference date.

Subsection 7(1) requires the assessor to assess all interests in land that are subject to taxation or for which payments in lieu may be accepted. First Nations may decide whether to conduct assessments for interests that are not taxable. Subsection 7(2) requires the assessor to assess each interest in land at value, which is defined in subsection 2(1) of the law and provides for a valuation on the reference date. The Assessment Law Standards require the law to use the same reference date as used in the Province.

The remaining provisions of section 7 set out the basic rules for property assessment, including specific rules for railway roadway, pipelines and gas distribution systems. These rules are supplemented by the relevant provincial assessment valuation methods, rates, rules and formulas, which the assessor is required to use in conducting assessments, as provided in subsection 7(9). The Assessment Law Standards require the law to follow provincial assessment methods.

Section 8 establishes property classes for assessment and taxation purposes. Property classes are the categories used to classify properties, such as residential and commercial. 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. Schedule I sets out the property class headings applicable in Manitoba.

Subsection 8(5) requires the assessor to determine the portioned value of each property using the percentages of assessed value prescribed by regulation under *The Municipal Assessment Act* (Manitoba) for each property class.

Although the sample law uses the prescribed percentages of assessed value, the First Nation could instead set out its own percentages of assessed value within the assessment law.

PART V REQUESTS FOR INFORMATION AND INSPECTIONS

Section 9(1) allows the assessor to request information or documentation that might relate to or affect the value of a property. A person receiving such a request must provide to the assessor all information or documentation to which the request relates that is in the possession or control of the person. The person

must also provide, in the form of a signed statement, a declaration affirming that the information or documentation provided is complete, true and accurate.

Section 10 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 11(1) sets out the requirement for the annual assessment roll. An assessment roll containing a list of every interest in land subject to taxation or for which payments-in-lieu may be accepted must be completed by the assessor by December 31 of each year.

Subsection 11(2) 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 11(3) 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.

Section 12 requires certification of the assessment roll by the assessor and delivery to Council, as required by the Assessment Law Standards. 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.

Subsection 13(1) sets out the required process for amendments to the assessment roll. The assessor must in each case date and initial amendments and report each change to Council. Subsection 13(3) prohibits an amendment to the roll contrary to a decision of the assessment review board or a court of competent jurisdiction.

Section 14 provides for the validity of the assessment roll, despite any errors and omissions. The assessment roll is valid until the next certified assessment roll.

Section 15 requires the tax administrator to make the roll available for inspection by any person. The Assessment Law Standards require assessment laws to provide for assessment roll inspection. The Standards also require assessment laws 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.

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 a date specified in the law. The First Nation should specify a date that is soon after the assessment roll is completed. 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 portioned value of the property subject to taxation. A form of Assessment Notice is set out in Schedule V.

**PART VII
AMENDMENT AND CORRECTION OF ASSESSMENT ROLL**

The procedures for the correction of errors and omissions in this Part generally follow those in *The Municipal Assessment Act*. 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.

Subsection 19(1) requires the assessor to amend the assessment roll in certain circumstances. Subsection 19(4) provides that these amendments will apply in subsequent years until the next general assessment.

Section 20 allows the assessor to amend the current roll in order to correct an error or omission. Under subsection 20(2), the assessor must correct the roll where there is a change in the holder. Subsection 20(3) requires the assessor to mail an amended assessment notice where the roll is amended.

Subsection 20(4) requires the assessor to create a supplementary assessment in certain circumstances, including where the interest in land is liable to taxation but was not assessed, or is liable to taxation due to change in ownership or use. Supplementary assessments are valid only until December 31 of the year in which the assessor creates them (subsection 20(6)), after which the new assessment takes effect directly on the new assessment roll (subsection 20(7)). Subsection 20(5) requires the assessor to mail a supplementary assessment notice for every supplementary assessment made.

**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 22(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 relevant provincial law society and one (1) of whom must have experience in assessment appeals in the Province.

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 22(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 23 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 24 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 25 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 26 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 27 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 28 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 29 requires the Assessment Review Board to hear and determine appeals.

Section 30 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 30(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. Subsection 30(4) provides that appeals on amended or supplementary assessments must be confined to the amendment or supplementary assessment, as the case may be. Subsection 30(5) precludes appeals respecting amendments to assessments that are made to reflect decisions of the Assessment Review Board or a court.

Subsection 32(1) 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 33 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 34 requires the assessor to deliver copies of documents submitted by a party in relation to an appeal to all other parties. This provision is required by the Assessment Appeal Regulations.

Section 35 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 36 requires the creation and posting of a daily schedule for Assessment Review Board hearings.

Section 37 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 39 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 40 requires a majority of the members of the Assessment Review Board to constitute a quorum, provided that there can be not 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.

Subsection 43(1) 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 43(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 44 provides for the Assessment Review Board to compel the delivery of documents and the attendance of witnesses. These provisions are modeled on provincial legislation, as there are no specific provisions in the FMA or the Regulations that empower the Assessment Review Board to make these types of orders.

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Section 46 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 47, which provides for appeals to be stayed pending court actions, is required by the Assessment Appeal Regulations.

The document delivery provisions in section 50 are required by the Assessment Appeal Regulations.

Section 51 provides for a right of appeal to a court of competent jurisdiction on a question of law.

PART XI GENERAL PROVISIONS

Section 52 sets out the circumstances under which information or records obtained or created under the law can be disclosed. Section 53 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 57 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 58 provides for when the law will come into force. This is on the day after the approval by the Commission unless a later date is specified in the law.