

EXPLANATORY NOTES
SAMPLE FIRST NATION PROPERTY ASSESSMENT LAW
(NEW BRUNSWICK)

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 New Brunswick 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 generally reflect provincial legislation, with necessary changes.

The definition of “interest in land” includes any occupation or right to occupy, and the definition of “holder” includes all occupiers of reserve land. 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), 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.

Subsection 6(2) sets January 1 as the valuation date for assessment purposes. The valuation date is the day each year that is used for determining the assessed value of property. The Assessment Law Standards require the assessment law to set a valuation date and that date must be the same valuation date as the relevant provincial valuation date.

Subsection 6(3) provides that interests in land must be assessed at their real and true value. This follows the New Brunswick provincial assessment practice. While “real and true value” is not defined in the New Brunswick *Assessment Act*, it is interpreted to mean the market value of the interest in land, based on the existing use.

The remaining provisions of section 6 set out the basic rules for property assessment. 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 6(9). Following the provincial assessment methods is required by the Assessment Law Standards.

Section 7 establishes property classes for assessment and taxation purposes. 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. In New Brunswick, the property classes are residential and non-residential, as set out in Schedule I.

PART V REQUESTS FOR INFORMATION AND INSPECTIONS

Section 8 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 9 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 AND TAX ROLL AND ASSESSMENT AND TAX NOTICE

The sample law provides for a combined assessment and tax roll and combined assessment and tax notices, following New Brunswick provincial practice. Subsection 10(1) requires the assessor to complete the annual assessment and tax roll by December 31 of each year. The assessment and tax roll must contain a list of every interest in land subject to taxation or for which payments-in-lieu may be accepted. While the assessor is responsible for preparing the roll, the tax administrator is responsible for providing the necessary tax information to the assessor (as provided in section 14 of the taxation law).

Subsection 10(2) sets out the information to be included on the assessment and tax roll. First Nations may include additional information on the assessment and tax roll, keeping in mind that it is a publicly available document.

Section 11 requires certification of the assessment and tax roll by the assessor and delivery to Council, as required by the Assessment Law Standards. The assessor certification pertains only to the assessment components of the roll. The assessor certifies that the assessment information was completed 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.

Section 12 sets out the process for amendments to the assessment and tax roll after certification under section 11. The assessor must in each case date and initial amendments and report each change to Council.

Section 14 requires the tax administrator to make the assessment and tax roll available for inspection by any person. The Assessment Law Standards require assessment laws 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 roll made available for public inspection must not include the taxation information contained in the assessment and taxation roll. In order to meet the requirements of subsection 14(2), the First Nation should either black out the taxation information or create a roll without the taxation information. The assessor (or tax administrator) may require a person to complete a declaration before inspecting the roll.

Section 15 allows a person to have their personal information omitted or obscured from any assessment and tax roll available for public inspection. These provisions are required by the Assessment Law Standards.

Section 16 allows chargeholders (for example, banks holding mortgages) to have their names added to the assessment and tax roll in respect of an assessable property. Once added to the roll, the chargeholder will receive copies of all assessment and tax notices sent in respect of the property.

Section 17 requires assessment and tax notices to be mailed to every person named in the assessment and tax roll in respect of a property, on or before March 1. The assessment and tax notice must include the information set out in Schedule V.

PART VII

ERRORS AND OMISSIONS IN ASSESSMENT AND TAX ROLL

The procedures for the correction of errors and omissions in this Part follow those in the New Brunswick *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 18(1) requires the assessor to correct errors in the assessment and tax roll. Subsection 18(2) requires the assessor to make any assessment necessary where a property has been omitted from the roll, and to amend the roll accordingly. Where the assessment and tax roll is amended, subsection 18(3) requires the assessor to mail an amended assessment and tax notice to all persons named on the roll in respect of the affected property.

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 and tax 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 and tax 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 and tax notices to all persons who received the original assessment and tax 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 20(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 20(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 21 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 22 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 23 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 24 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 25 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 26 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 27 requires the Assessment Review Board to hear and determine appeals.

Section 28 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 28(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 28(4) provides that appeals on amended assessments must be confined to the amendment. Subsection 28(5) precludes appeals respecting amendments to assessments that are made to reflect decisions of the Assessment Review Board or a court.

Subsection 30(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 31 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 33 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 34 requires the creation and posting of a daily schedule for Assessment Review Board hearings.

Section 35 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 37 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 38 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 41(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 41(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 42 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.

Section 44 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 45 provides for the Assessment Review Board to refer a question of law to a court of competent jurisdiction.

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

The document delivery provisions in section 49 are required by the Assessment Appeal Regulations.

Section 50 provides for a right of appeal to a court of competent jurisdiction on a question of law.

PART XI GENERAL PROVISIONS

Section 51 sets out the circumstances under which information or records obtained or created under the law can be disclosed. Section 52 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 56 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 57 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.