

EXPLANATORY NOTES
SAMPLE FIRST NATION PROPERTY ASSESSMENT LAW
(ONTARIO)

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 Ontario provincial assessment scheme under the *Assessment Act* (including recent amendments to take 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 AND REFERENCES

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(3) sets out the valuation date of January 1, 2008 for the four taxation years from 2009 to 2012, and subsection (4) sets out the valuation dates for each period consisting of four taxation years subsequent to 2012. Subsections (5) to (8) set out specific assessment rules. These rules are supplemented by the relevant provincial assessment valuation methods, rates, rules, procedures and formulas that the assessor is required to use in conducting assessments, as provided in subsection (9). Subsection (10) provides for the phasing in of assessment increases, following the same rules applied in the province. The Assessment Law Standards require the law to follow provincial assessment methods, except where the law expressly provides otherwise.

Section 7 establishes property classes for assessment and taxation purposes. Property classes are the categories used to classify properties, such as residential and commercial. Subsection 7(2) provides that the classification date for a taxation year is June 30 of the previous year. 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 Ontario.

PART V INFORMATION AND INSPECTIONS

Section 8(1) allows the assessor to request information from a holder or a person who has disposed of assessable property, as may be required for the administration of the property assessment law. A person receiving a request for information must provide that information to the assessor within fourteen (14) days or a longer period as specified in the notice. A person receiving a notice must, under subsection (2), provide to the assessor all of the required information within their knowledge and produce all documents within their control.

Section 9 sets out the required procedure for the assessor to conduct inspections. Subsections (1) through (6) are required by the Assessment Inspection Regulations and a form of notice of assessment inspection is set out in Schedule III. Subsection (7) provides that the assessor is not bound by information received under sections 8 or 9 and allows the assessor to make such assessments as are just and correct.

PART VI ASSESSMENT ROLL

Subsection 10(1) requires assessments to be conducted annually at any time between January 1 and the second Tuesday following December 1, except where otherwise provided. Under subsection (2), a new assessment roll must be completed each year.

Subsection 10(3) 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 10(4) clarifies that an assessment roll made under the previous law is valid and must be used under this assessment law until the next assessment roll is prepared and certified.

Section 11 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 12(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 12(3) prohibits an amendment to the roll contrary to a decision of the assessment review board or a court of competent jurisdiction.

Section 14 requires the assessment roll to be open to inspection by any person at the Band office during regular business hours, as required by the Assessment Law Standards. 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 15 allows a person to request that their personal information be omitted or obscured from any assessment roll available for public inspection, for health or safety reasons. 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 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.

PART VII ASSESSMENT NOTICES

Subsection 17(1) requires assessment notices to be mailed to every person named on the assessment roll in respect of a property, on or before December 31 in each year, as required by the Assessment Law Standards. Further, subsection (2) requires the assessor to mail assessment notices on or before the day that the tax administrator mails the tax notices under the taxation law. The Assessment Law Standards require assessment 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.

PART VIII ERRORS AND OMISSIONS IN ASSESSMENT ROLL

The procedures for the correction of errors and omissions in this Part generally follow Ontario provincial practice under the *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) gives the assessor the ability to correct defects, error, omissions or misstatements in the assessment roll at any time before the roll is certified. Subsection (2) requires the assessor to amend the roll where amendments to the assessment law or to provincial legislation would result in a change to the property classification, the exempt status, or the method of determining assessed value. Subsection (3) allows the assessor to correct errors at any time during the year that resulted from incorrect factual information about a property.

Subsection 19(1) provides for corrections to the roll in the current year, or in the last two (2) preceding years, where an assessable property has been omitted from the roll, or where a taxable property has been entered as exempt on the roll. Where a change is made under subsection (1), the change must be reflected on a supplementary roll and on the assessment roll for the following year.

Subsection 20(1) provides for supplementary assessments to correct assessments after assessment notices are sent and before the last day of the taxation year. Such assessments may be made where there are new improvements on the land, or where land ceases to be exempt or classified as farm, managed forest or in a property subclass. Subsection (2) allows the assessor to change the classification of a property where there has been a “change event”, such as a change in the use. Where the assessor makes changes under this section, the assessor must make a supplementary roll and must make the change on the assessment roll for the following year.

Section 21 requires the assessor to mail an amended assessment notice to every person named on the assessment roll affected by any changes to assessments under sections 18, 19 or 20.

PART IX 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 X 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 23(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 23(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 24 sets out the remuneration and reimbursement for 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 25 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 26 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 27 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 28 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 29 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 XI

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 30 requires the Assessment Review Board to hear and determine appeals.

Section 31 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 31(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 31(4) provides that appeals respecting supplementary assessments must be confined to the supplementary assessment.

Subsection 33(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 34 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 35 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 36 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 37 requires the creation and posting of a daily schedule for Assessment Review Board hearings.

Section 38 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.

Section 40 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 41 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 44(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 44(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 45 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 47 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 48 provides for the Assessment Review Board to refer a question of law to a court of competent jurisdiction.

Section 49, 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 53 provides for a right of appeal to a court of competent jurisdiction on a question of law.

PART XII GENERAL PROVISIONS

Section 54 sets out the circumstances under which information or records obtained or created under the law can be disclosed. Section 55 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 59 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 60 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.