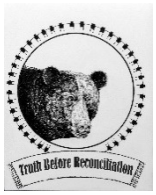

Indigenous Activists Networks
Defenders of the Land, Truth Campaign, Idle No More

Fact Sheet
The First Nations Land Management Act

The FNLMA (First Nations Land Management Act) is alternative legislation that replaces 40 sections of the Indian Act that deal with lands and resources.

It delegates federal authority to allow Band Councils to lease reserve lands without the "red tape" of the Indian Act, allowing reserve lands to be used as capital in promoting economic development.

This legislative option frees the Government of Canada of any future responsibility, reducing federal expenditures and eliminating potential liabilities, while confirming the Crown's unproven assertion to hold the underlying title to reserve lands.

There are many legal questions and implications with this new approach and there are no clear answers, as Canada and First Nations have been in conflict over the inherent right to self-government for many years.

First Nations have always known what their rights are, but whatever its rhetoric, Canada still refuses to recognize the legal jurisdiction of any First Nation unless it signs an agreement under one of Canada's policies or legislation, which are designed to unload federal responsibility and limit the extent of First Nations jurisdiction under delegated authority.

Alternative legislation like the FNLMA have been designed to fit together with other "optional" bills for elections and finance, which are all part of the federal government's off-loading of financial responsibilities by helping create corporate entities to raise capital, manage finances and control governance on reserve lands, changing reserves to what in effect are federal municipalities where the federal Crown holds underlying title, but retains no liability.

Some Key Problems with the FNLMA include:

- ✓ Release of the Crowns Fiduciary Obligations for Reserve Land in Future
- ✓ Adopts Corporate Model for Capitalizing on First Nation Lands and Resources
- ✓ Fate of First Nation Tied to Canada's Market Economy
- ✓ Taxation Inevitable with More Legislative Options Readily Available
- ✓ Unknown Impacts for Provincial Laws of General Application
- ✓ Inconsistent with Self-Determination, Aboriginal Title and Inherent Rights
- ✓ First Nations Opposition to the FNLMA Concept
- ✓ Lowered Standards for Community Approval and Crown Release

Release of the Crowns Fiduciary Obligations for Reserve Land in Future

The band will be agreeing to release Canada from all of it's trust-like responsibilities for reserve lands and resources in the future.

The band can never go back and sue Canada for anything that happens on the lands covered by this new Act and its regulations after the "land code" is approved.

The incentive for Canada to settle claims due to past Crown mismanagement is removed, as Canada will no longer responsible in future.

The Chief and Council become the fiduciaries responsible for all lawful obligations and liability related to the collective rights of members in lands and resources, as the Crown formerly was before the FNLMA release clause. How does this work?

Adopts Corporate Model for Capitalizing on First Nation Lands and Resources

This bill represents a fundamental change in the objectives of the land management regime on the reserve, where the land holdings are collective in nature.

The FNLMA focuses on using land as capital for generating revenue and land management is self-financed under various corporate investment schemes, like municipalities do under provincial jurisdiction, only this is under new federal laws.

Canada's land files on the First Nation are moved out of the federal government system to new corporate entities called the **First Nations Land Registry** and **First Nations Land Advisory Board**, where First Nations land codes are registered, and First Nations regulations stored and published for public access.

These entities have boards of directors who are from those First Nations who have signed off on Canada's responsibility can develop expertise and share information like a federally established municipal association.

This is also linked to First Nations choosing to establish their own constitutions and adopting corporate identities, where "Chief and Council, collectively, shall have the legal capacity, rights, powers and privileges of a Natural Person".

Fate of First Nation Tied to Canada's Market Economy

The FNLMA ties the First Nation's fate directly to the market economy of Canada with little protection or investment capital beyond its reserve land base.

First Nations agreeing to manage reserve lands on a private property model, where all lands are assessed in terms of monetary values and markets, are choosing money and revenue as the priority over self-determination, land title, Treaty relations, maintaining traditional values and protecting collective rights like fishing, hunting and gathering.

Taxation Inevitable with More Legislative Options Readily Available

There is a list of legislated options to the Indian Act that complement the FNLMA and can be more easily be adopted once this legislation is applied. It is one part in the federal bureaucracies' efforts to restrict and manage the Inherent, Aboriginal and Treaty rights.

The effect of privatising the land management system will commercialize band operations and bring in more zoning and regulations to be enforced.

Inevitably, user fees and taxation will be assessed as the need for revenue grows more desperate, but these other optional Bills on financial management, taxation, elections, etc. are all designed to come into play with new delegated authorities to accommodate the needs of the growing First Nation federal municipality.

Band members may wonder if they can lose family land due to non-payment of taxes in the future?

Unknown Impacts for Provincial Laws of General Application

Section 88 of the Indian Act, which enables provincial laws of general application continues to apply to reserve lands, but no legal analysis has been provided that identifies the impacts on provincial laws that apply on reserve lands under the FNLMA and First Nations Fiscal Management Act.

If First Nations are increasingly dependent on commercial operations to help raise revenues, how do provincial regulations affect First Nations operations and transactions?

Inconsistent with Self-Determination, Aboriginal Title and Inherent Rights

This FNLMA approach is inconsistent with the right to self-determination of Indigenous Peoples, as it is just another form of delegated authority from the federal government to First Nations that does not recognize the Inherent jurisdiction of Indigenous Peoples over Indigenous lands and resources.

It should be understood by First Nations members that all non-derogation clauses or stated assurances that Constitutionally protected rights will not be lost is false and ineffective protection against the impacts of the act or agreement.

It may well be that signing on to this Act is a legal acceptance of its definition of "reserve land" as title held by the federal Crown for the use and benefit of specific Indians. It depends on the unique legal and historical circumstances of each case, but this acceptance of underlying Crown title could be used to undermine a challenge to Canada's assertion of title over Indigenous lands.

First Nations Opposition to the FNLMA Concept

This option for land management was promoted with assistance from Canada, by a small group of 13 First Nations in the 1990's, which were located near urban centres and wanted to earn revenue from leasing lands for residential and business purposes without all the red tape required to lease reserve land under the Indian Act.

The majority of First Nations Across Canada opposed this approach and insisted it be made very clear that it was optional, applied only to those First Nations named in the Act and was not to be promoted by Canada as the main option available.

Since that time, Canada has amended the Act six times, making it easier and easier for First Nations to sign on, until this past December 2018, major amendments were made, lowering standards to the point where only a majority of those voting is required, unless the Band Council moves to raise the threshold.

Under the Trudeau Government, the legislation has been pushed on a new generation of leaders who are unaware of this bill's negative reputation as a "sell out" of inherent rights and just another form of delegated authority.

In the past two years Canada has committed $145 million to attract over seventy First Nations to sign on and appears to be reducing other services available under the Indian Act for land management, actively promoting and steering unsuspecting First Nations to join this federal offloading process.

Lowered Standards for Community Approval and Crown Release

The FNLMA calls for a referendum to be held, with the threshold of acceptance a simple majority of those voting. Paragraph 10(3) requires that certain ***Information to be Provided to Voters*** before obtaining community approval and it specifies that notice be given of:

1. the content of the Framework Agreement,
2. this Act,
3. any resolutions made under subsection 12(2),
4. the proposed land code' and
5. the individual agreement.

Many band members asked to vote have never seen, let alone have an explanation of, these five crucial items the law says are to be shared before voters are asked to decide whether to go under the Act and release Canada of all responsibility for reserve lands in future.

Prepared by: Rolland Pangowish, June 14, 2019