

**First Nations Fiscal and Statistical Management Act ( 2005, c. 9 )**

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Act current to February 4th, 2009

Attention: See coming into force provision and notes, where applicable.

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## First Nations Fiscal and Statistical Management Act

### 2005, c. 9

F-11.67

[Assented to March 23rd, 2005]

An Act to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts

#### Preamble

Whereas the Government of Canada has adopted a policy recognizing the inherent right of self-government as an aboriginal right and providing for the negotiation of self-government;

Whereas this Act is not intended to define the nature and scope of any right of self-government or to prejudge the outcome of any self-government negotiation;

Whereas the creation of national aboriginal institutions will assist first nations that choose to exercise real property taxation jurisdiction on reserve lands;

Whereas economic development through the application of real property tax revenues and other local revenues to support borrowing on capital markets for the development of public infrastructure is available to other governments in Canada;

Whereas real property taxation regimes on reserves should recognize both the interests of on-reserve taxpayers and the rights of members of first nations communities;

Whereas accurate, timely and credible statistics are a key element of sound financial planning, management and reporting available to other governments in Canada;

Whereas first nations led an initiative that resulted in 1988 in an amendment to the *Indian Act* so that their jurisdiction over real property taxation on reserve could be exercised and the Indian Taxation Advisory Board was created to assist in the exercise of that jurisdiction;

Whereas, in 1995, the First Nations Finance Authority Inc. was incorporated for the purposes of issuing debentures using real property tax revenues and providing investment opportunities;

Whereas, by 1999, first nations and the Government of Canada recognized the benefits of establishing statutory institutions as part of a comprehensive fiscal and statistical management system;

And whereas first nations have led an initiative culminating in the introduction of this Act;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## SHORT TITLE

### Short title

1. This Act may be cited as the *First Nations Fiscal and Statistical Management Act*.

## INTERPRETATION

### Definitions

2. (1) The following definitions apply in this Act. "borrowing member"  
«*membre emprunteur* »

"borrowing member" means a first nation that has been accepted as a borrowing member under subsection 76 (2) and has not ceased to be a borrowing member under section 77.

"council"  
«*conseil de la première nation* »

"council" has the same meaning as "council of the band" in subsection 2(1) of the *Indian Act*.

"first nation"  
«*première nation* »

"first nation" means

(a) in any provision of Part 5, a band; and

(b) in any other provision, a band named in the schedule.

"First Nations Finance Authority"  
«*Administration financière des premières nations* »

"First Nations Finance Authority" means the corporation established under section 58.

"First Nations Financial Management Board"  
«*Conseil de gestion financière des premières nations* »

"First Nations Financial Management Board" means the board established under subsection 38(1).

"*First Nations Gazette*"  
«*Gazette des premières nations* »

"*First Nations Gazette*" means the publication published under section 34.

"First Nations Statistical Institute"  
«*Institut de la statistique des premières nations* »

"First Nations Statistical Institute" means the institute established under section 91.

"First Nations Tax Commission"  
«*Commission de la fiscalité des premières nations* »

"First Nations Tax Commission" means the commission established under subsection 17(1).

"local revenue law"  
«*texte législatif sur les recettes locales* »

"local revenue law" means a law made under subsection 5(1).

"local revenues"  
«*recettes locales* »

"local revenues" means moneys raised under a local revenue law.

"Minister"  
« *ministre* »

"Minister" means the Minister of Indian Affairs and Northern Development.

"property taxation law"  
« *texte législatif relatif à l'imposition foncière* »

"property taxation law" means a law made under paragraph 5(1)(a).

"third-party management" « *Version anglaise seulement* »

"third-party management" means the management of a first nation's local revenues under section 53.

### Indian Act definitions

(2) Unless the context otherwise requires, words and expressions used in this Act and not otherwise defined have the same meaning as in the *Indian Act*.

### Amendments to schedule

(3) At the request of the council of a band, the Governor in Council may, by order, amend the schedule in order to

(a) add or change the name of the band; or

(b) delete the name of the band, as long as there are no amounts owing by the band to the First Nations Finance Authority that remain unpaid.

## ABORIGINAL RIGHTS

### Aboriginal and treaty rights

**3.** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

## PART 1

### FIRST NATIONS FISCAL POWERS

#### Financial administration laws

**4.** The council of a first nation may not make a law under paragraph 5(1)(d) until the council has made a law respecting the financial administration of the first nation under paragraph 9(1)(a) and that law has been approved by the First Nations Financial Management Board.

#### Local revenue laws

**5.** (1) Subject to subsections (2) to (6), sections 4 and 6 and any regulations made under paragraph 36(1)(d), the council of a first nation may make laws

(a) respecting taxation for local purposes of reserve lands, interests in reserve lands or rights to occupy, possess or use reserve lands, including

(i) the assessment of the value of those lands, interests and rights, the requisition of any information necessary to conduct the assessment and the inspection, in accordance with procedures prescribed by regulation, for assessment purposes of any reserve lands that are subject to taxation for local purposes,

(ii) a mechanism to establish tax rates and apply them to the assessed value of those lands, interests and rights,

- (iii) taxation for the provision of services in respect of reserve lands,
  - (iv) the taxation of business activities on reserve lands, and
  - (v) the imposition of development cost charges;
- (b) authorizing the expenditure of local revenues;
- (c) respecting procedures by which the interests of taxpayers may be represented to the council;
- (d) respecting the borrowing of money from the First Nations Finance Authority, including any authorization to enter into a particular borrowing agreement with that Authority;
- (e) subject to any conditions, and in accordance with any procedures, prescribed by regulation, respecting the enforcement of laws made under paragraph (a) in respect of outstanding taxes or charges, including
- (i) the creation of liens on reserve lands and interests in reserve lands,
  - (ii) the imposition and recovery of interest and penalties on an amount payable pursuant to a law made under that paragraph, where the amount is not paid when it is due, and the rate of interest or the amount of the penalty, as the case may be,
  - (iii) subject to subsection (7), the seizure, forfeiture and assignment of interests or rights in reserve lands,
  - (iv) the seizure and sale of personal property located on reserve lands, other than property located in a dwelling, and
  - (v) the discontinuance of services;
- (f) delegating to any person or body any of the council's powers to make laws under any of paragraphs (a) to (e); and
- (g) delegating to the First Nations Financial Management Board any other of the council's powers that are required to give effect to a co-management arrangement entered into under section 52 or to give effect to third-party management of the first nation's local revenues.

#### Approval required

(2) A law made under subsection (1) does not have any force or effect until it is approved by the First Nations Tax Commission.

#### Coming into force

(3) A law made under subsection (1) comes into force on the later of

- (a) the day of coming into force set out in the law, and
- (b) the day after it is approved by the First Nations Tax Commission.

#### Appeals

(4) A law made under paragraph (1)(a) shall include

- (a) an appeal procedure in respect of assessments, incorporating such procedures as are prescribed by regulation; and
- (b) fixed rates of remuneration and fixed terms of office for any persons designated to decide the appeals.

#### Third-party management

(5) A property taxation law shall provide that, if the First Nations Financial Management Board gives notice to the first nation that third-party management of the first nation's local revenues is required, the Board may act as agent of the first nation to fulfil any of the powers and obligations of the council under the property taxation law, this Act and any regulations made under this Act.

### Special levy

(6) A property taxation law of a borrowing member shall provide that the borrowing member must make a law under paragraph (1)(a) in order to recover amounts payable under paragraph 84(5)(b).

### Assignment of right or interest

(7) Notwithstanding the *Indian Act* or any instrument conferring a right or interest in reserve lands, if there are outstanding taxes payable pursuant to a law made under paragraph (1)(a) for more than two years, the first nation may assign the right or interest in accordance with the conditions and procedures prescribed by regulation.

### Judicial notice

(8) In any proceedings, judicial notice may be taken of a local revenue law.

### Statutory Instruments Act

(9) The *Statutory Instruments Act* does not apply in respect of local revenue laws or laws made under section 9.

### Notice of proposed laws

6. (1) The council of a first nation shall, at least 60 days before making a law under any of paragraphs 5(1)(a) to (c), including a law repealing such a law or an amendment to such a law other than one referred to in paragraph 10(a) or (b),

(a) publish a notice of the proposed law in a local newspaper;

(b) post the notice in a public place on the reserve lands of the first nation; and

(c) send the notice, by mail or electronic means, to the First Nations Tax Commission, to members of the first nation, to others who have interests in those lands or rights to occupy, possess or use those lands and to every government, organization and individual who, in the opinion of the council, may be affected by the proposed law.

### Exemption

(2) The First Nations Tax Commission may exempt a first nation from the requirements of subsection (1) in respect of an amendment of a law if the Commission considers that the amendment is not significant.

### Content of notice

(3) A notice referred to in subsection (1) shall

(a) describe the proposed law;

(b) state where a copy of the proposed law may be obtained;

(c) invite representations regarding the proposed law to be made, in writing, to the council within 60 days after the date stated in the notice; and

(d) if the council is to review the proposed law at a public meeting, state the time and place of the meeting.

### Council to consider representations

(4) Before making a law under any of paragraphs 5(1)(a) to (c), the council of a first nation shall consider any representations that were made in accordance with paragraph (3)(c) or at a meeting referred to in paragraph (3)(d).

### Further representations

7. When the council of a first nation sends a property taxation law or a law made under paragraph 5(1)(c) to

the First Nations Tax Commission for its approval, the council shall

(a) provide a copy of the law to any persons who made representations under paragraph 6(3)(c); and

(b) invite those persons to make written representations to the Commission within 30 days after the day on which they receive the copy of the law.

#### Information accompanying property taxation law

**8.** (1) A property taxation law — including an amendment of a property taxation law — shall, when submitted to the First Nations Tax Commission for approval, be accompanied by

(a) a description of the lands, interests or rights subject to the law;

(b) a description of the assessment practices to be applied to each class of land, interest or right;

(c) information regarding services to be provided from local revenues, existing service agreements and any service agreement negotiations under way at the time the law was made;

(d) a description of the notices that were given, any consultation undertaken by the council before making the law and copies of any written representations received by the council; and

(e) evidence that the law was duly made by the council.

#### Exemption

(2) The First Nations Tax Commission may exempt a first nation from the requirements of subsection (1) in respect of an amendment of a property taxation law if the Commission considers that the amendment is not significant.

#### Accompanying information

(3) A law made under paragraph 5(1)(c), when submitted to the First Nations Tax Commission for approval, shall be accompanied by

(a) a description of the notices that were given, any consultation undertaken by the council before making the law and copies of any written representations received by the council; and

(b) evidence that the law was duly made by the council.

#### Evidence law duly made

(4) A law made under paragraph 5(1)(b), (d) or (e) that is submitted to the First Nations Tax Commission for approval shall be accompanied by evidence that it was duly made by the council.

#### Additional information on request

(5) At the request of the First Nations Tax Commission, a first nation shall provide any documents that the Commission requires in order to

(a) review a local revenue law;

(b) determine that the law was made in accordance with this Act, the regulations or any standards made under subsection 35(1); or

(c) perform any of its other functions under this Act.

#### Financial administration laws

**9.** (1) Subject to subsections (2) and (3), the council of a first nation may make laws

(a) respecting the financial administration of the first nation; and

(b) delegating to any person or body its powers to make laws under paragraph (a).

#### Approval required

(2) A law made under subsection (1) by a borrowing member, including any amendment of such a law, does not have any force or effect until it is approved by the First Nations Financial Management Board.

#### Coming into force

(3) A law made under subsection (1) comes into force on the latest of

(a) the day on which it is made,

(b) the day of coming into force set out in the law, and

(c) in the case of a law or amendment made by a borrowing member, the day after it is approved by the First Nations Financial Management Board.

#### Evidence law duly made

(4) A law made under subsection (1) that is submitted to the First Nations Financial Management Board for approval shall be accompanied by evidence that it was duly made by the council.

#### Additional information on request

(5) At the request of the First Nations Financial Management Board, a first nation shall provide any documents that the Board requires in order to

(a) review a financial administration law submitted to the Board;

(b) determine that the law was made in accordance with this Act, the regulations or any standards made under subsection 55(1); or

(c) perform any of its other functions under this Act.

#### Annual rate and expenditure laws

**10.** A council of a first nation that makes a property taxation law shall, at least once each year at a time prescribed by regulation, make

(a) a law under paragraph 5(1)(a) setting the rate of tax to be applied to the assessed value of each class of lands, interests or rights; and

(b) a law under paragraph 5(1)(b) establishing a budget for the expenditure of revenues raised under the property taxation law.

#### No repeal by borrowing members

**11.** (1) A borrowing member shall not repeal a property taxation law.

#### Priority to Authority

(2) A law made under paragraph 5(1)(b) by a borrowing member shall not authorize the expenditure of local revenues unless the borrowing member's budget provides for the payment of all amounts payable to the First Nations Finance Authority during the budget period.

#### Financial commitment

(3) The borrowing member shall, in every year, reserve such local revenues as are required to ensure that all amounts authorized to be paid to the First Nations Finance Authority in the year are actually paid in that year.

#### Legal capacity of first nations

12. For greater certainty, for the purposes of Part 4, a borrowing member has the capacity to contract and to sue and be sued.

#### Local revenue account

13. (1) Local revenues of a first nation shall be placed in a local revenue account, separate from other moneys of the first nation.

#### Restriction on expenditures

(2) Local revenues may be expended only under the authority of a law made under paragraph 5(1)(b).

#### Balanced budget

(3) Expenditures provided for in a law made under paragraph 5(1)(b) shall not exceed the local revenues estimated for the year in which those expenditures are to be made, less any deficit accumulated from prior years.

#### Audit

14. (1) The local revenue account shall be audited at least once each calendar year and reported on separately from other accounts.

#### Access to report

(2) The audit report of the local revenue account shall be made available to

(a) the members of the first nation;

(b) any other persons who have an interest in, or the right to occupy, possess or use, the first nation's reserve lands;

(c) the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority; and

(d) the Minister.

#### Non-application of certain provisions

15. Paragraphs 83(1)(a) and (d) to (g) and section 84 of the *Indian Act* and any regulations made under paragraph 73(1)(m) of that Act do not apply to a first nation.

## PART 2

### FIRST NATIONS TAX COMMISSION

#### INTERPRETATION

#### Definitions

16. The following definitions apply in this Part.

"Commission"  
« *Commission* »

"Commission" means the First Nations Tax Commission.

"taxpayer"  
« *contribuable* »

"taxpayer" means a person paying tax under a property taxation law.

## ESTABLISHMENT AND ORGANIZATION OF COMMISSION

### Commission

**17.** (1) There is hereby established a commission, to be known as the First Nations Tax Commission, consisting of 10 commissioners, including a Chief Commissioner and Deputy Chief Commissioner.

### Capacity, rights, powers and privileges

(2) The Commission has the capacity, rights, powers and privileges of a natural person, including the capacity to

- (a) enter into contracts;
- (b) acquire, hold and dispose of property or an interest in property;
- (c) raise, invest or borrow money; and
- (d) sue and be sued.

### When agent of Her Majesty

**18.** (1) The Commission is an agent of Her Majesty only for the approval of local revenue laws.

### Savings

(2) For the purpose of subsection (1), the issuance of a certificate referred to in paragraph 32(2)(b) is deemed not to be an approval of a local revenue law.

### Appointment of Chief Commissioner

**19.** (1) On the recommendation of the Minister, the Governor in Council shall appoint a Chief Commissioner and Deputy Chief Commissioner.

### Tenure

(2) The Chief Commissioner and Deputy Chief Commissioner hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

### Appointment of commissioners

**20.** (1) On the recommendation of the Minister, the Governor in Council shall appoint four commissioners to hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

### Appointment of commissioners

(2) On the recommendation of the Minister, the Governor in Council shall appoint three additional commissioners — one of whom shall be a taxpayer using reserve lands for commercial, one for residential and one for utility purposes — to hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

### Appointment of additional commissioner

(3) A body prescribed by regulation shall appoint an additional commissioner to hold office during pleasure for a term not exceeding five years.

### Staggered terms

(4) In determining the term of appointment of commissioners, the Governor in Council shall endeavour to ensure that the terms of no more than three commissioners expire in any one calendar year.

### Qualifications

(5) The Commission shall be composed of men and women from across Canada, including members of first nations, who are committed to the development of a system of first nations real property taxation and who have the experience or capacity to enable the Commission to fulfil its mandate.

#### Status

**21.** The Chief Commissioner shall hold office on a full-time basis, while the other commissioners shall hold office on a part-time basis.

#### Reappointment

**22.** A commissioner may be reappointed for a second or subsequent term of office.

#### Remuneration

**23.** (1) Commissioners shall be paid the remuneration determined by the Governor in Council.

#### Expenses

(2) The Chief Commissioner shall be reimbursed for reasonable travel and other expenses incurred in performing duties while absent from his or her ordinary place of work. Other Commissioners shall be reimbursed for such expenses incurred in performing duties while absent from their ordinary place of residence.

#### Chief Commissioner — functions

**24.** The Chief Commissioner is the chief executive officer of the Commission and has supervision over, and direction of, the work and staff of the Commission.

#### Deputy Chief Commissioner — functions

**25.** In the event of the absence or incapacity of the Chief Commissioner, or if the office of Chief Commissioner is vacant, the Deputy Chief Commissioner shall assume the duties and functions of the Chief Commissioner.

#### Head office

**26.** (1) The head office of the Commission shall be on the reserve lands of the Kamloops Band or at any other location that the Governor in Council determines.

#### Additional office

(2) The Commission shall maintain an additional office in the National Capital Region described in the schedule to the *National Capital Act*.

#### Rules of procedure

**27.** The Commission may make any rules that it considers necessary for the conduct of, and the fixing of a quorum for, its meetings.

#### Staff

**28.** (1) The Commission may

(a) hire any staff that is necessary to conduct the work of the Commission; and

(b) determine the duties of those persons and the conditions of their employment.

#### Salaries and benefits

(2) Persons hired under subsection (1) shall be paid the salaries and benefits fixed by the Commission.

## PURPOSES

### Mandate

**29.** The purposes of the Commission are to

- (a) ensure the integrity of the system of first nations real property taxation and promote a common approach to first nations real property taxation nationwide, having regard to variations in provincial real property taxation systems;
- (b) ensure that the real property taxation systems of first nations reconcile the interests of taxpayers with the responsibilities of chiefs and councils to govern the affairs of first nations;
- (c) prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws;
- (d) assist first nations in the exercise of their jurisdiction over real property taxation on reserve lands and build capacity in first nations to administer their taxation systems;
- (e) develop training programs for first nation real property tax administrators;
- (f) assist first nations to achieve sustainable economic development through the generation of stable local revenues;
- (g) promote a transparent first nations real property taxation regime that provides certainty to taxpayers;
- (h) promote understanding of the real property taxation systems of first nations; and
- (i) provide advice to the Minister regarding future development of the framework within which local revenue laws are made.

## FUNCTIONS AND POWERS

### Powers

**30.** In furtherance of the purposes set out in section 29, the Commission may enter into cooperative arrangements and shared-cost ventures with national and international organizations to consult on or sell products or services developed for first nations who have made property taxation laws.

### Local revenue law review

**31.** (1) The Commission shall review every local revenue law.

### Written submissions

(2) Before approving a local revenue law, the Commission shall consider, in accordance with any regulations made under paragraph 36(1)(b), any representations made to it under paragraph 7(b) in respect of the law by members of the first nation or others who have interests in the reserve lands of the first nation or rights to occupy, possess or use those lands.

### Local revenue law approval

(3) Subject to section 32, the Commission shall approve a local revenue law that complies with this Act and with any standards and regulations made under this Act.

### Registry

(4) The Commission shall maintain a registry of every law approved by it under this section and every financial administration law made under section 9.

### Restrictions

**32.** (1) The Commission shall not approve a law made under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands unless

(a) the first nation has obtained and forwarded to the Commission a certificate of the First Nations Financial Management Board under subsection 50(3); and

(b) the first nation has unutilized borrowing capacity.

### Copy and certificate

(2) On approving a law made by a first nation under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands, the Commission shall provide the First Nations Finance Authority with

(a) a true copy of the law registered under subsection 31(4); and

(b) a certificate stating that the law meets all the requirements of this Act and the regulations made under this Act.

### Notice of judicial review

(3) If the Commission becomes aware that judicial review proceedings have been undertaken in respect of a law made by a first nation under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands, the Commission shall without delay inform the First Nations Finance Authority of those proceedings.

### Certificate is evidence

(4) A certificate referred to in paragraph (2)(b) is, in the absence of evidence to the contrary, conclusive evidence in any judicial proceedings of the facts contained in it.

### Review on request

**33.** (1) On the request in writing by a member of a first nation, or by a person who holds an interest in reserve lands or has a right to occupy, possess or use the reserve lands, who

(a) is of the opinion that the first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied,

(b) has requested the council of the first nation to remedy the situation, and

(c) is of the opinion that the council has not remedied the situation,

the Commission shall conduct a review of the matter in accordance with the regulations.

### Independent review

(2) If the Commission is of the opinion that a first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied, it shall conduct a review of the matter in accordance with the regulations.

### Remedy

(3) If, after conducting a review, the Commission considers that a first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied, the Commission

(a) shall order the first nation to remedy the situation; and

(b) may, if the first nation does not remedy the situation within the time set out in the order, by notice in writing, require the First Nations Financial Management Board to either — at the Board's discretion —

impose a co-management arrangement on the first nation or assume third-party management of the first nation's local revenues to remedy the situation.

### *First Nations Gazette*

**34.** (1) All local revenue laws approved by the Commission and all standards and procedures established by the Commission under section 35 shall be published in the *First Nations Gazette*.

### Frequency of publication

(2) The Commission shall publish the *First Nations Gazette* at least once in each calendar year.

## STANDARDS AND PROCEDURES

### Standards

**35.** (1) The Commission may establish standards, not inconsistent with the regulations, respecting

- (a) the form and content of local revenue laws;
- (b) enforcement procedures to be included in those laws;
- (c) criteria for the approval of laws made under paragraph 5(1)(d); and
- (d) the form in which information required under section 8 is to be provided to the Commission.

### Procedures

(2) The Commission may establish procedures respecting

- (a) submission for approval of local revenue laws;
- (b) approval of those laws;
- (c) representation of taxpayers' interests in the decisions of the Commission; and
- (d) resolution of disputes with first nations concerning the taxation of rights and interests on reserve lands.

### *Statutory Instruments Act*

(3) The *Statutory Instruments Act* does not apply to a standard established under subsection (1) or a procedure established under subsection (2).

## REGULATIONS

### Regulations

**36.** (1) The Governor in Council may, on the recommendation of the Minister made having regard to any representations by the Commission, make regulations

- (a) prescribing anything that is to be prescribed under subparagraph 5(1)(a)(i), paragraph 5(1)(e) or (4)(a), subsection 5(7) or section 10;
- (b) establishing the procedures to be followed in reviewing laws submitted under section 7 and conducting reviews under section 33, including procedures
  - (i) for requiring the production of documents from a first nation or person requesting a review under subsection 33(1),
  - (ii) for conducting hearings, and
  - (iii) authorizing the Commission to apply to a justice of the peace for a subpoena compelling a person to

appear before the Commission to give evidence and bring any documents specified in the subpoena, and to pay associated travel expenses;

(c) prescribing fees to be charged by the Commission for services to first nations and other organizations; and

(d) respecting the exercise of the law-making powers of first nations under subsection 5(1).

#### Provincial differences

(2) Regulations made under paragraph (1)(a) may vary from province to province.

#### Authority to vary

(3) Regulations made under paragraph (1)(b) may authorize the Commission to

(a) vary the procedures to accommodate the customs or culture of a first nation in respect of which a hearing is being held;

(b) extend or shorten any period provided for in those regulations;

(c) dispense with compliance with any procedure provided for in the regulations in the interest of securing a just, expeditious and inexpensive hearing of a complaint; and

(d) delegate any of the powers of the Commission under section 31 or 33 to one or more commissioners.

#### Inconsistencies

(4) In the event of an inconsistency between a law made under subsection 5(1) and regulations made under subsection (1), the regulations prevail to the extent of the inconsistency.

## PART 3

### FIRST NATIONS FINANCIAL MANAGEMENT BOARD

#### INTERPRETATION

##### Definition of "Board"

**37.** In this Part, "Board" means the First Nations Financial Management Board.

#### ESTABLISHMENT AND ORGANIZATION OF BOARD

##### Establishment

**38.** (1) There is hereby established a board, to be known as the First Nations Financial Management Board, to be managed by a board of directors consisting of a minimum of nine and a maximum of 15 directors, including a Chairperson and Vice-Chairperson.

##### Capacity, rights, powers and privileges

(2) The Board has the capacity, rights, powers and privileges of a natural person, including the capacity to

(a) enter into contracts;

(b) acquire, hold and dispose of property or an interest in property;

(c) raise, invest or borrow money; and

(d) sue and be sued.

### Not agent of Her Majesty

**39.** The Board is not an agent of Her Majesty.

### Appointment of Chairperson

**40.** On the recommendation of the Minister, the Governor in Council shall appoint a Chairperson to hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

### Appointment of additional directors

**41.** (1) The Governor in Council, on the recommendation of the Minister, shall appoint a minimum of five, and a maximum of eleven, other directors to hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

### Appointment by AFOA

(2) The Aboriginal Financial Officers Association of Canada, or any other body prescribed by regulation, shall appoint up to three additional directors to hold office during pleasure for a term not exceeding five years.

### Staggered terms

(3) In determining the term of appointment of directors, the Governor in Council shall endeavour to ensure that the terms of no more than three directors expire in any one calendar year.

### Qualifications

(4) The board of directors shall be composed of men and women from across Canada, including members of first nations, who are committed to the strengthening of first nation financial management and who have the experience or capacity to enable the Board to fulfil its mandate.

### Election of Vice-Chairperson

**42.** (1) The board of directors shall elect a Vice-Chairperson from among the directors.

### Functions

(2) In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the Vice-Chairperson shall assume the duties and functions of the Chairperson.

### Reappointment

**43.** Directors may be reappointed for a second or subsequent term of office.

### Status

**44.** Directors shall hold office on a part-time basis.

### Remuneration

**45.** (1) Directors shall be paid the remuneration determined by the Governor in Council.

### Expenses

(2) Directors shall be reimbursed for reasonable travel and other expenses incurred in performing duties while absent from their ordinary place of residence.

### Rules of procedure

**46.** The board of directors may make any rules that it considers necessary for the conduct of its meetings.

### Head office

47. The head office of the Board shall be at a location determined by the Governor in Council.

### Staff

48. (1) The board of directors may

(a) hire any staff that is necessary to conduct the work of the Board; and

(b) determine the duties of those persons and the conditions of their employment.

### Salaries and benefits

(2) Persons hired under subsection (1) shall be paid the salary and benefits fixed by the board of directors.

## PURPOSES

### Mandate

49. The purposes of the Board are to

(a) assist first nations in developing the capacity to meet their financial management requirements;

(b) assist first nations in their dealings with other governments respecting financial management, including matters of accountability and shared fiscal responsibility;

(c) assist first nations in the development, implementation and improvement of financial relationships with financial institutions, business partners and other governments, to enable the economic and social development of first nations;

(d) develop and support the application of general credit rating criteria to first nations;

(e) provide review and audit services respecting first nation financial management;

(f) provide assessment and certification services respecting first nation financial management and financial performance;

(g) provide financial monitoring services respecting first nation financial management and financial performance;

(h) provide co-management and third-party management services; and

(i) provide advice, policy research and review and evaluative services on the development of fiscal arrangements between first nations' governments and other governments.

## FUNCTIONS AND POWERS

### Review of financial management system

50. (1) On the request of the council of a first nation, the Board may review the first nation's financial management system or financial performance for compliance with the standards established under subsection 55(1).

### Report

(2) On completion of a review under subsection (1), the Board shall provide to the first nation a report setting out

- (a) the scope of the review undertaken; and
- (b) an opinion as to the extent to which the first nation was in compliance with the standards.

#### Certificate

(3) If after completing a review under subsection (1) the Board is of the opinion that the first nation was in compliance with the standards, it shall issue to the first nation a certificate to that effect.

#### Revocation of certificate

(4) The Board may, on giving notice to a council, revoke a certificate issued under subsection (3) if, on the basis of financial or other information available to the Board, it is of the opinion that the basis upon which the certificate was issued has materially changed.

#### Form and content

(5) The Board may determine the form and content of certificates issued under subsection (3), including any restrictions as to the purposes for which, and the persons by whom, they are intended to be used.

#### Remedial measures required

(6) If a borrowing member's certificate is revoked, the borrowing member shall, without delay, take any measures required to re-establish its certification.

#### Opinion final

(7) An opinion of the Board referred to in this section is final and conclusive and is not subject to appeal.

#### Required intervention

**51.** On receipt of a notice from the First Nations Tax Commission under paragraph 33(3)(b) or from the First Nations Finance Authority under subsection 86(4), the Board shall either require the first nation to enter into a co-management arrangement in accordance with section 52 or assume third-party management of the first nation's local revenues in accordance with section 53, as the Board sees fit.

#### Imposed co-management

**52.** (1) The Board may, on giving notice to the council of a first nation, require the first nation to enter into a co-management arrangement in respect of the first nation's local revenues, including its local revenue account,

- (a) if, in the opinion of the Board, there is a serious risk that the first nation will default on an obligation to the First Nations Finance Authority; or
- (b) on receipt of a request or demand to do so under paragraph 33(3)(b) or subsection 86(4).

#### Powers

- (2) Under a co-management arrangement, the Board may
  - (a) recommend amendments to a law of the first nation made under this Act;
  - (b) recommend changes to the first nation's expenditures or budgets;
  - (c) recommend improvements to the first nation's financial management system;
  - (d) recommend changes to the delivery of programs and services;
  - (e) order that expenditures of local revenues of the first nation be approved by, or paid with cheques co-signed by, a manager appointed by the Board; and
  - (f) exercise any powers delegated to the Board under a law of the first nation or under an agreement

between the first nation and the Board or the first nation and the First Nations Finance Authority.

#### Termination by Board

(3) The Board may terminate a co-management arrangement with a first nation on giving notice to its council that the Board is of the opinion that

(a) there is no longer a serious risk that the first nation will default on an obligation to the First Nations Finance Authority;

(b) where the first nation was in default of a payment obligation to the First Nations Finance Authority, the first nation has remedied the default;

(c) a co-management arrangement requested or demanded under paragraph 33(3)(b) or subsection 86(4) is no longer required; or

(d) third-party management of the first nation's local revenues is required.

#### Opinion final

(4) An opinion given by the Board under this section is final and conclusive and is not subject to appeal.

#### Notice

(5) The Board shall advise the First Nations Finance Authority and the First Nations Tax Commission of the commencement or termination of a co-management arrangement.

#### Third-party management

**53.** (1) The Board may, on giving notice to the council of a first nation and to the Minister, assume management of the first nation's local revenues, including its local revenue account,

(a) if, in the opinion of the Board, a co-management arrangement under section 52 has not been effective;

(b) if, in the opinion of the Board, there is a serious risk that the first nation will default on an obligation to the First Nations Finance Authority; or

(c) on receipt of a request or demand to do so under paragraph 33(3)(b) or subsection 86(4).

#### Powers

(2) If the Board assumes third-party management of the local revenues of a first nation, the Board has the exclusive right to

(a) subject to subsection (3), act in the place of the council of the first nation to make laws under paragraphs 5(1)(a) to (f);

(b) act in the place of the council of the first nation under laws made under paragraphs 5(1)(a) to (e) and manage the first nation's local revenue account, including any necessary borrowing;

(c) provide for the delivery of programs and services that are paid for out of local revenues;

(d) assign rights or interests under subsection 5(7); and

(e) exercise any powers delegated to the Board under a law of the first nation or an agreement between the first nation and the Board or between the first nation and the First Nations Finance Authority.

#### Consent of council required

(3) The Board shall not make a law under paragraph 5(1)(f) that delegates a power to a person or body to whom a power was not delegated at the time the Board assumed third-party management of the local revenues

of a first nation, unless the council of the first nation gives its consent.

#### Prohibition

(4) The council of the first nation shall not, during the time that the board assumes third-party management of the first nation's local revenues, repeal any law made under paragraph 5(1)(g).

#### Review every six months

(5) Where the Board has assumed third-party management of a first nation's local revenues, it shall review the need for third-party management at least once every six months and advise the First Nations Finance Authority, the First Nations Tax Commission and the council of the first nation of the results of its review.

#### Termination by Board

(6) The Board may terminate third-party management of a first nation's local revenues, on giving notice to the council of the first nation, if

(a) it is of the opinion that there is no longer a serious risk that the first nation will default on an obligation to the First Nations Finance Authority and the Authority consents to the termination in writing;

(b) where the first nation was in default of an obligation to the First Nations Finance Authority, it is of the opinion that the first nation has remedied the default and the Authority consents to the termination in writing; or

(c) it is of the opinion that the situation for which third-party management of the first nation's local revenues was required under paragraph 33(3)(b) or subsection 86(4) has been remedied.

#### Opinion final

(7) An opinion given by the Board under this section is final and conclusive and is not subject to appeal.

#### Notice

(8) The Board shall advise the First Nations Finance Authority and First Nations Tax Commission of the assumption or termination of third-party management of a first nation's local revenues.

#### Required information

**54.** At the request of the Board, a first nation that has made a local revenue law shall provide to the Board any information about the first nation's financial management system and financial performance that the Board requires for a decision regarding a co-management arrangement or third-party management of the first nation's local revenues.

## STANDARDS AND PROCEDURES

#### Standards

**55.** (1) The Board may establish standards, not inconsistent with the regulations, respecting

(a) the form and content of laws made under section 9;

(b) approvals of the Board under Part 1;

(c) certification of first nations under section 50; and

(d) financial reporting under subsection 14(1).

#### Procedures

(2) The Board may establish procedures respecting

(a) the submission for approval and approval of laws made under section 9;

(b) the issuance of a certificate under subsection 50(3); and

(c) the implementation or termination of a co-management arrangement or third-party management of a first nation's local revenues.

### *Statutory Instruments Act*

(3) The *Statutory Instruments Act* does not apply to a standard established under subsection (1) or a procedure established under subsection (2).

### *First Nations Gazette*

(4) All laws made under section 9 and approved by the Board and all standards established by the Board under subsection (1) shall be published in the *First Nations Gazette*.

## REGULATIONS

### Regulations

**56.** The Governor in Council may, on the recommendation of the Minister made having regard to any representations by the Board, make regulations

(a) respecting the implementation of a co-management arrangement or third-party management of a first nation's local revenues, including the obligations of affected first nations to provide access to financial records; and

(b) fixing fees that the Board may charge for services, including fees to first nations for co-management and third-party management services, and the manner in which the fees may be recovered.

## PART 4

### FIRST NATIONS FINANCE AUTHORITY

#### INTERPRETATION

### Definitions

**57.** The following definitions apply in this Part.

"Authority"  
«*Administration* »

"Authority" means the First Nations Finance Authority.

"investing member"  
«*membre investisseur* »

"investing member" means a first nation that has invested in a short-term investment pool managed by the Authority.

"long-term loan"  
«*prêt à long terme* »

"long-term loan" means a loan the term of which is one year or longer.

"member"  
«*membre* »

"member" means a borrowing member or investing member.

"property tax revenues"

« *recettes fiscales foncières* »

"property tax revenues" means moneys raised under a law made under paragraph 5(1)(a).

"representative"

« *représentant* »

"representative", in respect of a first nation that is a member, means the chief or a councillor of the first nation who is designated as a representative by a resolution of its council.

"security"

« *titre* »

"security" means a security of the Authority issued under paragraph 75(1)(b).

"short-term loan"

« *prêt à court terme* »

"short-term loan" means a loan the term of which is less than one year.

## ESTABLISHMENT AND ORGANIZATION OF AUTHORITY

### Establishment

**58.** There is hereby established a non-profit corporation without share capital, to be known as the First Nations Finance Authority.

### Membership

**59.** The members of the Authority shall be its borrowing members and investing members.

### Not agent of Her Majesty

**60.** (1) The Authority is not an agent of Her Majesty or a Crown corporation within the meaning of the *Financial Administration Act*, and its officers and employees are not part of the federal public administration.

### No guarantees

(2) No person shall give a guarantee on behalf of Her Majesty for the discharge of an obligation or liability of the Authority.

2005, c. 9, ss. 60, 154(E).

### Board of Directors

**61.** (1) The Authority shall be managed by a board of directors, consisting of from 5 to 11 directors, including a Chairperson and Deputy Chairperson.

### Nomination of directors

(2) A representative of a borrowing member may nominate

(a) a representative of a borrowing member for election as Chairperson or Deputy Chairperson; and

(b) any representative for election as a director other than the Chairperson or Deputy Chairperson.

### Election of directors

(3) Directors shall be elected by representatives of borrowing members.

### Function of Deputy Chairperson

**62.** In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the

Deputy Chairperson shall assume the duties and functions of the Chairperson.

#### Term of office

**63.** (1) Directors shall hold office on a part-time basis for a term of one year.

#### Additional terms

(2) A director is eligible to be re-elected for a second or subsequent term of office.

#### Ceasing to be director

(3) A person ceases to be a director when

(a) the person ceases to hold office as a chief or councillor of a first nation that is a borrowing member or investing member;

(b) the person's designation as a representative of a borrowing member or investing member is revoked by a resolution of the council of that first nation; or

(c) the person is removed from office before the expiry of the term of the appointment by a special resolution of the board of directors.

#### Quorum

**64.** Two thirds of the directors constitute a quorum at any meeting of the board of directors.

#### Majority vote

**65.** Decisions by the board of directors shall be made by a majority vote of the directors present.

#### Canada Corporations Act

**66.** (1) The *Canada Corporations Act* does not apply to the Authority.

#### Canada Business Corporations Act

(2) The following provisions of the *Canada Business Corporations Act* apply, with any modifications that the circumstances require, to the Authority and its directors, members, officers and employees as if the Authority were a corporation incorporated under that Act, this Part were its articles of incorporation and its members were its shareholders:

(a) subsection 15(1) (capacity of a natural person);

(b) section 16 (by-law not required to confer powers on Authority, restriction on powers of Authority, and validity of acts of Authority);

(c) subsection 21(1) (access to Authority's records by members and creditors);

(d) section 23 (corporate seal not needed to validate instrument);

(e) subsections 103(1) to (4) (powers of directors to make and amend by-laws, member approval of by-laws and effective date of by-laws);

(f) subsection 105(1) (qualifications of directors);

(g) subsection 108(2) (resignation of director);

(h) section 110 (right of director to attend members' meetings and statements by retiring directors);

- (i) subsection 114(1) (place of directors' meetings);
- (j) section 116 (validity of acts of directors and officers);
- (k) section 117 (validity of directors' resolutions not passed at meeting);
- (l) subsections 119(1) and (4) (liability of directors);
- (m) section 120 (conflict of interests of directors);
- (n) section 123 (directors' dissents);
- (o) section 124 (directors' indemnity);
- (p) section 155 (financial statements);
- (q) section 158 (approval of financial statements by directors);
- (r) section 159 (sending financial statements to members before annual meeting);
- (s) sections 161 and 162 (qualifications and appointment of auditor);
- (t) section 168 (rights and duties of auditor);
- (u) section 169 (examination by auditor);
- (v) section 170 (auditor's right to information);
- (w) subsections 171(3) to (9) (duty and administration of audit committee and penalty for failure to comply);
- (x) section 172 (qualified privilege in defamation for auditor's statements); and
- (y) subsections 257(1) and (2) (certificates of Authority as evidence).

#### Remuneration of directors

**67.** Directors shall be paid a fee for attendance at meetings of the board of directors, as fixed by the by-laws of the Authority.

#### Duty of care

- 68.** (1) The directors and officers of the Authority in exercising their powers and performing their duties shall
- (a) act honestly and in good faith with a view to the best interests of the Authority; and
  - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### Limit of liability

- (2) Directors and officers are not liable for a failure to comply with subsection (1) if they rely in good faith on
- (a) a written report of the auditor of the Authority or financial statements represented by an officer of the Authority as fairly reflecting the financial condition of the Authority; or
  - (b) a report of a lawyer, notary, accountant, engineer, appraiser or other person whose position or profession lends credibility to a statement made by that person.

### President

**69.** (1) The board of directors shall appoint a President to act as the chief executive officer of the Authority.

### Other staff

(2) The President may employ any other officers and employees that are necessary to conduct the work of the Authority.

### Annual general meeting

**70.** The Authority shall hold an annual general meeting of representatives for the purpose of

- (a) presenting the annual report and audited financial statements of the Authority;
- (b) electing the board of directors; and
- (c) dealing with any other business of the Authority that may be presented by the board of directors.

### By-laws

**71.** The board of directors may make by-laws

- (a) respecting the calling and conduct of meetings of the board, including the holding of meetings by teleconference;
- (b) fixing the fees to be paid to directors for attendance at meetings of the board and the reimbursement of reasonable travel and living expenses to directors;
- (c) respecting the duties and conduct of the directors, officers and employees of the Authority and the terms and conditions of employment and of the termination of employment of officers and employees of the Authority;
- (d) respecting the signing and sealing of securities and interest coupons issued by the Authority; and
- (e) generally for the conduct and management of the affairs of the Authority.

### Head office

**72.** The head office of the Authority shall be on reserve lands at a location determined by the board of directors.

### Annual budget

**73.** At the beginning of every year, the President shall prepare an annual budget of the Authority and present it to the board of directors for approval.

## PURPOSES

### Mandate

**74.** The purposes of the Authority are to

- (a) secure for its borrowing members, through the use of property tax revenues,
  - (i) long-term financing of capital infrastructure for the provision of local services on reserve lands,
  - (ii) lease financing of capital assets for the provision of local services on reserve lands, or
  - (iii) short-term financing to meet cash-flow requirements for operating or capital purposes under a law

made under paragraph 5(1)(b), or to refinance a short-term debt incurred for capital purposes;

(b) secure for its borrowing members, through the use of other revenues prescribed by regulation, financing for any purpose prescribed by regulation;

(c) secure the best possible credit terms for its borrowing members;

(d) provide investment services to its members and first nations organizations; and

(e) provide advice regarding the development of long-term financing mechanisms for first nations.

## FUNCTIONS AND POWERS

### Powers of board of directors

**75.** (1) For the purposes of this Part, the board of directors may by resolution

(a) borrow money in an amount authorized by the resolution;

(b) issue securities of the Authority;

(c) lend securities to generate income, if the loan is fully secured;

(d) enter into agreements for risk management purposes, including swaps; and

(e) provide for

(i) payments related to the issuance of securities,

(ii) the registration, transfer, management and redemption of securities,

(iii) the re-issuance, reinstatement or other disposition of lost, stolen, destroyed or damaged securities or interest coupons,

(iv) the examination, cancellation or destruction of securities and of materials used in their production, or

(v) the timing of the issuance of securities.

### Security issuance requirements

(2) A resolution respecting the issuance of securities shall set out

(a) the rate of interest;

(b) the time and place of repayment of principal and interest; and

(c) the currency in which repayment of principal and interest will be made.

### Security issuance resolutions

(3) A resolution respecting the issuance of securities may provide that

(a) the securities are to be redeemable in advance of maturity at a time and price set out in the resolution;

(b) all or any part of the securities may be paid, refunded or renewed;

(c) the securities are to be issued in an amount sufficient to realize the amount of any securities called in and paid before maturity, for a term not longer than the remainder of the term of the securities called in and paid; or

(d) the securities and any interest coupons attached to them are to be in the form set out in the resolution, and are to be exchangeable for other securities of the same issue on any terms and conditions set out in the

resolution.

#### Amount of issue

(4) The Authority may issue securities the principal amounts of which, after payment of any discount and the costs of issue and sale, will realize the net amount authorized by the board of directors in a resolution made under paragraph (1)(a).

#### Declaration conclusive

(5) A declaration in a resolution authorizing the issuance of securities that it is necessary to issue securities in the principal amount authorized in order to realize the net amount authorized is conclusive evidence of that fact.

#### Sale price

(6) The board of directors may sell securities at their par value or at other than par value.

#### Delegation

(7) The board of directors may delegate its powers under this section to a committee of directors and officers of the Authority, subject to any limitations that the board of directors may impose.

#### Application to become borrowing member

**76.** (1) A first nation may apply to the Authority to become a borrowing member.

#### Criteria

(2) The Authority shall accept a first nation as a borrowing member only if the First Nations Financial Management Board has issued to the first nation a certificate under subsection 50(3) and has not subsequently revoked it.

#### Ceasing to be a borrowing member

**77.** A first nation may cease to be a borrowing member only with the consent of all other borrowing members.

#### Priority

**78.** (1) The Authority has a priority over all other creditors of a first nation that is insolvent, for any moneys that are authorized to be paid to the Authority under a law made under paragraph 5(1)(b) or (d).

#### Debts to the Crown

(2) For greater certainty, subsection (1) does not apply to Her Majesty.

#### Limitations — infrastructure loans

**79.** The Authority shall not make a long-term loan to a borrowing member for the purpose of financing capital infrastructure for the provision of local services on reserve lands unless

(a) the First Nations Tax Commission has approved a law made by the borrowing member under paragraph 5(1)(d); and

(b) the loan is to be paid out of the property tax revenues of the borrowing member in priority to other creditors of the borrowing member.

#### Restriction on financing

**80.** A borrowing member shall not obtain long-term financing secured by property tax revenues from any person other than the First Nations Finance Authority.

### Limitations — short-term loans

**81.** The Authority shall not make a short-term loan to a borrowing member for a purpose described in subparagraph 74(a)(iii) unless the loan is made in anticipation of local revenues of the borrowing member set out in a law made under paragraph 5(1)(b).

### Sinking fund

**82.** (1) The Authority shall establish a sinking fund, or any other system of repayment prescribed by regulation, to fulfil its repayment obligations to the holders of each security issued by the Authority.

### Separate accounts

(2) Where a sinking fund is established, a separate sinking fund account shall be kept for each borrowing member participating in a security issued by the Authority.

### Sinking fund investments

(3) Funds in a sinking fund may be invested only in

(a) securities issued or guaranteed by Canada or a province;

(b) securities of a local, municipal or regional government in Canada;

(c) investments guaranteed by a bank, trust company or credit union; or

(d) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

### Surpluses

**83.** (1) The Authority may declare a surplus in a sinking fund and use the surplus, in order of priority, to

(a) replenish any amounts paid out of the debt reserve fund; and

(b) make a distribution to borrowing members who are participating in that fund.

### Recovery from sinking fund

(2) The Authority may recover fees payable by a borrowing member from any surplus to be distributed to that member under paragraph (1)(b).

### Debt reserve fund

**84.** (1) The Authority shall establish a debt reserve fund to make payments or sinking fund contributions for which insufficient moneys are available from borrowing members.

### Provisioning of fund

(2) Subject to the regulations, the Authority shall withhold 5% of the amount of any long-term loan to a borrowing member for financing capital infrastructure for the provision of local services on reserve lands and deposit that amount in the debt reserve fund.

### Separate account

(3) A separate account shall be kept for each security issued and for each borrowing member contributing to the debt reserve fund.

### Investments

(4) The funds of the debt reserve fund may be invested only in securities, investments or deposits referred to in paragraph 82(3)(a), (c) or (d) that mature or are callable within five years, 25% of which must be callable within 90 days.

### Liability for shortfall

(5) If payments from the debt reserve fund reduce its balance

(a) by less than 50% of the total amount contributed by borrowing members, the Authority may, in accordance with the regulations, require all borrowing members to pay amounts sufficient to replenish the debt reserve fund; and

(b) by 50% or more of the total amount contributed by borrowing members,

(i) the Authority shall, in accordance with the regulations, require all borrowing members to pay without delay amounts sufficient to replenish the debt reserve fund, and

(ii) the borrowing members shall recover those amounts under their property taxation laws.

### Repayment

(6) Money contributed by a borrowing member to the debt reserve fund and investment income received on it shall be repaid by the Authority to the borrowing member when all obligations in respect of the security in respect of which the money was contributed have been satisfied.

### Credit enhancement fund

**85.** (1) The Authority shall establish a fund for the enhancement of the Authority's credit rating.

### Investments

(2) The funds of the credit enhancement fund may be invested only in securities, investments or deposits referred to in paragraph 82(3)(a), (c) or (d) that mature or are callable within five years, 25% of which must be callable within 90 days.

### Investment income

(3) Investment income from the credit enhancement fund may be used

(a) to temporarily offset any shortfalls in the debt reserve fund;

(b) to defray the Authority's costs of operation; and

(c) for any other purpose prescribed by regulation.

### Capital

(4) The capital of the credit enhancement fund may be used

(a) to temporarily offset any shortfalls in the debt reserve fund; and

(b) for any other purpose prescribed by regulation.

### Default by first nation

**86.** (1) If a borrowing member fails to make a payment to the Authority, to fulfil any other obligation under a borrowing agreement with the Authority or to pay a charge imposed by the Authority under this Part, the Authority shall

(a) notify the borrowing member of the failure; and

(b) send a notice of the failure to the First Nations Financial Management Board and the First Nations Tax Commission, together with evidence of the failure and a copy of any relevant documents and records.

### Requirement for report

(2) If a failure referred to in subsection (1) relates to an obligation other than payment, the Authority may

require that the First Nations Financial Management Board review and report on the reasons for the failure.

#### Report

(3) On receipt of a notice referred to in paragraph (1)(b) in respect of a failure related to an obligation other than payment, the First Nations Financial Management Board shall advise the Authority in writing of its opinion on the reasons for the failure and recommend any intervention under section 52 or 53 that it considers appropriate.

#### Required intervention

(4) The Authority may, by notice in writing, require the First Nations Financial Management Board to either — at the Board's discretion — impose a co-management arrangement on a borrowing member or assume third-party management of the first nation's local revenues

(a) where the borrowing member fails to make a payment to the Authority under a borrowing agreement with the Authority, or to pay a charge imposed by the Authority under this Part; or

(b) on receipt of a report of the Board under subsection (3) in respect of the borrowing member.

#### Short-term pooled investment funds

**87.** (1) The Authority may establish short-term pooled investment funds.

#### Investments

(2) Funds in a short-term pooled investment fund may be invested only in

(a) securities issued or guaranteed by Canada, a province or the United States;

(b) fixed-term deposits, notes, certificates or other short-term paper of, or guaranteed by, a bank, trust company or credit union, including swaps in United States currency;

(c) securities issued by the Authority or by a local, municipal or regional government in Canada;

(d) commercial paper issued by a Canadian company that is rated in the highest category by at least two recognized security-rating institutions;

(e) any class of investments permitted under an Act of a province relating to trustees; or

(f) any other investments or class of investments prescribed by regulation.

## GENERAL

#### Annual report

**88.** (1) The Chairperson shall, within four months after the end of each fiscal year, submit to the Authority's members and the Minister a report of the operations of the Authority for that fiscal year.

#### Contents

(2) The annual report shall include the financial statements of the Authority and its auditor's opinion on them.

## REGULATIONS

#### Regulations

**89.** The Governor in Council may, on the recommendation of the Minister after consultation by the Minister with the Authority, make regulations

(a) prescribing anything that is to be prescribed under subsection 82(1) and paragraphs 85(3)(c) and (4)(b) and 87(2)(f);

(b) increasing or decreasing the amount to be withheld from a loan under subsection 84(2);

(c) respecting the imposition of charges under subsection 84(5), including the manner of calculating those charges and the share of those charges to be paid by each borrowing member; and

(d) extending the application of this Part to any non-profit organization established to provide social welfare, housing, recreational or cultural services to first nations or their members on reserve lands and making any adaptations to the provisions of this Act that are necessary for that purpose.

## PART 5 FIRST NATIONS STATISTICAL INSTITUTE

### INTERPRETATION

#### Definitions

**90.** The following definitions apply in this Part.

"Institute"  
« *Institut* »

"Institute" means the First Nations Statistical Institute.

"other aboriginal group"  
« *autre groupe autochtone* »

"other aboriginal group" means an aboriginal group that was formerly a band under the *Indian Act* and that is a party to a treaty, land claim agreement or self-government agreement with Canada.

"respondent"  
« *intéressé* »

"respondent" means a person in respect of whom, or in respect of whose activities, a report or information is sought or provided under this Part.

### ESTABLISHMENT AND ORGANIZATION OF INSTITUTE

#### Institute

**91.** There is hereby established an institute, to be known as the First Nations Statistical Institute, which may carry on business under the name of "First Nations Statistics".

#### Crown Corporation

**92.** The Institute is a Crown corporation and is governed by Part X of the *Financial Administration Act*, but to the extent that any provisions of this Part are inconsistent with sections 105 and 121 of that Act, the provisions of this Part prevail.

#### Not an agent of Her Majesty

**93.** The Institute is not an agent of Her Majesty.

#### Board of directors

**94.** (1) The Institute shall be managed by a board of directors, consisting of 10 to 15 directors, including the Chairperson and Vice-Chairperson.

#### *Ex officio* director

(2) The Chief Statistician of Canada shall be a member of the board of directors.

#### Appointment of Chairperson

**95.** On the recommendation of the Minister, the Governor in Council shall appoint a Chairperson to hold office during pleasure for a term not exceeding five years.

#### Appointment of other directors

**96.** On the recommendation of the Minister, the Governor in Council shall appoint a minimum of eight, and a maximum of 13, additional directors to hold office during pleasure for a term not exceeding five years.

#### Staggered terms

**97.** (1) In determining the term of appointment of directors, the Governor in Council shall endeavour to ensure that the terms of no more than three directors expire in any one calendar year.

#### Qualifications

(2) The board of directors shall be composed of men and women from across Canada, including members of first nations, who are committed to improving first nations statistical information and analysis and who have the experience or capacity to enable the Institute to fulfil its mandate.

#### Status

**98.** The Chairperson and other directors shall hold office on a part-time basis.

#### Election of Vice-Chairperson

**99.** (1) The board of directors shall elect a Vice-Chairperson from among the directors.

#### Functions

(2) In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the Vice-Chairperson shall assume the duties and functions of the Chairperson.

#### Reappointment

**100.** A director may be reappointed for a second or subsequent term of office.

#### Head office

**101.** The head office of the Institute shall be at a location determined by the Governor in Council.

#### First Nations Chief Statistician

**102.** (1) On the recommendation of the Minister, the Governor in Council shall appoint a First Nations Chief Statistician to hold office during pleasure on a full-time basis for a term not exceeding five years.

#### Remuneration

(2) The First Nations Chief Statistician shall be paid the remuneration determined by the Governor in Council.

#### Staff

(3) The board of directors shall determine the duties of other officers and employees and the conditions of their employment.

#### Staff

(4) The First Nations Chief Statistician may hire any other officers and employees that are necessary to conduct the work of the Institute.

### Salaries and benefits

(5) Persons hired under subsection (4) shall be paid salaries and benefits fixed by the board of directors.

### Oath of office

**103.** The First Nations Chief Statistician, every person employed by the Institute, every person retained under contract by the Institute and every employee and agent of a person retained under contract by the Institute shall, before commencing their duties, swear or solemnly affirm that he or she will comply with section 108 and will not without authority disclose any information acquired in the course of his or her duties that can be related to any identifiable individual, first nation, business or organization.

## PURPOSES

### Mandate

**104.** The purposes of the Institute are to

(a) provide statistical information on, and analysis of, the fiscal, economic and social conditions of

(i) Indians and other members of first nations,

(ii) members of other aboriginal groups, and

(iii) other persons who reside on reserve lands or lands of other aboriginal groups;

(b) promote the quality, coherence and compatibility of first nations statistics and their production in accordance with generally accepted standards and practices through collaboration with first nations, federal departments and agencies, provincial departments and agencies and other organizations;

(c) work with, and provide advice to, federal departments and agencies and provincial departments and agencies on first nations statistics;

(d) work in cooperation with Statistics Canada to ensure that the national statistical system meets the needs of first nations and Canada; and

(e) build statistical capacity within first nation governments.

## POWERS

### General powers

**105.** (1) In furtherance of the purposes set out in section 104, the Institute may enter into agreements with aboriginal and other governments and organizations.

### Particular powers

(2) The Institute may collect, compile, analyze and abstract data for statistical purposes respecting any of the following matters as they relate to first nations, to reserve lands, to Indians and other members of first nations, to members of other aboriginal groups, and to other persons who reside on reserve lands or lands of other aboriginal groups:

(a) population;

(b) agriculture;

(c) health and welfare;

(d) commercial and industrial activities;

(e) law enforcement, the administration of justice and corrections;

- (f) finance;
- (g) education;
- (h) language, culture and traditional activities;
- (i) labour and employment;
- (j) prices and the cost of living;
- (k) transportation and communications;
- (l) electric power, gas and water utilities;
- (m) public administration;
- (n) community services;
- (o) the environment;
- (p) forestry, fishing and trapping; and
- (q) any other matter prescribed by regulation.

#### Publication

(3) The Institute shall publish and make publicly available statistical information collected, compiled, analysed or abstracted under subsection (2) in a manner that does not permit the information to be related to any identifiable individual, business or organization.

#### Sharing of information

**106.** (1) The Institute may enter into an agreement with a first nation or other aboriginal group, federal department or agency, provincial department or agency, municipality, corporation or other organization for the sharing of information collected by or on behalf of either party and for its subsequent tabulation or publication.

#### Agreement

(2) An agreement under subsection (1) shall provide that

(a) respondents from whom information is collected are to be informed by notice that the information is being collected on behalf of the Institute and the first nation, other aboriginal group, department, agency, municipality, corporation or organization, as the case may be; and

(b) if the respondents object by notice in writing to the First Nations Chief Statistician to the sharing of the information by the Institute, the information will not be shared unless the first nation, other aboriginal group, department, agency, municipality, corporation or organization is authorized by law to require respondents to provide that information.

#### Federal data

**107.** (1) Subject to subsection (2), documents or records relating to first nations, Indians or other members of first nations, or to members of other aboriginal groups, that are maintained by any department, body or corporation set out in any of Schedules I to III to the *Financial Administration Act* that is prescribed by regulation shall be disclosed to the Institute for the purposes of this Part in accordance with an agreement referred to in subsection (3).

#### Exception

(2) A department, body or corporation referred to in subsection (1) is not required to disclose any information

that it is required to, or may, withhold under any federal law or under any privilege at law.

#### Agreement required

(3) The Institute shall enter into an agreement for the collection and use of information referred to in subsection (1) with the department, body or corporation from whose documents or records it is to be obtained.

### GENERAL

#### Protection of information

**108.** (1) Except for the purpose of communicating information in accordance with the conditions of an agreement made under section 106, for the conduct of a prosecution under this Act or for the purposes of subsection (2),

(a) no person, other than a person employed by, or under contract to, the Institute and sworn or affirmed under section 103, shall be permitted to examine any identifiable individual return made for the purposes of this Part; and

(b) no person who has been sworn or affirmed under section 103 shall knowingly disclose any information obtained by the Institute that can be related to any identifiable individual, first nation, business or organization.

#### Permissible disclosure

(2) The First Nations Chief Statistician may authorize the following information to be disclosed:

(a) information collected by persons, first nations, organizations or departments for their own purposes and communicated to the Institute, subject to the same secrecy requirements applicable to it when it was collected, and in the manner and to the extent agreed on by its collector and the First Nations Chief Statistician;

(b) information relating to a person, first nation, business or organization in respect of which disclosure is consented to in writing by that person, first nation, business or organization;

(c) information available to the public under an Act of Parliament or of the legislature of a province;

(d) information relating to a hospital, institution for individuals with a mental health disability, library, educational institution or other similar non-commercial institution that cannot be related to an individual to whom services were or are provided by that institution; and

(e) a list of businesses, showing

(i) their names and addresses,

(ii) the telephone numbers at which they may be reached in relation to statistical matters,

(iii) the official language in which they prefer to be addressed in relation to statistical matters,

(iv) the products they produce, transport, store, purchase or sell, or the services they provide, in the course of their business, or

(v) the number of persons they employ, as a specified range.

#### Information privileged

**109.** (1) Except for the purpose of conducting a prosecution under this Act, information obtained by the Institute that can be related to any identifiable individual, business, organization or first nation is privileged and shall not be used as evidence in a legal proceeding.

#### No compulsion to produce

(2) No person referred to in section 103 shall be required by an order of a court, tribunal or other body to give testimony in respect of any information referred to in subsection (1).

### Powers of Statistics Canada

**110.** Nothing in this Act shall be construed so as to limit the powers and duties of Statistics Canada under the *Statistics Act*.

## OFFENCES

### Offence

**111.** Every person who, after making an oath or solemn affirmation under section 103,

(a) wilfully makes a false declaration, statement or return in the performance of his or her duties,

(b) in the pretended performance of his or her duties, obtains or seeks to obtain information that the person is not authorized to obtain, or

(c) contravenes section 108

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months, or to both.

### Secret information

**112.** Every person who, after making an oath or solemn affirmation under section 103,

(a) wilfully discloses, directly or indirectly, information obtained in the course of his or her duties that might affect the market value of a security or commodity, including any information referred to in subsection 108 (2), to any person who has not been sworn or affirmed under section 103, or

(b) uses any information described in paragraph (a) for the purpose of speculating in a security or commodity

is guilty of an offence and liable on summary conviction to a fine not exceeding the aggregate of \$5,000 and double the amount of any benefit obtained from speculation referred to in paragraph (b) or to imprisonment for a term not exceeding five years, or to both.

## REGULATIONS

### Regulations

**113.** The Governor in Council may, on the recommendation of the Minister made having regard to any representations by the Institute, make regulations prescribing anything to be prescribed under paragraph 105(2) (q) or subsection 107(1).

## PART 6

### FINANCIAL MANAGEMENT AND CONTROL

#### Definitions

**114.** The following definitions apply in this Part.

"board of directors"  
« *conseil d'administration* »

"board of directors" includes

(a) in respect of the First Nations Tax Commission, the commissioners referred to in section 17; and

(b) in respect of the First Nations Financial Management Board, the directors referred to in section 38.

"institution"  
«*institution*»

"institution" means the First Nations Tax Commission or the First Nations Financial Management Board.

#### Exclusion from federal public administration

**115.** (1) The officers and employees of an institution are not part of the federal public administration.

#### No guarantees

(2) No person shall give a guarantee on behalf of Her Majesty for the discharge of an obligation or liability of an institution.

2005, c. 9, ss. 115, 154(E).

#### Financial year

**116.** The financial year of each institution is the period from April 1 to March 31, unless otherwise prescribed by regulation.

#### Expenditure of revenues

**117.** Subject to any terms and conditions that the Treasury Board may direct, for the purposes of the institution, an institution may expend, during a financial year or the following year, any revenues that it receives in that financial year through the conduct of its operations.

#### Corporate plans

**118.** (1) Each institution shall, in accordance with any directions given by the Minister, establish a corporate plan and budget for each financial year and submit them to the Minister for approval.

#### Scope and contents of corporate plan

(2) The corporate plan of each institution shall encompass all of the businesses and activities of the institution and include a statement of

(a) the objects or purposes of the institution;

(b) the institution's objectives for the financial year and the strategy it intends to employ to achieve those objectives; and

(c) the institution's expected performance for the financial year as compared to its objectives for that year as set out in the last corporate plan.

#### Contents of budget

(3) The budget of each institution must include a statement of the institution's projected revenues and expenses for the financial year on account of capital and operations.

#### Form of corporate plan

(4) The corporate plan of each institution shall be prepared in a form that clearly sets out information according to the major businesses or activities of the institution.

#### Restriction on business or activity

(5) No institution may carry on any business or activity in any financial year in a manner that is not consistent with its corporate plan for that year.

#### Amendment

(6) Any amendment by an institution to its corporate plan or budget shall be submitted to the Minister for approval.

#### Books and systems

**119.** (1) Each institution shall

- (a) keep books of account and records in relation to them; and
- (b) maintain financial and management control and information systems.

#### Books and systems

(2) The books, records and systems referred to in subsection (1) shall be kept and maintained in such a manner as will provide reasonable assurance that

- (a) the institution's assets are safeguarded and controlled;
- (b) its transactions are in accordance with this Act;
- (c) its financial, human and physical resources are managed economically and efficiently; and
- (d) its operations are carried out effectively.

#### Internal audit

(3) An institution may cause internal audits to be conducted to assess compliance with subsections (1) and (2).

#### Financial statements

(4) Each institution shall annually prepare financial statements, in accordance with generally accepted accounting principles, as supplemented by any directions given by the Minister under subsection (6).

#### Form of financial statements

(5) The financial statements of an institution shall be prepared in a form that clearly sets out information according to the major businesses or activities of the institution.

#### Directions

(6) The Minister may give directions respecting the preparation of financial statements, to supplement generally accepted accounting principles.

#### Annual auditor's report

**120.** (1) Each institution shall cause an annual auditor's report to be prepared in accordance with any directions of the Minister, on

- (a) its financial statements; and
- (b) any quantitative information required to be audited under subsection (3).

#### Contents

(2) A report under subsection (1) shall

- (a) include separate statements as to whether in the auditor's opinion
  - (i) the financial statements are presented fairly, in accordance with generally accepted accounting principles, applied on a basis consistent with that of the preceding year,
  - (ii) the quantitative information is accurate in all material respects and, if applicable, was prepared on a basis consistent with that of the preceding year, and

(iii) the transactions of the institution that have come to the auditor's notice in the course of his or her examination for the report were carried out in accordance with this Act; and

(b) call attention to any other matter falling within the scope of the auditor's examination for the report that, in his or her opinion, should be brought to the attention of the institution or the Minister.

#### Audit of quantitative information

(3) The Minister may require that any quantitative information required to be included in an institution's annual report pursuant to paragraph (2)(a) be audited.

#### Presentation to Minister

(4) Each institution shall submit its audited financial statements to the Minister at least 30 days before the day of its annual meeting.

#### Special examination

**121.** (1) Each institution shall, at least once every five years and at any other time required by its board of directors or by the Minister, cause a special examination to be carried out in respect of its operations to determine if the books, records, systems and practices referred to in section 119 were, in the period under examination, maintained in a manner that met the requirements of that section.

#### Plan

(2) Before commencing a special examination, an examiner shall survey the systems and practices of the institution to be examined and submit a plan for the examination, including a statement of the criteria to be applied in the examination, to the audit committee of the institution.

#### Resolution of disagreements

(3) Any disagreement between the examiner and the audit committee or board of directors of an institution with respect to a plan referred to in subsection (2) shall be resolved by the Minister.

#### Reliance on internal audit

(4) An examiner shall, as far as is practicable, rely on any internal audit conducted pursuant to subsection 119(3) in respect of the institution being examined.

#### Report

**122.** (1) An examiner shall, on completion of a special examination in respect of an institution, submit a report on his or her findings, and a summary of that report, to the Minister and to the board of directors of the institution.

#### Contents

(2) The report of an examiner shall include

(a) a statement whether in the examiner's opinion, having regard to the criteria referred to in subsection 119(2), there is a reasonable assurance that there are no significant deficiencies in the systems and practices examined; and

(b) a statement of the extent to which the examiner relied on internal audits.

#### Posting of report

(3) An institution shall, as soon as possible after receipt of an examiner's report, post a summary of the report on an Internet website maintained by the institution.

#### Examiner

**123.** (1) Subject to subsection (2), a special examination shall be carried out by the auditor of the institution.

#### Other auditor

(2) If, in the opinion of the Minister, a person other than the auditor of an institution should carry out a special examination in respect of the institution, the Minister may, after consulting with the board of directors of the institution, direct that the examination be carried out by another auditor who is qualified for the purpose.

#### Consultation with Auditor General

**124.** The auditor or examiner of an institution may at any time consult the Auditor General of Canada on any matter relating to an audit or special examination.

#### Right to information

**125.** (1) At the request of the auditor or examiner of an institution, the present or former commissioners, directors, officers, employees or agents of the institution shall provide any information and explanations, and give access to any records, documents, books, accounts and vouchers of the institution that are under their control, that the auditor or examiner considers necessary to prepare a report required under this Act.

#### Obligation to inform

(2) If a commissioner or director of an institution does not have information or an explanation requested by an auditor or examiner under subsection (1), the commissioner or director shall obtain the information or explanation and provide it to the auditor or examiner.

#### Restriction

**126.** Nothing in this Part or in any directions of the Minister shall be construed as authorizing the auditor or examiner of an institution to express any opinion on the merits of matters of policy, including the merits of

(a) the objects or purposes for which the institution was established or the restrictions on the businesses or activities that it may carry on, as set out in this Act; or

(b) any business or policy decision of the institution.

#### Qualified privilege

**127.** An oral or written statement or report made under this Part by an auditor or examiner has qualified privilege.

#### Audit committee

**128.** (1) Each institution shall establish an audit committee composed of not less than three commissioners or directors who are not officers of the institution and who are competent to perform the duties set out in subsection (2).

#### Duties

(2) An audit committee shall

(a) review, and advise the board of directors in respect of, the financial statements that are to be included in the annual report of the institution;

(b) oversee any internal audit of the institution;

(c) review, and advise the board of directors in respect of, the annual auditor's report in respect of the institution;

(d) review, and advise the board of directors in respect of, any plan and report of a special examiner; and

(e) perform any other functions that are assigned to it by the board of directors of the institution.

#### Auditor's or examiner's attendance

(3) An auditor and any examiner of an institution are entitled to receive notice of every meeting of the audit

committee and, at the expense of the institution, to attend and be heard at each meeting.

#### Required attendance

(4) The auditor or examiner of an institution shall attend any meeting of the institution's audit committee at which he or she is requested to attend by a member of that committee.

#### Calling meeting

(5) The auditor or examiner of an institution or a member of the institution's audit committee may call a meeting of that committee.

#### Disclosure of material developments

**129.** The chief executive officer of an institution shall, as soon as reasonably practicable, notify the Minister and any commissioner or director of the institution not already aware of them of any financial or other developments that, in the chief executive officer's opinion, are likely to have a material effect on the performance of the institution, relative to its objectives or requirements for funding.

#### Annual report

**130.** (1) Each institution shall, within four months after the end of each financial year, submit to the Minister an annual report on the operations of the institution in that year.

#### Form and contents

(2) The annual report of an institution shall be prepared in a form that clearly sets out information according to the major businesses or activities of the institution and shall include

- (a) the financial statements of the institution;
- (b) the annual auditor's report;
- (c) a statement on the extent to which the institution has met its objectives for the financial year;
- (d) any quantitative information respecting the performance of the institution that the Minister may require to be included; and
- (e) any other information that is required under this Act or any other Act of Parliament.

#### Annual meeting

**131.** (1) The board of directors of an institution shall call an annual meeting not later than 18 months after the institution is established and subsequently not later than 15 months after the preceding annual meeting.

#### Notice of meeting

(2) An institution shall, at least 30 days before the annual meeting, publish a notice in a major newspaper setting out the time and location of the meeting and specifying that the institution's annual report may be accessed on an Internet website to be maintained by the institution.

#### Availability to public

- (3) At the annual meeting, the board of directors shall ensure that
- (a) there are available a sufficient number of copies of the institution's most recent annual report for those present at the meeting; and
  - (b) the chief executive officer and the commissioners or directors of the institution are available to those present at the meeting to answer any questions about the institution's operations.

## PART 7

## PROVISIONS OF GENERAL APPLICATION

### GENERAL

#### Conflict of interest

**132.** (1) No person who is appointed to, or is employed by, a commission, board, authority or institute established under this Act shall be appointed to, or be employed by, any other commission, board, authority or institute established under this Act.

#### Conflict of interest

(2) No person referred to in subsection (1) shall accept or hold any office or employment that is inconsistent with that person's duties or take part in any matter involving the commission, board, authority or institute in which that person has an interest.

#### Conflict of interest

(3) All persons appointed to a commission, board or institute established under this Act shall comply with the *Conflict of Interest Act* as though they were public office holders as defined in that Act.

2005, c. 9, s. 132; 2006, c. 9, s. 8.

#### Liability of Her Majesty

**133.** (1) No person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada in respect of any claim against the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority or First Nations Statistical Institute arising from its exercise of, or its failure to exercise, any of the powers or functions of that Commission, Board, Authority or Institute, as the case may be, including any claim against the First Nations Tax Commission as an agent of Her Majesty in right of Canada.

#### Insurance required

(2) The First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute shall maintain in good standing at all times the insurance coverage required by any regulations made under paragraph 140(b).

#### No appropriation

**134.** No payment to the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority or First Nations Statistical Institute may be made under an appropriation by Parliament authorized under an Act of Parliament to enable the Commission, Board, Authority or Institute to satisfy any claim referred to in subsection 133(1).

#### No compensation

**135.** No person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada, or from the First Nations Tax Commission, for any acquired, vested or future right, or for any prospect of such a right, that is affected by a law approved by the First Nations Tax Commission under subsection 31(3), or for any duty or liability imposed on that person as a result of such a law.

#### Limit of liability

**136.** No civil proceedings lie against a commissioner or employee of the First Nations Tax Commission, or any director or employee of the First Nations Financial Management Board or First Nations Statistical Institute, for anything done, or omitted to be done, in the exercise or purported exercise in good faith of any power, or in the performance or purported performance in good faith of any duty, of that person in accordance with this Act.

#### Limit of liability

**137.** No civil proceedings lie against a member of a council or an employee of a first nation for anything

done, or omitted to be done, during the course of the exercise or purported exercise in good faith of any power, or the performance or purported performance in good faith of any duty, of that member or employee in accordance with this Act, regulations made under this Act or a law made by the council of a first nation under this Act.

#### Conflict with other laws

**138.** (1) In the event of a conflict between a local revenue law and an Act of Parliament or any regulations made under an Act of Parliament or a code made by a first nation under another Act of Parliament, the Act, regulations or code prevails to the extent of the conflict.

#### Conflict with other first nation laws

(2) In the event of a conflict between a law made by a first nation under this Act and a law, other than a code, made by the first nation under another Act of Parliament, the law made by the first nation under this Act prevails to the extent of the conflict.

#### Official languages

**139.** (1) For greater certainty, the provisions of the *Official Languages Act* applicable to federal institutions apply to the First Nations Tax Commission and First Nations Statistical Institute.

#### Official languages

(2) Where there is a significant demand for services in a particular official language, the First Nations Financial Management Board and First Nations Finance Authority shall offer services in that language.

## REGULATIONS

#### Regulations

**140.** The Governor in Council may make regulations

(a) prescribing anything that is to be prescribed under subsection 20(3) or 41(2) or section 116; and

(b) prescribing the insurance coverage required to be maintained by the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute in respect of liabilities referred to in subsection 133(1).

#### Regulations

**141.** For the purpose of enabling an aboriginal group that is not a band as defined in subsection 2(1) of the *Indian Act* but is a party to a treaty, land claims agreement or self-government agreement with Canada to benefit from the provisions of this Act or obtain the services of any body established under this Act, the Governor in Council may make any regulations that the Governor in Council considers necessary, including regulations

(a) adapting any provision of this Act or of any regulation made under this Act; and

(b) restricting the application of any provision of this Act or of any regulation made under this Act.

#### Regulations

**142.** The Governor in Council may make regulations

(a) prescribing anything that is to be prescribed for the purposes of paragraph 74(b); and

(b) adapting or restricting any provision of this Act or of any regulation made under this Act for the purposes of paragraph 74(b).

## PART 8

### TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS, COORDINATING AMENDMENTS AND COMING INTO FORCE

#### TRANSITIONAL PROVISIONS

##### ITAB employees

143. (1) Persons who are employed by the Indian Taxation Advisory Board at the time that the First Nations Tax Commission is established shall be offered employment with the Commission, at the same salary and with equivalent terms and conditions of employment.

##### Interim rules of procedure

(2) Until new rules are established by the First Nations Tax Commission, the Commission shall conduct itself in accordance with the rules of procedure established by the Indian Taxation Advisory Board.

##### Continuation of directors

144. Persons who are directors of the First Nations Finance Authority Inc., a corporation incorporated under the *Canada Business Corporations Act*, on the day on which section 58 comes into force shall continue as directors of the First Nations Finance Authority until new directors are elected.

##### Continuation of existing by-laws

145. (1) By-laws made by a first nation under paragraph 83(1)(a), or any of paragraphs 83(1)(d) to (g), of the *Indian Act* that are in force on the day on which the name of the first nation is added to the schedule are deemed to be laws made under section 5 or 9, as the case may be, to the extent that they are not inconsistent with section 5 or 9, and remain in force until they are repealed or replaced.

##### Amendment of existing by-laws

(2) For greater certainty, subsections 5(2) to (7) apply to amendments of by-laws referred to in subsection (1).

##### Review and evaluation

146. Within seven years after the day on which this Act receives royal assent, the Minister, after consultation with the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute, shall review the provisions and operation of this Act and the operations of those institutions, and submit a report to each House of Parliament on that review, including any changes that the Minister recommends relating to the evolution of the mandate and operation of those institutions.

#### CONSEQUENTIAL AMENDMENTS

##### *Access to Information Act*

147. [Amendment]

148. [Amendment]

##### *Financial Administration Act*

149. [Amendment]

##### *Indian Act*

150. [Amendment]

151. [Amendment]

### ***Privacy Act***

152. [Amendment]

### ***Westbank First Nation Self-Government Act***

153. [Amendment]

### **COORDINATING AMENDMENTS**

154. [Amendments]

### **COMING INTO FORCE**

#### **Order in council**

**\*155. The provisions of this Act, other than section 154, come into force on a day or days to be fixed by order of the Governor in Council.**

**\* [Note: Section 154 in force on assent March 23, 2005; Act, other than section 154, in force April 1, 2006, see SI/2006-59.]**

x.

### **SCHEDULE**

*(Subsections 2(1) and (3))*

Adams Lake Indian Band  
 Aitchelitz First Nation  
 ?Akisq'nuk First Nation  
 Alexander First Nation  
 Chawathil First Nation  
 Chehalis Indian Band  
 Chemainus First Nation  
 Chippewas of Georgina Island First Nation  
 Chippewas of Kettle and Stony Point First Nation  
 Elsipogtog First Nation  
 Indian Island First Nation  
 Kamloops Indian Band  
 Kitselas First Nation  
 Kwaw-Kwaw-Apilt First Nation  
 Leq'á:mel First Nation  
 Lower Kootenay Indian Band  
 Lower Nicola Indian Band  
 Matsqui First Nation  
 Metepenagiag Mi'kmaq Nation  
 Moricetown Indian Band  
 Mosquito, Grizzly Bear's Head, Lean Man First Nation  
 Muskeg Lake Cree Nation  
 Nanoose First Nation  
 Neskonalith Indian Band  
 Osoyoos Indian Band  
 Popkum First Nation  
 Seabird Island Band

Shuswap First Nation  
Shxwhá:y Village First Nation  
Shxw'ow'hamel First Nation  
Simpcw First Nation  
Skawahlook First Nation  
Skeetchestn Indian Band  
Skowkale First Nation  
Sliammon First Nation  
Songhees First Nation  
Squamish Nation  
Squiala First Nation  
St. Mary's First Nation  
Sumas First Nation  
Thunderchild First Nation  
Tla-o-qui-aht First Nations  
Tobacco Plains Indian Band  
Tobique First Nation  
Tsawout First Nation  
Tsawwassen First Nation  
Tsleil-Waututh Nation (also known as Burrard Indian Band)  
Tzeachten First Nation  
We Wai Kai Nation  
White Bear First Nation  
Yakwekwioose First Nation

2005, c. 9, Sch.; SOR/2007-276, s. 1; SOR/2008-264; SOR/2009-25.

Last updated: 2009-02-23



[Important Notices](#)