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# First Nations' On-Reserve Source Water Protection

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A Legal Toolkit

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Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.

## ACKNOWLEDGMENT

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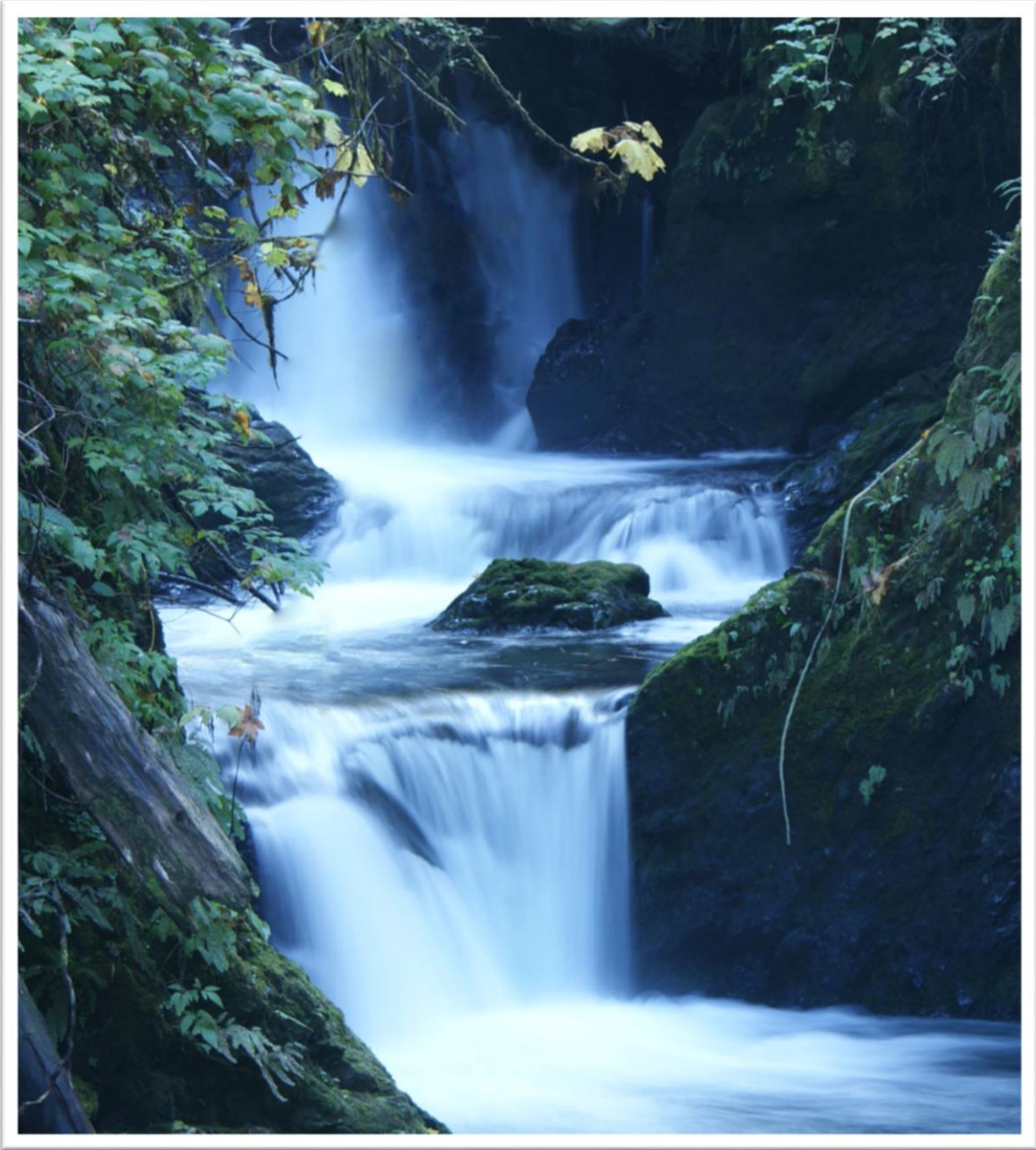
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# 1 PART I: INTRODUCTION

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The tragedy at Walkerton in 2000 claimed 7 lives and led to thousands of cases of illness from drinking contaminated water. While what occurred at Walkerton may have been directly caused by an *E. Coli* O157:H7 contaminated well, it would not have occurred without a lax Public Utilities Commission borne of government cutbacks. The subsequent inquiry into the tragedy and its resulting report showed the paramount importance of protecting the sources of drinking water.

## 1.1 WHO IS THIS TOOLKIT FOR?

This toolkit provides a compendium of resources for anyone interested in protecting on-reserve sources of water from contamination. While these resources are generally available, this toolkit hopes to aid and simplify the research and development of a plan to protect source waters. Users of this toolkit may come from a wide range of experience and organizations. Ideally they will include:



- First Nations Band Councils and community members who wish to manage their drinking water sources and to locally take concrete actions to support human health and ensure a healthy environment for current and future generations.
- Staff or community members who provide services to First Nations communities in various disciplines, including health and legal services.
- Individuals who are actively involved in environmental and health campaigns on First Nation reserves.
- First Nation community members who want to become involved in the environmental decision-making processes on their reserve.

## 1.2 WHO IS THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION (“CELA”)?

The Canadian Environmental Law Association (“CELA”) is a non-profit public interest organization, established in 1970. CELA uses existing laws to protect the environment and advocate for environmental law reform.

CELA is also a legal aid clinic and appears before tribunals and courts on behalf of low-income individuals, citizen groups, and not-for-profit organizations who otherwise would not be able to afford legal assistance. As a legal aid clinic, CELA is funded by Legal Aid Ontario and is part of a larger system of community legal clinics in Ontario.

Through all of its work, CELA endeavours to meet the following objectives:

- Providing equitable access to justice to those otherwise unable to afford representation for their environmental problems.

- Advocating for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality in Ontario and throughout Canada.
- Increasing public participation in environmental decision-making.
- Working with the public and public interest groups to foster long-term sustainable solutions to environmental concerns and resource use.
- Preventing harm to human and ecosystem health through application of precautionary measures.

CELA's services include the provision of information, summary advice and referrals. In some cases, CELA will provide formal representation before various courts, tribunals and other administrative bodies. On occasion, CELA will also provide legal opinions.

If you would like to contact CELA for summary advice or information, you can contact the articling student for a preliminary intake interview at 416-960-2284, ext.216 or via email at [articling@cela.ca](mailto:articling@cela.ca).

## 2 PART II: SOURCE WATER PROTECTION (“SWP”)

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### 2.1 INTRODUCTION TO SOURCE WATER AND ITS PROTECTION<sup>1</sup>

#### 2.1.1 What is Source Water?

Source water is untreated surface water or groundwater used to supply private wells and public drinking water systems.

Surface water refers to water that collects on the surface of the earth to form lakes, rivers, streams, wetlands; and in some cases, it is where the water table associated with groundwater meets the earth’s surface. Surface water is naturally replenished through rain and melting snow. Surface water from the Great Lakes is the source of water that most Ontarians use for drinking water, cleaning, irrigation and industrial purposes.

Groundwater is water from rain or snow that seeps below the ground and pools in cracks and spaces beneath the earth’s surface, in what is called aquifers. It is a valuable resource as it makes up 2/3 of the world’s fresh water supply. Groundwater supplies are not endless and can be depleted. Twenty-six percent of Canadians use groundwater to meet their daily needs for drinking, cleaning and irrigation. Human activities can pollute groundwater so severely that the damage may be very difficult and costly to clean up. It is especially important to protect groundwater sources for those who obtain their water from wells.

#### 2.1.2 What is SWP?

SWP is the prevention of water source contamination or overuse by using a variety of management actions. SWP is about protecting both the quality and the quantity of water sources, now and into the future.

Protecting water at the source helps to protect ecosystems and local economies and is an important means of preventing human illnesses. It is considerably less expensive to protect sources of water from contamination than it is to remediate them following contamination.

#### 2.1.3 What is a Source Water Protection Plan (“SWPP”)?

A SWPP documents inventories on how to go about protecting source water quality and quantity. An SWPP is a systematic and organized assessment of sources of contamination and pathways linked to human activity and natural processes that occur in a watershed. Based on the inventory, a SWPP identifies and prioritizes management actions to mitigate or reduce water contamination risks to an acceptable level.

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<sup>1</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations On-Reserve Source Water Protection Plan Guide and Template* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2014). <[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source\\_1398366907537\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source_1398366907537_eng.pdf)> accessed 30 October 2014.



## 2.2 SOURCE WATER PROTECTION UNDER THE FEDERAL GOVERNMENT

When it comes to water regulation in Canada, the federal government is responsible for water in certain areas such as navigation, fisheries and boundary waters (e.g., water shared with the U.S.), and shares responsibilities with the provinces in other areas such as agriculture and health. The federal government is also responsible for managing water on federal facilities (e.g., office buildings and military bases), federal lands (e.g., National Parks), Nunavut, the Northwest Territories, and First Nation reserves.<sup>2</sup>

### 2.2.1 Who is Responsible for Water and Wastewater Services in First Nations Communities?

The management of drinking water and wastewater on First Nation reserves is shared between First Nations and the federal government. Programs and services for providing clean, safe and secure water on reserves are provided through First Nation band councils, Aboriginal Affairs and Northern Development Canada (“AANDC”) and Health Canada (“HC”), including an advisory role to AANDC by Environment Canada (“EC”). The various roles for water and wastewater services are:<sup>3</sup>



#### 2.2.1.1 First Nations

- Own, manage and operate water and wastewater services.
- Monitor water and waste water systems.
- Design and construct facilities in accordance with established standards.
- Issue Drinking Water Advisories, typically on the recommendation of HC, or on their own initiative in emergency situations.

#### 2.2.1.2 Aboriginal Affairs and Northern Development Canada

- Provides funding and advice regarding design, construction, operation and maintenance of water and wastewater facilities.
- Reviews designs in collaboration with HC and EC.
- Sets standards through protocols.
- Provides funding for training staff such as water treatment plant operators.

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<sup>2</sup> The federal crown has ownership of the water resources in the Northwest Territories and Nunavut. AANDC has a mandate to manage those water resources. The Government of Yukon is responsible for Yukon water resources. See Government of Canada; Aboriginal Affairs and Northern Development Canada, *Water Management* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2012). <<http://www.aadnc-aandc.gc.ca/eng/1100100037427/1100100037428>> accessed October 30 2014.

<sup>3</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Roles and Responsibilities* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2012). <<http://www.aadnc-aandc.gc.ca/eng/1314034319353/1314034564208>> accessed October 30 2014.

### 2.2.1.3 Health Canada

- Ensures that monitoring programs for drinking water quality are in place on-reserve south of 60°.
- Helps First Nation communities identify potential drinking water quality problems.
- Provides advices, guidance and recommendations to First Nation communities about drinking water safety and safe disposal of on-site domestic sewage.
- Verifies monitoring of the overall quality of drinking water at tap, and reviews, interprets and disseminates results to First Nations.
- Reviews First Nation water and wastewater infrastructure project proposals from a public health perspective.

### 2.2.1.4 Environment Canada

- Regulates treatment of wastewater discharged to receiving waters.
- Provides advice and guidance on source water protection and sustainable water use.

## 2.2.2 Watershed approach to SWPP

The federal government a watershed or "multi-barrier" approach to safeguarding drinking water. Source water protection represents a vital barrier in a watershed approach. Some of the other key barriers include drinking water treatment, maintenance of the water distribution system, testing and monitoring drinking water quality, and emergency planning. The multi-barrier approach is basically a system of redundancies that allows a drinking water system to avoid failure should a single barrier fail.<sup>4</sup>

## 2.3 FIRST NATIONS ON-RESERVE SOURCE WATER PROTECTION PLAN – GUIDE AND TEMPLATE

In support of its policy<sup>5</sup> to support First Nations in providing community water and wastewater services comparable to the levels of service that would generally be available in off-reserve communities of similar size and circumstances, the AANCD has established water and wastewater protocols.<sup>6</sup> AANCD has also developed four documents that provide First Nations' communities with guidance toward developing

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<sup>4</sup> *Supra* note 1

<sup>5</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Water and Wastewater Policy and Level of Services Standards (Corporate Manual System) Volume 1 - Capital Facilities and Maintenance - Potable Water and Wastewater Systems*, (Ottawa, Aboriginal Affairs and Northern Development Canada, 2011). <<http://www.aadnc-aandc.gc.ca/eng/1312228309105/1312228630065>> accessed October 30 2014.

<sup>6</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Protocol for Centralised Drinking Water Systems in First Nations Communities*, (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<http://www.aadnc-aandc.gc.ca/eng/1100100034998/1100100035000>> accessed October 30 2014; Government of Canada; Aboriginal Affairs and Northern Development Canada, *Protocol for Centralised Wastewater Systems in First Nations Communities*, (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<http://www.aadnc-aandc.gc.ca/eng/1100100035002/1100100035004>> accessed October 30 2014; and Government of Canada; Aboriginal Affairs and Northern Development Canada, *Protocol for Decentralised Water and Wastewater Systems in First Nations Communities*, (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<http://www.aadnc-aandc.gc.ca/eng/1100100034991/1100100034996>> accessed October 30 2014.

emergency response plans, maintenance management plans and source water protection plans required by the protocols.<sup>7</sup>

The First Nations On-Reserve Source Water Protection Plan Guide and Template<sup>8</sup> (“Guide”), published in May 2014, provides step-by-step guidance to First Nations as they develop a SWPP. The Guide provides templates with pre-written text and is filled with examples that can be used in community-specific SWPPs. The Guide can be found in Appendix I. The Guide is built around a generic SWPP template, provided in Appendix II, which proposes a standard structure for a SWPP. The approach proposed by the Guide should provide First Nations with a process to help manage drinking water sources. We provide here an overview of the steps recommended by the Guide.

While the Guide recognizes and takes a watershed approach to the protection of source water, its focus is on on-reserve source water protection planning.<sup>9</sup> In addition, because source water protection involves land use and other considerations that go beyond the authority of those involved in drinking water treatment and distribution, the Guide is intended for use by community decision makers. Depending on the size and administrative structure of the community, this means that the plan development process needs to be led by Chief and Council and also likely by those responsible for land use and community development planning.<sup>10</sup> Land use and land use planning undertaken by First Nations will be further addressed under sections dealing with First Nation land management of this toolkit (sections 2.4 and 2.5).

The planning process for developing an on-reserve SWPP provided by the Guide follows a five stage process and has the goal of producing a watershed assessment that ranks risks to the source water, identifying management level actions to reduce those risks, and an implementation strategy to deliver on those actions. The stages are meant to be completed in sequence. The five stages are summarized below:

- Stage 1: Form your Source Water Protection Working Committee
- Stage 2: Complete your source water assessment
- Stage 3: Identify management actions to address potential risks to your source water
- Stage 4: Develop an implementation strategy
- Stage 5: Undertake a full plan review approximately every 5 years

### 2.3.1 Stage 1: Form a Source Water Protection Working Committee

The Working Committee oversees the process of developing a SWPP. It will ideally lead a locally driven, multi-stakeholder, science-based process to protect on-reserve drinking water sources while promoting

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<sup>7</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Standards, Guidelines and the Safe Drinking Water for First Nations Act*, (Ottawa, Aboriginal Affairs and Northern Development Canada, 2014). <<http://www.aadnc-aandc.gc.ca/eng/1100100034988/1100100034989>> accessed October 30 2014.

<sup>8</sup> *Supra* note 1.

<sup>9</sup> Nevertheless, this initial approach should not limit the scope of concern only to on-reserve contaminant threats; potential contaminant threats that are not on-reserve should still be recorded as “off-reserve” potential risks for consideration in subsequent watershed-level planning and discussions with external stakeholders.

<sup>10</sup> The Siksika First Nation, Alberta, piloted the Guide in 2012 and 2013 to create the first on-reserve source water protection plan in Canada.

water stewardship in the community. During the development of a SWPP, the Working Committee will hold meetings, undertake field inspections, receive reports, and meet with community members.

Working Committee membership will ideally be expansive to include multiple perspectives and world views on water and the environment. Elders will be critical to the success of any on-reserve SWPP because they bring aboriginal traditional knowledge about the watershed that is probably not documented. Youth and Elder engagement in such activities serves a role in both environmental education and traditional knowledge. Guiding principles for those serving on a Working Committee include trust, two-way communication, commitment, and honesty.

In Stage 1, members of the Working Committee need to be listed in a table for reason of transparency and openness. This list allows for easy reference in the future when the SWPP gets reviewed and updated. Working Committee members may need to be consulted for information and details relating to the original plan. A sample table is found in Table 1 of the Guide found in Appendix I.

### 2.3.2 Stage 2: Complete a source water risk assessment

During Stage 2, the Working Committee member will seek input from SWPP participants to identify important features of community water sources and identify, describe, assess and prioritize the risks associated with contamination sources. Stage 2 of a SWPP development contains several important sub-stages and will likely represent the longest and most demanding portion of the initiative. The following presents the five sub-stages that are covered in Stage 2:

- Sub-stage 2.1: Delineation of drinking water sources and systems
- Sub-stage 2.2: Description of drinking water systems
- Sub-stage 2.3: Inventory and Description of potential contamination sources
- Sub-stage 2.4: Assessment of source contamination risks
- Sub-stage 2.5: Prioritization of source contamination risks

Stage 2 requires adequate knowledge of watershed features located in the community. The role of the Working Committee will be instrumental in collecting this knowledge from participants and compiling it into the SWPP. A detailed description of each of the sub-stages for source water assessment can be found in Section 3 of the Guide in Appendix I.

### 2.3.3 Stage 3: Identify management actions to address potential risks to source water

Upon completion of the Stage 2 source water risk assessment, the Working Committee proceeds to develop a management action plan aimed at reducing all significant risks to an acceptable level. Acceptable levels of risk will vary between First Nations and within the members of any Working Committee. It is important to get to a level of consensus and to realize that not all risks can be eliminated.

The Working Committee will identify on and off-reserve risk management actions for each of the risks. The number and the extent of management actions will vary depending upon the final Risk Ranking (determined from Sub-stage 2.5). Depending on where they rank on the list, some risks may warrant multiple management actions, whereas others may require only minimal control efforts.

There are many examples of management actions for the protection of source water. A list of examples is provided in Table 10 of the Guide. An excerpt of Table 10 is provided below. The correct management action will depend on the specific site and situation and in some cases may require a mix of management

actions to monitor changes to water quality and land use conditions over time. Table 10 arranges management actions by “immediate actions” and “longer term” actions.

Excerpt from the Guides Table 10: Examples of Risk Management Actions<sup>11</sup>

Activity	Source	Management Actions
<b>Agriculture</b>		
Fertilizers	Land Application	<b>Immediate actions:</b> Buffer and setback zones Education <b>Longer term:</b> Health regulations Application standards
<b>Construction</b>		
Industrial transportation	Runoff from disturbed land Runoff from impervious surfaces	<b>Immediate actions:</b> Buffers and setbacks Education <b>Longer term:</b> First Nation building codes Impervious surface limits First Nation zoning codes
<b>Forestry</b>		
Harvesting operations	Road construction Runoff from disturbed sites	<b>Immediate actions:</b> Buffers and setbacks Grass swales, runoff ponds
<b>Industry</b>		

<sup>11</sup> *Supra* note 1 at pg. 23.

Activity	Source	Management Actions
Storage tanks	Hazardous materials and waste	<p><b>Immediate actions:</b>            Buffer and setbacks            Education</p> <p><b>Longer term:</b>            Industry regulations            Restoration, remediation            Emergency Response Plan</p>
<b>Urban (commercial and residential)</b>		
Fuel storage tanks	Hazardous materials, hydrocarbon releases	<p><b>Immediate actions:</b>            Buffer and setbacks            Education            Water quality monitoring</p> <p><b>Longer term:</b>            Re-siting, remediation            Education            Floodplain management</p>
Septic tanks	Individual homes, businesses, multi-family units	<p><b>Immediate actions:</b>            Pump-out regulations            Setbacks, construction standards            Education</p> <p><b>Longer term:</b>            Review health regulations            Design standards            Implement subdivision regulations            Site design            On-site wastewater regulations</p>
Groundwater	Unused or abandoned wells	<p><b>Immediate actions:</b>            Well decommissioning            Site remediation</p>



### 2.3.4 Stage 4: Develop an implementation strategy

An implementation strategy is necessary to ensure the SWPP is executed. An implementation strategy is about assigning roles and responsibilities, developing an implementation schedule, allocating resources, and putting in place a monitoring program to measure if the SWPP is having its intended effect. The Working Committee will record implementation aspects of the SWPP in a table such as the one found in Table 12 of the Guide.

### 2.3.5 Stage 5: Undertake a full plan review approximately every 5 years

The SWPP is a living document that should be reviewed and updated over time. On a five year cycle, the Working Committee should undertake a full review of the SWPP. This review will commence with the appointment of a new Working Committee that will be tasked to revise the SWPP by repeating the undertaking of Stages 2 through 4.

#### 2.3.5.1 Review Water Monitoring

A monitoring program should be designed to provide feedback to the Working Committee on water quality and quantity. This information would then help inform decisions on the success of specific management actions and the need to make adjustments.

#### 2.3.5.2 Monitor Plan Implementation

Stage 5 should also examine the rate of implementation of management actions. This process should be designed to identify needs to help advance plan implementation. Financial, human, technical and other forms of capacity building may be identified in this process that could help advance implementation of management actions.

## 2.4 LAND MANAGEMENT UNDER THE *INDIAN ACT*

As identified in the *Indian Act*, reserve land is "a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a band". Reserve lands are different from other land in that:<sup>12</sup>

- Legal title to reserve lands is held by the Crown rather than by individuals or organizations;
- First Nations have a recognized interest in reserve land that includes the right to exclusive use and occupation, inalienability and the communal nature of the interest;
- The land cannot be seized by legal process or be mortgaged or pledged to non-members of a First Nation; and
- The Minister of Indian Affairs and Northern Development ("Minister") must approve or grant most land transactions under the *Indian Act*.

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<sup>12</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Land Management* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <<https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>> accessed October 30 2014.

#### 2.4.1 By-laws under the *Indian Act*<sup>13</sup>

A First Nation can make their own laws (by-laws) to regulate and control certain on-reserve activities, such as the construction of watercourses or the regulation of wells. For example, a First Nation may make a by-law to divide the reserve into zones and regulating the use of land or collect taxes when reserve land is used for a hydro line or gas pipeline. This is especially relevant for management actions under a SWPP. The *Indian Act* lists the circumstances in which a First Nation can make by-laws. A by-law has absolutely no effect outside reserve boundaries – it is strictly a local law.<sup>14</sup>

A by-law governs the activity in question on all of the reserve lands under the control of the Band Council that passed the by-law. The by-law applies to *everyone* (native and non-native) present on the reserve, whether or not they normally live on the reserve. A by-law cannot be enforced in court until it has been properly enacted in accordance with the procedural requirements set out in the *Indian Act*. All by-laws are recorded and classified. The AANDC has a repository where by-laws are stored. You may contact a First Nation and/or the AANDC regional office for copies of the First Nation's by-laws. A regional office directory can be found in Appendix III – AANDC Regional Office Directory and links to sample by-laws can be found in Appendix IV.

Section 81 of the *Indian Act* contains a list of powers available to a Band Council. Under this section, a council may make by-laws to regulate many areas of activity on the reserve such as traffic control, residency, health, nuisances, wildlife conservation and zoning. There are some restrictions on what Band Councils can control through their by-laws. According to section 81 of the *Indian Act*, Band Councils may make by-laws so long as they are not contrary to:

- the *Indian Act*; or
- the regulations enacted pursuant to section 73 of the *Indian Act*.

In certain cases by-laws cannot be contrary to other federal laws, e.g. the *Criminal Code*. In addition, a by-law can only be enacted if it covers a subject that is within the powers provided to the council under the *Indian Act*. Therefore, before enacting a section 81 by-law, it is necessary to check through the areas of authority that are listed under section 81 to determine if the enactment of a by-law is within the Band Council's authority. Finally, a Band Council is not required to obtain general Band membership acceptance before enacting a section 81 by-law, though this may be advisable under circumstances that might prove controversial.

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<sup>13</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Governance By-law Workshop* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2011). <<https://www.aadnc-aandc.gc.ca/eng/1315237438434/1315237762167>> accessed October 30 2014.

<sup>14</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Governance By-law Workshop: Session 1* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<https://www.aadnc-aandc.gc.ca/eng/1100100013955/1100100013957>> accessed October 30 2014.

#### 2.4.1.1 Requirements for Enacting By-laws<sup>15</sup>

A by-law is not a law until all of the procedures for legal enactment are followed. Enactment simply refers to the process of having a by-law legally passed, recorded and registered so that it becomes an official law that can be enforced in the courts. Each of the areas in the *Indian Act* under which by-laws may be enacted, sections 81, 83, and 85.1, have their own separate procedures and requirements.

To be valid by-laws, the subject-matter of enacted by-laws must fall within the scope of the delegations indicated in the sections. If the enacted by-laws do not fall within the scope of the authority given by the sections of the Act then a reviewing court will overturn the by-laws, or delete from the by-law the improper portions, as they would be in excess of jurisdiction given to the Bands under the *Indian Act*. A by-law cannot deal with subject matters that come under two or more sections of the Act at the same time. This means that a by-law properly enacted under section 81 will only deal with matters listed under section 81 (general by-laws) and cannot deal with matters under section 83 (money by-laws) or 85.1 (by-laws related to intoxicants).

Paragraph 2(3)(b) of the *Indian Act* makes it clear that a by-law, which requires enactment by the Band Council, must be approved by a majority of the councillors of the Band present at a duly convened meeting of the council. All by-laws, under any of the authority sections 81, 83 and 85.1 must comply with this procedure.

While each of the sections have their own specific procedural requirements for valid by-law enactment, the only procedural requirements for section 81 by-laws are those contained in subsection 2(3)(b) of the *Indian Act*. By-laws under this section automatically come into effect 40 days after the Band Council has mailed the by-law to the Minister unless the Minister disallows it.

##### 2.4.1.1.1 Proof of Proper Procedures<sup>16</sup>

Band Councils passing by-laws should ensure they are able to prove that the actions required by the *Indian Act* have been taken properly. Such proof may be required in the event the by-law has been challenged and a court must make a ruling on the validity of the by-law. The use of registered mail to show the date of mailing of a by-law and affidavits certifying the fact that a band meeting was held, including the results, could be used to show that necessary procedures were followed and the by-law properly enacted.

#### 2.4.1.2 Formal Process for Enacting By-laws<sup>17</sup>

Once a by-law has been drafted to a Band Council's satisfaction there is a very formal procedure for enacting it. The process consists of:

- convening a Band Council meeting
- introducing the by-law by motion
- "reading" a by-law

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<sup>15</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Governance By-law Workshop: Session 6* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<https://www.aadnc-aandc.gc.ca/eng/1100100013971/1100100013972>> accessed October 30 2014.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Supra* note 13.

- “voting” on the by-law
- recording the result of the vote in the minutes of the meeting
- signing the by-law
- reproduction of the by-law
- forwarding the by-law to the Minister
- storage and distribution of the by-law

A detailed explanation of each of the procedural steps can be found in Appendix V – AANDC’s Guide to the Process of Enacting First Nation By-laws.

### 2.4.1.3 Drafting Requirements for By-laws<sup>18</sup>

It is important to note that by-laws are a type of legislation, authorized by an Act of Parliament of Canada and, as such can come under the scrutiny of the courts. Accordingly, Band Councils may find the services of a lawyer to be of substantial assistance. In addition, it is worth reiterating that by-laws enacted under the *Indian Act* will apply only upon the territory over which the Band Council has jurisdiction – the actual reserve territory.

#### 2.4.1.3.1 Basic Requirements

It is important to remember that any by-law that is vague or ambiguous could be held invalid by a court, or disallowed by the Minister.

Whether the Band Council drafts the by-law itself or enlists the aid of a lawyer, certain basic drafting requirements must be met. A by-law consists of the following parts:

- Title and numbering
- Recital
- Enacting clause
- Definition section (optional but strongly suggested)
- Main body of the by-law
- *Indian Act* by-law procedural requirements
- *Indian Act* mailing requirements
- Schedules and Appendices (optional)

**A DETAILED EXPLANATION OF EACH OF THE PROCEDURAL STEPS CAN BE FOUND IN**

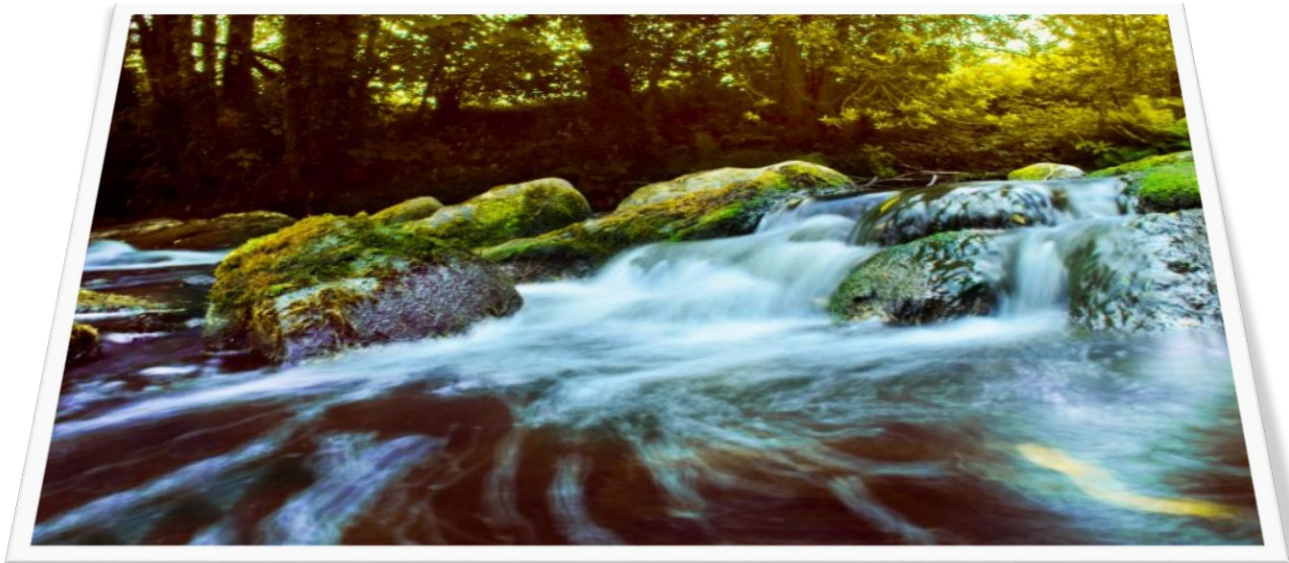
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<sup>18</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Governance By-law Workshop: Session 5* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2010). <<https://www.aadnc-aandc.gc.ca/eng/1100100013968/1100100013969>> accessed October 30 2014.

## Appendix VI – AANDC’s Guide To Drafting First Nation By-laws.

### 2.4.2 Band Council Resolutions and Band Council By-Laws

While a by-law is a continuing regulation, a Band Council Resolution (“BCR”) is an administrative declaration of the Band Council with respect to a particular matter of a temporary character.<sup>19</sup> It does not establish a permanent rule. A BCR generally expresses the will of the Band Council on a particular occasion which is not likely to recur and its subject matter is not usually as important as that dealt with by a by-law.<sup>20</sup>



Because a by-law is, in effect, a federal law (like, for example, the *Criminal Code*), it is enforceable by the local policing agency or by-law enforcement officers. Any contravention of a by-law is a summary conviction offence which may be dealt with by a court which can impose fines and penal sanctions.

While a BCR may be a legal document, it is *not* a law and therefore there is no obligation for the police to enforce it. BCR's are not heard in court and no penal sanctions are available for their contravention.<sup>21</sup> Sample BCR can be found in Appendix VII.

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<sup>19</sup> *Supra* note 13.

<sup>20</sup> For example, if a Council wished to hire a band manager, it could pass a BCR stating that it is employing “Mr. X as Band Manager of the Y Indian Band”. This resolution would be voted on at one of the council's regular meetings and those councillors in favour of hiring Mr. X would sign the BCR. However, if the Band Council wished to set permanent rules for controlling, for example, noise levels in residential areas, it would enact a by-law and not a BCR. While the BCR would only affect Mr. X, the by-law would apply to all persons on the reserve.

<sup>21</sup> *Supra* note 13.

## 2.5 FIRST NATIONS LAND MANAGEMENT REGIME

In 1991, a group of First Nation Chiefs approached AANDC with a proposal to allow First Nations to opt out of the portions of the *Indian Act* dealing with land and resources. As a result, in 1996 the Chiefs from 14 First Nations and the Minister signed the Framework Agreement on First Nations Land Management which was ratified in 1999 with the enactment of the *First Nations Land Management Act*. First Nations who initially signed the Framework Agreement established the Lands Advisory Board and Resource Center to help implement their own land management regimes.<sup>22</sup>

For most First Nations, the *Indian Act* controls how their reserve lands and resources are managed. This includes how their reserve lands are used or developed for personal, community and economic development purposes. Under the First Nations Land Management (“FNLM”) Regime, First Nations may opt out of 34 land-related sections of the *Indian Act* and govern their reserve lands and resources through their own land code. The FNLM Regime transfers administration of land to a participating First Nation. This includes the authority to enact laws with respect to land, the environment, and most resources. First Nations in the FNLM Regime are free to develop projects on reserve land without approval from the Minister of AANDC.<sup>23</sup>

There are presently 94 First Nations operating under, or developing, their own land codes under the FNLM Regime.<sup>24</sup> Links to sample land codes can be found in Appendix VIII. For First Nations interested in the FNLM Regime, the AANDC has developed a detailed guide.<sup>25</sup> This can be found in Appendix IX. A summary of the steps for a First Nation to participate in the FNLM Regime shown below.

### 2.5.1 What steps does an interested First Nation community need to take to participate in the FNLM Regime?

- The First Nation must pass and submit a BCR (to their AANDC Regional office or the Resource Center) expressing interest in joining the FNLM Regime.
- The First Nation must also complete an Assessment Questionnaire and send it to their AANDC Regional Office.<sup>26</sup> The Questionnaire can be found in Appendix X.

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<sup>22</sup> Government of Canada; Canada's Economic Action Plan, *First Nations Land Management Regime* (Ottawa, Canada's Economic Action Plan, 2013). <<http://actionplan.gc.ca/en/initiative/first-nations-land-management-regime>> accessed October 30 2014.

<sup>23</sup> *Ibid.*

<sup>24</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations Land Management Regime* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <<http://www.aadnc-aandc.gc.ca/eng/1327090675492/1327090738973>> accessed October 30 2014.

<sup>25</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations Land Management Readiness Guide: A Guide for First Nations Interested in the First Nations Land Management Regime* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/lands\\_readiness\\_guide2013\\_1368113998592\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/lands_readiness_guide2013_1368113998592_eng.pdf)> accessed October 30 2014.

<sup>26</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Questionnaire for First Nation Entry to the Framework Agreement on First Nation Land Management and the First Nations Land Management Act* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/fnlm\\_questionnaire2013\\_1368447217333\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/fnlm_questionnaire2013_1368447217333_eng.pdf)> accessed October 30 2014.



- Upon a positive assessment by the Department, a recommendation is made to the Minister to add the First Nation to the Framework Agreement via an adhesion document.
- Once the adhesion document is signed by the Minister and the First Nation, the First Nation is added to the Schedule of the *First Nations Land Management Act*.
- The First Nation must then enter into the Community Approval Process Plan, develop a land code and negotiate their Individual Agreement, (typically a two-year process).
- After the land code and individual agreement are drafted, both must be brought to the First Nation community for a ratification vote.
- With a successful ratification vote, the Minister will sign the Individual Agreement to transfer administration and control over the First Nation's land and resources to the First Nation. At this point, the 34 sections of *Indian Act* which deal with land, resources, and environment no longer apply to that First Nation.

### 2.5.2 Available Funding

Funding is available to support First Nations through the developmental phase, as well as with operational land management activities:

- Developmental funding assists with the community's approval process, development of the land code, and negotiation of the individual agreement.
- Operational funding is determined through a formula, which is set out in the individual agreement

Most relevant to the development of a SWPP, once a Land code is implemented, it supersedes the authority of any provisions of a First Nation law or of a by-law made by its council under section 81 of the *Indian Act*. Section 81 of the *Indian Act*

## 2.6 LAND USE PLANNING

First Nations with their own land code are able to manage and administer the following essential activities according to their own land code:

- Land transactions and registrations
- Permit, licenses and land designations
- Mortgages and related terminations
- Infrastructural leases
- Access roads, hydro transmissions lines, communications towers
- Environmental management, land use planning
- Managing third-party interests
- Law creation, land administration and enforcement

Land use planning, in particular, is important in asserting rights and community values on the development of a First Nation's territory. It is also especially relevant to source water protection. BC's Ecotrust in conjunction with First Nation's and land use planners developed a First Nation land use

planning guide.<sup>27</sup> The planning guide does not provide a step-by-step process, but a guide to land use planning based on best practices. The planning guide can be found in Appendix XI and links to a number of First Nations' land use plans can be found in Appendix VIII.

Briefly, the framework for land use planning includes 5 broad stages, pre-planning, planning, implementation, monitoring and adaptation. The stages can be further broken down into multiple steps:

- 1. Pre-planning (3 to 6 months)**
  - a. Form planning team
  - b. Describe purpose and scope
  - c. Timeline and work plan
  - d. Communications strategy
  - e. Engage and survey community
  - f. Collect local cultural knowledge and identify information gaps
- 2. Planning (18 months+)**
  - a. Vision, values, and guiding principles
  - b. Goals, objectives, and strategies
  - c. Technical assessments
  - d. Policies
  - e. Land use designations
  - f. Formal adoption of the plan
- 3. Implementation (18 months+)**
  - a. Create action plan
  - b. Celebrate the plan
  - c. Integrate the plan into the community
  - d. Economic development
- 4. Monitoring (iterative process over multiple years)**
  - a. Monitor change
  - b. Assess impact
  - c. Enforcement
- 5. Adaptation (iterative process over multiple years)**
  - a. Reflect on implementation strategy
  - b. Revise land use plan with new information, new science and, new human needs

The land use planning guide delves into greater detail with respect to each of the steps involved in developing a viable land use plan.

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<sup>27</sup> New Relationship Trust; Best Practices - New Relationship Trust, *BC First Nation Land Use Planning: Effective Practices* (West Vancouver, New Relationship Trust, 2009). <<http://www.newrelationshiptrust.ca/downloads/land-use-planning-report.pdf>> accessed October 30 2014.

## 2.7 SAFE DRINKING WATER FOR FIRST NATIONS ACT

On June 19, 2013, the *Safe Drinking Water for First Nations Act*, was passed into law. According to the AANDC, this legislation is a step towards ensuring First Nations have the same health and safety protections for drinking water as other Canadians. The Act will allow the Government to develop, in partnership with First Nations, enforceable federal regulations to ensure access to safe, clean and reliable drinking water; the effective treatment of wastewater; and the protection of sources of water on First Nation lands.<sup>28</sup>

Despite the AANDC optimism, there have been a number of concerns voiced by First Nations' communities regarding the Act and its implication. The Act will allow the Minister of Indian Affairs and Northern Development to promulgate regulations that over-ride existing First Nation by-laws, BCRs and policies that protect safe drinking water. The Act gives the Minister power to require First Nations to charge fees to members for receiving clean water. Most concerning however, is the authority conferred on the Minister to abrogate or derogate from any existing Aboriginal or treaty rights "to the extent necessary to ensure safe drinking water."<sup>29</sup>

The above concerns as well as its relatively recent pronouncement leave open a number of questions with respect to the impact the Act shall have on current First Nation communities as well as the enforceability of certain provisions of the Act. As such, this tool-kit will not attempt to address the bearing of the *Safe Drinking Water for First Nations Act* on First Nation on-reserve source water protection efforts.



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<sup>28</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Water* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2014). <<https://www.aadnc-aandc.gc.ca/eng/1100100034879/1100100034883>> accessed October 30 2014.

<sup>29</sup> These concerns stem from sections 3, 5(1)(d) and 7 of the *Safe Drinking Water for First Nations Act*, SC 2013, c 21 and have been

## 2.8 SOURCE WATER PROTECTION UNDER THE ONTARIO *CLEAN WATER ACT*<sup>30</sup>

The *Clean Water Act* (“CWA”) requires Communities in Ontario to develop source protection plans in order to protect their municipal sources of drinking water. These plans identify risks to local drinking water sources and develop strategies to reduce or eliminate these risks. Because it is everyone's responsibility to protect Ontario's water resources, broad consultation throughout the development of the source protection plans is important and involves municipalities, Conservation Authorities, property owners, farmers, industry, businesses, community groups, public health officials, and First Nations.

Ontario mandates that Source Protection Committees (“SPC”) consult with First Nation communities in their source protection areas and solicit their participation in the process, either through working groups or as members of the SPC. The CWA allows a First Nation's drinking water system located within or adjacent to a source protection region to be considered as part of the SPP process. The process of including a First Nation system would be initiated by a resolution of a First Nation band council. The Province would then have the authority to include as part of the SPP a drinking water system that serves a First Nation reserve, as long as the First Nation has requested the system be included in the process.<sup>31</sup>

It is important to note that, the CWA includes a ‘non-derogation’ clause in relation to protection provided for existing aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*. The CWA provision is not intended to have any added legal effect beyond what is already enshrined in the Constitution.

According to the CWA, a Source Protection Plan is a strategic document for a Source Protection Area that outlines policies and procedures to ensure that all significant and potential threats to the sources of Municipal residential drinking water systems are managed in a way that they will never become significant drinking water risks. Municipalities will play a central role in the implementation and enforcement of the Plan which will be monitored and revised as required by the Source Protection Committee.

The legislation sets out a basic framework for communities to follow in developing an approach to protecting their water supplies that works for them:

- **Identify and assess risks** to the quality and quantity of drinking water sources and decide which risks are significant and need immediate action, which need monitoring to ensure they do not become significant, or which pose a low or negligible risk.
- **Develop a source protection plan** that sets out how the risks will be addressed. Broad consultation will involve municipalities, conservation authorities, property owners, farmers, industry, businesses, community groups, public health officials, First Nations and the public in coming up with workable, effective solutions.
- **Carry out the plan** through existing land use planning and regulatory requirements or approvals, or voluntary initiatives. Activities that pose a significant risk to drinking water sources may be

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<sup>30</sup> Conservation Ontario, *Source Water Protection* (Newmarket, Conservation Ontario, 2013) <<http://www.conservation-ontario.on.ca/what-we-do/source-water-protection>> accessed 30 October 2014.

<sup>31</sup> Lake Erie Source Protection Region, *Drinking Water Source Protection Plain Language Guide to the Clean Water Act, 2006* (Cambridge, Lake Erie Source Protection Region, 2007). <[http://www.sourcewater.ca/swp\\_cleanwateract/Plain\\_Language\\_Guide\\_July\\_2007.pdf](http://www.sourcewater.ca/swp_cleanwateract/Plain_Language_Guide_July_2007.pdf)> at pg. 6 accessed 30 October 2014.

prohibited or may require a site specific risk management plan. This plan will set out the measures that a property owner will take to ensure the activity is no longer a threat.

- **Stay vigilant** through ongoing monitoring and reporting to measure the effectiveness of the actions taken to protect drinking water sources and ensure they are protected in the future.

Northern municipalities, where Conservation Authorities are not present, will protect their drinking water supplies through a locally-driven, scoped planning process that focuses on specific drinking water threats in specific areas.

In brief, the source protection process involves the Source Protection Authority, in most cases the conservation authority, establishing the Source Protection Committee. The Source Protection Committee brings together the key stakeholders in each watershed, and is responsible for preparing the main products in the process – the Terms of Reference, the Assessment Report, and the Source Protection Plan. The Source Protection Committee will be made up of a mix of stakeholders in the watershed. It is expected to have between 10-20 members depending on the size of the source protection region. Members may include representatives from municipalities, industry, farming and other business representatives, public health and public interest. It is anticipated that a seat will also be offered to a First Nations representative where appropriate.<sup>32</sup>

The Source Protection Committee is responsible for preparing the Terms of Reference, the Assessment Report and the Source Protection Plan. The Source Protection Committee may propose amendments to the Terms of Reference in circumstances expected to be set out in regulation, in consultation with affected municipalities, and updates to the Assessment Report. The Source Protection Committee is also responsible for ensuring that stakeholders and the public in the watershed are consulted.<sup>33</sup>

The Implementation Resource Guide is a document developed by conservation authorities and Conservation Ontario in support of source protection plan implementation in Ontario municipalities. The guide is separated into 8 modules:<sup>34</sup>

- [Background and Introduction](#)
- [Common Acronyms](#)
- [Module 1: Establishing a Risk Management Office](#)
- [Module 2: Where Policies Apply](#)
- [Module 3: Land Use Planning](#)
- [Module 4: Annual Reporting & Information Management](#)
- [Module 5: Risk Management Plans](#)
- [Module 6: Part IV Prohibition](#)
- [Module 7: Non-Regulatory Policies \(Education and Outreach, Incentives, and Section 26, Paragraph 1 Policies\)](#)

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<sup>32</sup> *Ibid* at pg. 10.

<sup>33</sup> *Ibid* at pg. 13.

<sup>34</sup> All 8 modules can be found separately and in a single file at Conservation Ontario's online library; Conservation Ontario, Source Water Protection Implementation Resource Guide (Newmarket, Conservation Ontario, 2013) <<http://www.conservation-ontario.on.ca/library?view=category&id=64>> accessed 30 October 2014.



- [Module 8: Other Obligations \(e.g. Transport Pathways, Septics\)](#)

Links to sample source protection plans under the CWA are included in Appendix XII.





# APPENDIX I – AANDC FIRST NATIONS ON-RESERVE SOURCE WATER PROTECTION PLAN - GUIDE<sup>35</sup>

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## First Nations On-Reserve Source Water Protection Plan Guide and Template

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<sup>35</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations On-Reserve Source Water Protection Plan Guide and Template* (Toronto, Aboriginal Affairs and Northern Development Canada, 2014). <[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source\\_1398366907537\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source_1398366907537_eng.pdf)> accessed 30 October 2014.

## APPENDIX II – AANDC FIRST NATIONS ON-RESERVE SOURCE WATER PROTECTION PLAN - TEMPLATE<sup>36</sup>

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### FIRST NATIONS ON-RESERVE SOURCE WATER PROTECTION PLAN GUIDE AND TEMPLATE

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<sup>36</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations On-Reserve Source Water Protection Plan Template* (Toronto, Aboriginal Affairs and Northern Development Canada, 2014).  
<[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source\\_1398367009081\\_eng.docx](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/source_1398367009081_eng.docx)> accessed 30 October 2014.

## APPENDIX III – AANDC REGIONAL OFFICE DIRECTORY

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### **Atlantic Region**

Aboriginal Affairs and Northern  
Development Canada  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
B4H 3Z3  
1-800-567-9604  
(902) 661-6200  
fax: (902) 661-6237

### **Quebec Region**

Aboriginal Affairs and Northern  
Development Canada  
Place Jacques-Cartier Complex  
320 St. Joseph Street East  
Suite 400  
Quebec, Quebec  
G1K 9J2  
1-800-567-9604  
1-800-263-5592  
fax: (418) 648-2266

### **Ontario Region**

Aboriginal Affairs and Northern  
Development Canada  
8th Floor 25 St. Clair Avenue  
East  
Toronto, Ontario  
M4T 1M2  
(416) 973-6234  
fax: (416) 954-6329

### **Manitoba Region**

Aboriginal Affairs and Northern  
Development Canada  
365 Hargrave Street  
Room 200  
Winnipeg, Manitoba  
R3B 3A3

1-800-567-9604  
fax: (204) 983-2936

### **Saskatchewan Region**

Aboriginal Affairs and Northern  
Development Canada  
1827 Albert Street  
Regina, Saskatchewan  
S4P 2S9  
(306) 780-5392  
fax: (306) 780-7305

### **Alberta Region**

Aboriginal Affairs and Northern  
Development Canada  
630 Canada Place  
9700 Jasper Avenue  
Edmonton, Alberta  
T5J 4G2  
(780) 495-2773  
fax: (780) 495-4088

### **British Columbia Region**

Aboriginal Affairs and Northern  
Development Canada  
Suite 600  
1138 Melville Street  
Vancouver, B.C.  
V6E 4S3  
(604) 775-7114  
(604) 775-5100  
fax: (604) 775-7149

### **Northwest Territories Region**

Aboriginal Affairs and Northern  
Development Canada  
P.O. Box 1500  
Yellowknife, N.W.T.  
X1A 2R3

(867) 669-2500  
fax: (867) 669-2709

### **Yukon Region**

Aboriginal Affairs and Northern  
Development Canada  
415C-300 Main Street  
Whitehorse, Yukon  
Y1A 2B5  
(867) 667-3888  
fax: (867) 667-3801

### **Federal Treaty Negotiation Office**

Aboriginal Affairs and Northern  
Development Canada  
Suite 600  
1138 Melville Street  
Vancouver, B.C.  
V6E 4S3  
(604) 775-7114  
(604) 775-5100  
fax: (604) 775-7149

### **Indian Oil and Gas Canada**

Suite 100  
9911 Chiila Boulevard  
Tsuu T'ina (Sarcee), Alberta  
T2W 6H6  
(403) 292-5625  
fax: (403) 292-5618

### **Nunavut Region**

Aboriginal Affairs and Northern  
Development Canada  
P.O. Box 2200  
Iqaluit, Nunavut  
X0A 0H0  
(867) 975-4500  
fax: (867) 975-4560

## APPENDIX IV – LINKS TO SOME FIRST NATION’S BY-LAWS

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### ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT CANADA

- [Governance By-law Workshop Sessions](#)
- [Governance By-law Samples](#)
  - [Animal Control](#)
  - [Hunting By-law](#)
  - [Intoxicant By-law](#)
  - [Nuisance By-law](#)
  - [Zoning By-law](#)

### BRITISH COLUMBIA

- [Columbia Shuswap Regional District](#)
  - [Rural Sicamous Land Use Bylaw No. 2000](#)
  - [Salmon Valley Land Use Bylaw No. 2500](#)
  - [Scotch Creek/Lee Creek Zoning Bylaw No. 825](#)
  - [South Shuswap Zoning Bylaw No. 701](#)
  - [Subdivision Servicing Bylaw No. 641](#)
  - [Anglemont Zoning Bylaw No. 650](#)
  - [Kault Hill Rural Land Use Bylaw No. 3000](#)
  - [Lakes Zoning Bylaw No. 900](#)
  - [Magna Bay Zoning Bylaw No. 800 800](#)
  - [Procedures Bylaw No. 566](#)
  - [Ranchero/Deep Creek Land Use Bylaw No. 2100](#)
  - [Parks \(CSRD\) Regulation Bylaw No. 5556](#)
  - [Illegal Dumping Regulation Bylaw No. 5615](#)
  - [Refuse Disposal Facilities Tipping Fee and Regulation Bylaw No. 5542 \(Consolidated\)](#)
- [Kamloops Indian Band](#)
  - [Amendment To Rules A Governing Band Meeting By-law](#)
  - [Animal Control By-law](#)
  - [Band Council Procedures By-law](#)
  - [Band Council Resolution By-law](#)
  - [Business License 2001-04 By-law](#)
  - [Cattle & Other Animal Trespassing By-law](#)
  - [Construction, Alternation, Repair, Moving or Demolition of Buildings or Structures By-law](#)
  - [Fire Prevention By-law](#)
  - [Graffiti By-law](#)
  - [Heritage Conservation By-law](#)
  - [Noise Control By-law](#)
  - [Recreational Facilities By-law](#)
  - [Referendum By-law](#)
  - [Residential Rehabilitation Assistance \(RRAP\) Program By-law](#)

- [Rules Governing Band Meeting By-law](#)
- [Sanitary Sewer By-law](#)
- [Trespassing By-law](#)
- [Water Rates and Regulations By-Law](#)
- **[Sechelt Indian Government District](#)**
  - [2011-03 Advisory Council Elections](#)
  - [2010-03 Unsightly Premises](#)
  - [2008-03 Burning & Smoke Release Law](#)
  - [1996-05 General Animal Control law](#)
  - [1988-11 Traffic law](#)
  - [1988-08 Noise law](#)
  - [2001-04-25 Advisory Council Procedure #1](#)
  - [2001-07-11 Advisory Council Procedure #2](#)
- **[Tsawwassen First Nation](#)**
  - [Zoning Regulation](#)
  - [Building Regulation](#)
  - [Consolidated Planning and Development Application Fees Regulation](#)
  - [Development Permit Area Regulation](#)
- **[Tzeachten First Nation](#)**
  - [Zoning and Land Use Law 10-01](#)
  - [Subdivision and New Development Law 10-02](#)
  - [TZFN Noise Law](#)

#### NOVA SCOTIA

- **[Acadia First Nation](#)**
  - [Acadia First Nation By-laws](#)

#### AUSTRALIA

- [The Balgo Hills Aboriginal Community Incorporated By-laws 1982](#)
- [Wongatha Wonganarra Aboriginal Community By-laws 2003](#)

#### NEW ZEALAND

- **Central Hawke's Bay District**
  - [CHBDC 1 Introductory Bylaw 2008](#)
  - [CHBDC 2 Public Places 2008](#)
  - [CHBDC 3 Hostels 2008](#)
  - [CHBDC 4 Trading in Public Places 2008](#)
  - [CHBDC 5 Livestock Movement & Animals in Public Places 2008](#)
  - [CHBDC 6 Solid Waste 2008](#)
  - [CHBDC 7 Water Supply 2013](#)
  - [CHBDC 13 The Keeping of Animals, Poultry & Bees 2008](#)
  - [CHBDC 14 Cemeteries 2008](#)

- [CHBDC 21 Stormwater 2013](#)
- [CHBDC 22 Wastewater 2013](#)
- [CHBDC 23 Trade Waste 2008 Appendices](#)
- [CHBDC 23 Trade Waste 2008 Part 1](#)
- [CHBDC 24 Food Safety 2008](#)
- [CHBDC 25 Traffic](#)

## OTHER RESOURCES

[Denis John McDougall, “Annotated bibliography: \*Bylaws\*”, The National Centre for First Nations Governance \(March 2008\)](#)



## APPENDIX V – AANDC’S GUIDE TO THE PROCESS OF ENACTING FIRST NATION BY-LAWS<sup>37</sup>

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AANDC GOVERNANCE BY-LAW WORKSHOP: SESSION 6 – BY-LAW ENACTMENT.

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<sup>37</sup> Reproduced from the AANDC Governance By-law Workshop: Session 6 – By-law Enactment <<https://www.aadnc-aandc.gc.ca/eng/1100100013971/1100100013972>> Accessed on October 30, 2014.

## APPENDIX VI – AANDC’S GUIDE TO DRAFTING FIRST NATION BY-LAWS<sup>38</sup>

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### AANDC GOVERNANCE BY-LAW WORKSHOP: SESSION 5 – DRAFTING REQUIREMENTS

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<sup>38</sup> AANDC; Governance By-law Workshop: Session 5 – Drafting Requirements <<https://www.aadnc-aandc.gc.ca/eng/1100100013968/1100100013969>> Accessed October , 30, 2014

## APPENDIX VII – SAMPLE BAND COUNCIL RESOLUTIONS

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- [AANDC BCR Template](#)
- [Resolutions from UBCIC's Chiefs Council \(April 3-4, 2014\)](#) (access requires registration)
- [11-12-16 AFN First Nations E-Community Strategy Resolution](#) (access requires registration)
- [BCR to join the First Nation Land Managers Association for Québec & Labrador](#)
- [BCR to join the Ontario Aboriginal Lands Association](#)

# APPENDIX VIII – LINKS TO SAMPLE LAND CODES AND LAND USE PLANS AND TERMS OF REFERENCE FOR LAND USE PLANS

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## LAND CODES

### British Columbia

- [Beecher Bay First Nation Land Code](#)
- [Leg' a: mel First Nation Land Code](#)
- [LheidliT'enneh First Nation Land Code](#)
- [Matsqui First Nation Land Code](#)
- [McLeod First Nation Land Code](#)
- [Seabird Island First Nation Land Code](#)
- [Shx'wha:y Village First Nation Land Code](#)
- [Skawahlook First Nation Land Code](#)
- [Sliammon First Nation Land Code](#)
- [Squiala First Nation Land Code](#)
- [Tsawout First Nation Land Code](#)
- [Tsawwassen First Nation Land Code](#)
- [Ts'kw'aylaxw \(Pavilion\) First Nation Land Code](#)
- [Tsleil-Waututh First Nation Land Code](#)
- [T'souke First Nation Land Code](#)
- [Tzeachten First Nation Land Code](#)
- [We Wai Kai \(Cape Mudge\) First Nation Land Code](#)
- [Westbank First Nation Land Code](#)

### Manitoba

- [Chemawawin Cree Nation Land Code](#)
- [Opaskwayak Cree Nation Land Code](#)
- [Swan Lake First Nation Land Code](#)

### Ontario

- [Anishinaabeg of Naongashing Land Code](#)
- [Atikameksheng Anishnawbek](#)
- [Chippewas of Georgina Island Land Code](#)
- [Henvey Inlet Certified Land Code](#)
- [Mississauga Certified Land Code](#)
- [Mississaugas of Scugog Island Land Code](#)
- [Nipissing Land Code](#)

### Saskatchewan

- [Kahkewistahaw Land Code](#)

- [KinistinSaleaxe Land Code](#)
- [Muskeg Land Code](#)
- [Muskoday Land Code](#)
- [Whitecap Dakota First Nation Land Code](#)

#### OTHER RESOURCES FOR LAND CODES

- [First Nations Land Management Readiness Guide](#)
- [First Nation Generic Land Use Law](#)
- [Model Land Code - FNLMA - September 2007](#)
- [Model Annotated Transit/Deposit of Soil Law](#)

## LAND USE PLANS

### British Columbia

- [Chawathil First Nation Community Land Use Plan Drafts](#) (access requires registration)
- [Dease-Liard Sustainable Resource Management Plan](#)
- [Fort Nelson First Nation Strategic Land Use Plan](#)
- [Lil'wat Land Use Plan](#)
- [Tla'amin Land Use Plan](#)
- **[Tsawwassen First Nation](#)**
  - [Bulk Water and Trunk Sanitary Master Plan-FINAL](#)
  - [Internal Roads Analysis Revised Final Report](#)
  - [NPA Design Guidelines](#)
  - [TFN Agricultural Plan 2013](#)
  - [TFN Residential Enterprise Neighbourhood Plan 2011](#)
  - [Land Use Concept 2011](#)
  - [TFN Land Use Plan 2009](#)
- [Westbank First Nation Land Use Plan](#)
- [Wóoshtin wudidaa Atlin Taku Land Use Plan](#) (access requires registration)
- [Musqueam Land Use Plan](#) (access requires registration)
- [Land use plan - Soowahlie First Nation](#) (access requires registration)
- [Nooaitch Indian Band - Land Use Plan](#) (access requires registration)

### Manitoba

- [Asatiwisipe Aki Lands Management Plan](#)
- [Bloodvein First Nation Land Use Plan](#)
- [Little Grand Rapids First Nation "Ni-Kes" Lands Management Plan](#)
- [Pauingassi First Nation Final Draft Lands Management Plan](#)

### Ontario

- [Cat Lake - Slate Falls Community Based Land Use Plan](#)
- [Little Grand Rapids Community Based Land Use Plan](#)

- [Pauingassi Community Based Land Use Plan](#)
- [Pikangikum First Nation Land Use Strategy](#)

#### Yukon

- [North Yukon Land Use Plan](#)

#### Other Land Use Planning Resources

- [BC First Nations Land Use Planning: Effective Practices](#)
- [What Lies Beneath: Responding to Forest Development Plans – A Guide for First Nations](#)
- [Xeni Gwet'in Land Use Guideline](#) (access requires registration)

#### TERMS OF REFERENCE FOR LAND USE PLANS

#### Ontario

- [Deer Lake First Nation](#)
- [Eabametoong & Mishkeegogamang First Nations](#)

# APPENDIX IX – AANDC’S FIRST NATIONS LAND MANAGEMENT READINESS GUIDE: A GUIDE FOR FIRST NATIONS INTERESTED IN THE FIRST NATIONS LAND MANAGEMENT REGIME<sup>39</sup>

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FIRST NATIONS LAND MANAGEMENT READINESS GUIDE: A GUIDE FOR FIRST NATIONS INTERESTED IN THE FIRST NATIONS LAND MANAGEMENT REGIME

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<sup>39</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *First Nations Land Management Readiness Guide: A Guide for First Nations Interested in the First Nations Land Management Regime* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/lands\\_readiness\\_guide2013\\_1368113998592\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/lands_readiness_guide2013_1368113998592_eng.pdf)> accessed October 30 2014.



# APPENDIX X – QUESTIONNAIRE FOR FIRST NATION ENTRY TO THE FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT AND THE FIRST NATIONS LAND MANAGEMENT ACT<sup>40</sup>

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QUESTIONNAIRE FOR FIRST NATION ENTRY TO THE FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT AND THE *FIRST NATIONS LAND MANAGEMENT ACT*

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<sup>40</sup> Government of Canada; Aboriginal Affairs and Northern Development Canada, *Questionnaire for First Nation Entry to the Framework Agreement on First Nation Land Management and the First Nations Land Management Act* (Ottawa, Aboriginal Affairs and Northern Development Canada, 2013). <[http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/fnlm\\_questionnaire2013\\_1368447217333\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ENR/STAGING/texte-text/fnlm_questionnaire2013_1368447217333_eng.pdf)> accessed October 30 2014.

## APPENDIX XI – BC FIRST NATION LAND USE PLANNING: EFFECTIVE PRACTICES<sup>41</sup>

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### BC FIRST NATION LAND USE PLANNING: EFFECTIVE PRACTICES

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<sup>41</sup> New Relationship Trust; Best Practices - New Relationship Trust, *BC First Nation Land Use Planning: Effective Practices* (West Vancouver, New Relationship Trust, 2009). <<http://www.newrelationshiptrust.ca/downloads/land-use-planning-report.pdf>> accessed October 30 2014.

## APPENDIX XII – SAMPLE SOURCE WATER PROTECTION PLANS UNDER ONTARIO'S *CLEAN WATER ACT, 2006*

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- [Lakehead Source Protection Plan](#)
- [Cataraqui Source Protection Plan](#)
- [Proposed Source Protection Plan for the CTC \(Credit Valley, Toronto and Region and Central Lake Ontario\) Region](#)

# BIBLIOGRAPHY

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## TEXTS

Julie Abouchar & Theresa McClenaghan, *Ontario Water Law* (Toronto: Canada Law Book, 2014).

## RELEVANT SECTIONS OF ACTS

### *Indian Act*

#### **Definitions**

2. (1) In this Act,

...

#### **Definition of "band"**

(2) The expression "band", with reference to a reserve or surrendered lands, means the band for whose use and benefit the reserve or the surrendered lands were set apart.

#### **Exercise of powers conferred on band or council**

(3) Unless the context otherwise requires or this Act otherwise provides,

(a) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and

(b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

...

## REGULATIONS

#### **Regulations**

73. (1) The Governor in Council may make regulations

(a) for the protection and preservation of fur-bearing animals, fish and other game on reserves;

(b) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;

(c) for the control of the speed, operation and parking of vehicles on roads within reserves;

(d) for the taxation, control and destruction of dogs and for the protection of sheep on reserves;

(e) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;

- (f) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;
- (g) to provide medical treatment and health services for Indians;
- (h) to provide compulsory hospitalization and treatment for infectious diseases among Indians;
- (i) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (j) to prevent overcrowding of premises on reserves used as dwellings;
- (k) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;
- (l) for the construction and maintenance of boundary fences; and
- (m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.

### **Punishment**

(2) The Governor in Council may prescribe the punishment, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of a regulation made under subsection (1).

### **Orders and regulations**

(3) The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.

...

## **POWERS OF THE COUNCIL**

### **By-laws**

81. (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;
- (b) the regulation of traffic;
- (c) the observance of law and order;
- (d) the prevention of disorderly conduct and nuisances;
- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;

- (f) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works;
- (g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone;
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
- (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;
- (j) the destruction and control of noxious weeds;
- (k) the regulation of bee-keeping and poultry raising;
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;
- (m) the control or prohibition of public games, sports, races, athletic contests and other amusements;
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;
- (o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;
- (p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;
- (p.1) the residence of band members and other persons on the reserve;
- (p.2) to provide for the rights of spouses or common-law partners and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;
- (p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;
- (p.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and
- (r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.

### **Power to restrain by order where conviction entered**

(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

### **Power to restrain by court action**

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council.

### **Copies of by-laws to be sent to Minister**

82. (1) A copy of every by-law made under section 81 shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it is made.

### **Effective date of by-law**

(2) A by-law made under section 81 comes into force forty days after a copy thereof is forwarded to the Minister pursuant to subsection (1), unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period.

### **Money by-laws**

83. (1) Without prejudice to the powers conferred by section 81, the council of a band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely,

- (a) subject to subsections (2) and (3), taxation for local purposes of land, or interests in land, in the reserve, including rights to occupy, possess or use land in the reserve;
- (a.1) the licensing of businesses, callings, trades and occupations;
- (b) the appropriation and expenditure of moneys of the band to defray band expenses;
- (c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a);
- (d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);
- (e) the enforcement of payment of amounts that are payable pursuant to this section, including arrears and interest;
- (e.1) the imposition and recovery of interest on amounts that are payable pursuant to this section, where those amounts are not paid before they are due, and the calculation of that interest;
- (f) the raising of money from band members to support band projects; and
- (g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

### **Restriction on expenditures**

(2) An expenditure made out of moneys raised pursuant to subsection (1) must be so made under the authority of a by-law of the council of the band.

### **Appeals**

(3) A by-law made under paragraph (1)(a) must provide an appeal procedure in respect of assessments made for the purposes of taxation under that paragraph.

### **Minister's approval**

(4) The Minister may approve the whole or a part only of a by-law made under subsection (1).

### **Regulations re by-laws**

(5) The Governor in Council may make regulations respecting the exercise of the by-law making powers of bands under this section.

### **By-laws must be consistent with regulations**

(6) A by-law made under this section remains in force only to the extent that it is consistent with the regulations made under subsection (5).

### **Recovery of taxes**

84. Where a tax that is imposed on an Indian by or under the authority of a by-law made under section 83 is not paid in accordance with the by-law, the Minister may pay the amount owing together with an amount equal to one-half of one per cent thereof out of moneys payable out of the funds of the band to the Indian.

85. [Repealed, R.S., 1985, c. 17 (4th Supp.), s. 11]

### **By-laws relating to intoxicants**

85.1 (1) Subject to subsection (2), the council of a band may make by-laws

- (a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;
- (b) prohibiting any person from being intoxicated on the reserve;
- (c) prohibiting any person from having intoxicants in his possession on the reserve; and
- (d) providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

### **Consent of electors**

(2) A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

### **Copies of by-laws to be sent to Minister**



(3) A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

#### Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and liable on summary conviction

(a) in the case of a by-law made under paragraph (1)(a), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and

(b) in the case of a by-law made under paragraph (1)(b) or (c), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.

#### Proof

86. A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form.

#### *First Nations Land Management Act*

The federal *First Nations Land Management Act* can be accessed online at:

- [Canlii](#); or
- [Justice Laws Website](#)

#### *Clean Water Act, 2006*

Ontario's *Clean Water Act, 2006* can be accessed at:

- [Canlii](#); or
- [e-laws](#)