

Principle Differences Between the Framework Agreement on First Nations Land Management and the Indian Act Delegated Administration

FRAMEWORK AGREEMENT ON FIRST NATIONS LAND MANAGEMENT (SECTORAL SELF GOVERNMENT)	INDIAN ACT DELEGATED AUTHORITY
Government to government agreement signed in 1996, initiated and created by First Nations for First Nations	First passed in 1876 under the provisions of Section 91(24) of the <i>Constitution Act</i> of 1867, in an effort to codify the <i>Royal Proclamation</i> of 1763
Cannot be amended/changed without the consent of the First Nation Signatories	Can be amended /changed without consent of First Nations
First Nation are recognized as “governments” with real legislative authority. Laws enforceable in any court of competent jurisdiction. Canada has no authority to overrule or cancel duly made laws or decisions made by First Nations	First Nations are not governments, they are “wards”, “Ministerial Delegates” and “administrators” with no Law Making Authority. First Nations may only make legal decisions or by-laws that Canada approves of or that fall within the sections of the Indian Act
According to their own authority First Nations may: <ul style="list-style-type: none"> - Make land laws - Administer land laws - Enforce land laws - Manage and protect Lands and Resources 	First Nations may: <ul style="list-style-type: none"> - Make certain managerial decisions - Make certain bylaws
Laws, policies, procedures and legal instruments are all developed, approved and enacted by each First Nation according to its own Land Code, unique language, culture and values	Indian Act/Federal laws, policies, procedures, rules and legal instruments made by Canada and must be followed by First Nations
Many flexible, diverse and innovative legal land governance approaches developed to suit individual First Nation situations	One inflexible law/land management manual and set of legal instruments for all First Nations
First Nations can create and authorize different types of legal land interests	No Indian is in lawful possession of land unless the Minister approves. This includes land transfers
Ability to enact Environmental Assessment/Protection Laws	None, only those that may be entered into by contractual arrangement by Canada. Enforcement, monitoring, testing and compliance can be problematic
Accountability and reporting to membership	Accountability and reporting to Canada
Members have clear role in decision making, approvals, access to and information sharing	Members do not have a clear role in certain decisions nor do they have a right to receive or access information
Dispute Resolution	No dispute resolution
No expropriation by Provincial/Municipal agencies. Extremely limited Federal expropriation in emergencies	Expropriation possible without First Nation consent by Federal or Provincial government for the purposes of crown corporations or municipalities
Regulation backed, paperless, electronic and instant land registry which is priority based and is recognized/supported by financial institutions and titles insurance providers	Policy based registry that does not guarantee land certainty. Overly bureaucratic and lengthy approval times
Recognized First Nation legal status/capacity to acquire and hold property, to borrow and contract, to expend and invest money and to be a party to legal proceedings	Legal status unclear and uncertain to hold property/enter into binding agreements. This discourages lenders and other financing partners