

IMPLEMENTATION MONITORING COMMITTEE

2013 – 2014 ANNUAL REPORT

**1997 MANITOBA FRAMEWORK AGREEMENT ON TREATY
LAND ENTITLEMENT**

TABLE OF CONTENTS

1.0	INTRODUCTION	1
	Chart 1: Dates of Treaty Entitlement Agreements and Amount of Crown Land and Other Land for Entitlement First Nations under the Manitoba Framework Agreement	3
	Chart 2: Acreage and Parcels Set Apart as Reserve Pursuant to the Manitoba Framework Agreement per year up to March 31, 2014	4
2.0	REQUIREMENTS FOR IMC ANNUAL REPORT	5
3.0	IMC STRUCTURE AND WORKPLAN FOR 2013 – 2014	6
4.0	SUMMARY OF ISSUES OR MATTERS IN DISPUTE REFERRED TO IMC	7
5.0	SUMMARY OF OTHER IMC BUSINESS	8
5.1	Strategic Planning and Identification of EFN Priority Parcels	8
5.2	Third Party Interests	8
5.3	Surface Access Rights	8
5.4	MDSA and Municipal Relations	9
5.5	Unsigned EFNs	9
5.6	Finances	10
6.0	RECOMMENDATIONS	11
	Chart 3: Comparison of Saskatchewan and Manitoba TLE Framework Agreements	16
7.0	CONCLUSIONS	17
	‘ANNEX A’ – 2013-2014 IMC Annual Work Plan	18

1.0 INTRODUCTION

On August 27, 2013, Ms. Irene Linklater, IMC Chairperson, tendered her resignation to the Senior Advisory Committee, and officially left the post on September 27, 2013. For the remainder of the 2013-2014 fiscal year, the parties unsuccessfully attempted to find a replacement while the IMC functioned as best as possible without a Chairperson. As a result, this Annual Report is being generated by the Interim Chairperson appointed by the Senior Advisory Committee on July 9, 2014. Given such circumstances, this report is not as fulsome as previous Annual Reports; however, it is being generated to fulfill the requirements articulated in Article 34.09(10)(b) of the Framework Agreement, recognizing that it has not been possible to comply with the requirement under Article 34.09(11) to produce the Annual Report before June 30th of each year.

On May 29, 1997, the Framework Agreement on Treaty Land Entitlement was signed by representatives of Canada, Manitoba and the Treaty Land Entitlement Committee of Manitoba Inc. in order to fulfill the long outstanding Treaty Land Entitlement of 19 Manitoba First Nations. Through subsequent Band Division, that number has grown to encompass 21 First Nations. All told, when implementation is complete, there will be over 1.1 million acres of new reserve land set apart in Manitoba for these 21 Entitlement First Nations. Specifically, the 21 Entitlement First Nations are entitled to select a total of 985,949 acres of provincial Crown Land, and six of those First Nations who are listed in Schedule B of the Framework Agreement (comprising Brokenhead Ojibway Nation, Buffalo Point First Nation, Opaskwayak Cree Nation, Rolling River First Nation, Sapotawayak Cree Nation and Wuskwi Sipiik First Nation) are entitled to purchase or otherwise acquire an additional 114,677 acres (see Chart 1).

As of March 31, 2014, 15 of the eligible 21 Entitlement First Nations have signed their respective Treaty Entitlement Agreements, and are actively involved in implementing the land selection and acquisition provisions of the Framework Agreement, which lead to Addition to Reserve proposals for Canada to process.

However, for a variety of reasons, many of which are documented in previous Annual Reports and in two Reports of the Auditor General of Canada (November 2005 Chapter 7, and 2009 Chapter 4), implementation has generally been a protracted affair. Explicitly, in accordance with Article 34 (and more specifically Article 34.07) of the Framework Agreement, it is the role of the IMC to monitor the progress of implementation efforts by the parties, make recommendations to the parties for the resolution of any issue or matter in dispute, and attempt to resolve those issues or matters in dispute by consensus or through the use of the Dispute Resolution options detailed in Article 35 of the Framework Agreement.

Perhaps IMC's most significant accomplishment during 2013-2014 was that a Binding Arbitration hearing was conducted on March 27, 2014 concerning a matter in dispute between the Treaty Land Entitlement Committee of Manitoba Inc. and the Province of Manitoba respecting "Crown Reservations – Portages", and more specifically concerning the Trout Falls (620 acres) and Wapanipanis Portage (327 acres) crown land selections by Bunibonibee Cree Nation. Given the litany of disputes before the IMC throughout the 17-year history of the Framework Agreement, many will find it surprising to learn that this was the first ever such use of the Binding Arbitration provisions.

In total during the 2013-2014 period, only one Addition to Reserve proposal comprising an acquisition of 0.14 acres of land was set apart by Canada as reserve in fulfillment of the Framework Agreement, largely due to difficulties encountered in implementing the requirements respecting the duty to consult, and accommodate if necessary, as part of the Additions to

Reserve process. Although this new reserve set apart for Sapotaweyak Cree Nation is relatively tiny, it is located in the Town of Swan River, thus representing an important economic development opportunity for Sapotaweyak and potentially ushering in a new era for First Nations/municipal government relations in Manitoba.

Also included in Chart 1 is a summary of the progress per Entitlement First Nation as of March 31, 2014. After 17 years of implementation, the Parties have successfully processed over 462,726 acres of land that have been set apart as reserve for the use and benefit of respective Entitlement First Nations by either Order in Council using the Federal Royal Prerogative, or by Ministerial Order under the authority of the *Manitoba Claim Settlements Implementation Act*. This has comprised a total of 123 separate Crown Land selections and 24 separate acquisitions of land, and represents 48% completion for the 15 Entitlement First Nations that have signed their respective Treaty Entitlement Agreements. Year by year completion rates are detailed in Chart 2.

The remainder of this 2013-2014 Annual Report provides further details of the parties' progress, a summary of the various issues or matters in dispute before the IMC, and recommendations for improvement. Additional information including the previous IMC Annual Reports is available on the website at www.tleimc.ca.

Chart 1: Dates of Treaty Entitlement Agreements and Amount of Crown Land and Other Land for Entitlement First Nations under the Manitoba Framework Agreement

Entitlement First Nation	Treaty No.	Date TEA Signed	Crown Land (Acres)	Crown Land Set Apart	Other Land (Acres)	Other Land Set Apart	Total Acres	% Completed
Barren Lands	10	June 23, 1999	66,420	0	-	-	66,420	0
Brokenhead	1	September 9, 1998	4,344	672.00	10,137	7.46	14,481	4.69
Buffalo Point	3	March 24, 1998	3,432	2,369.70	607	0	4,039	58.67
Bunibonibee	5	February 17, 1999	35,434	31,342.34	-	-	35,434	88.45
Fox Lake	5	Unsigned	26,391	0	-	-	26,391	-
God's Lake	5	May 28, 1999	42,600	16,301.75	-	-	42,600	38.27
Manto Sipi	5	May 19, 1999	8,725	4,284.00	-	-	8,725	49.1
Marcel Colomb	6	Unsigned	17,007	-	-	-	17,007	-
Mathias Colomb	6	October 1, 2003	217,364	172,538.49	-	-	217,364	79.38
Nisichawayasihk	5	September 1, 1998 ¹	61,761	33,816.01	-	-	61,761	54.75
Northlands	10	November 9, 1999	94,084	4,134.00	-	-	94,084	4.39
Norway House	5	November 12, 1998	104,784	42,045.53	-	-	104,784	40.13
Opaskwayak	5	January 22, 1999	47,658	24,375.30	8,410	0	56,068	43.47
O-Pipon-Na-Piwin	5	Unsigned	17,674	-	-	-	17,674	-
Rolling River	4	March 6, 1998	2,356	2,350.70	44,756	3,117.85	47,112	11.61
Sapotaweyak	4	September 1, 1998	108,134	99,701.73	36,045	0.14	144,179	69.15
Sayisi Dene	5	Unsigned	22,372	-	-	-	22,372	-
Shamattawa	5	Unsigned	24,912	-	-	-	24,912	-
War Lake	5	May 28, 1999	7,156	480.0	-	-	7,156	6.71
Wuskwi Sipiik	4	July 17, 1998	44,168	25,189.83	14,722	0	58,890	42.77
York Factory	5	Unsigned	29,173	-	-	-	29,173	-
			985,949	459,601.4	114,677	3,125.45	1,100,626	48.05

¹ The Effective date of the Nisichawayasihk Cree Nation Treaty Entitlement Agreement is a matter in dispute referred to the IMC (File 1999-NCN-003)

Chart 2: Acreage and Parcels Set Apart as Reserve Pursuant to the Manitoba Framework Agreement per year up to March 31, 2014

DATES	SELECTIONS		ACQUISITIONS		TOTAL	
	Acres	Parcels	Acres	Parcels	Acres	Parcels
May 29,1997- March 31, 1998	0	0	0	0	0	0
April 1, 1998-March 31, 1999	0	0	0	0	0	0
April 1, 1999- March 31, 2000	1,275.18	2	0	0	1,275.18	2
April 1, 2000- March 31, 2001	0	0	0	0	0	0
April 1, 2001- March 31, 2002	0	0	0	0	0	0
April 1, 2002- March 31, 2003	0	0	0	0	0	0
April 1, 2003- March 31, 2004	4,894.75	2	0	0	4,894.75	2
April 1, 2004- March 31, 2005	7,040.30	9	0	0	7,040.30	9
April 1, 2005- March 31, 2006	9,333.55	11	0	0	9,333.55	11
April 1, 2006- March 31, 2007	24,362.48	13	158.14	1	24,520.62	14
April 1, 2007- March 31, 2008	140,465.95	25	0	0	140,465.95	25
April 1, 2008- March 31, 2009	123,874.29	29	2,571.39	19	126,445.68	48
April 1, 2009- March 31, 2010	38,757.65	17	0	0	38,757.65	17
April 1, 2010- March 31, 2011	100,604.70	13	0	0	100,604.70	13
April 1, 2011- March 31, 2012	8,881.0	1	395.78	3	9,276.78	4
April 1, 2012- March 31, 2013	112.0	1	0	0	112.0	1
April 1, 2013- March 31, 2014	0	0	0.14	1	0.14	1
	459,601.8	123	3,125.4	24		147

2.0 REQUIREMENTS FOR IMC ANNUAL REPORT

Under the terms of the Framework Agreement, the IMC is charged with reporting on an annual basis to the Parties. Specifically, the Annual Report is provided to fulfill the requirements as stated in Article 34.09 (10) (b):

The Chairperson will, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development Canada and the Minister of Northern Affairs of Manitoba an annual written report including:

- i. a summary of the progress of implementation of this Agreement and any Treaty Entitlement Agreement;*
- ii. the recommendations of the Implementation Monitoring Committee for the improvement of the implementation of this Agreement and any Treaty Entitlement Agreement;*
- iii. a summary of the issues or matters in dispute which have been resolved during the reporting period;*
- iv. a summary of the issues or matters in dispute still outstanding at the end of the reporting period; and*
- v. recommendations for improvement of the implementation of this Agreement and any Treaty Entitlement Agreement.*

3.0 IMC STRUCTURE AND WORKPLAN FOR 2013 – 2014

Under the terms of the Framework Agreement, the IMC is comprised of five members, two representatives appointed by the Treaty Land Entitlement Committee of Manitoba Inc., one representative appointed by each of Canada and Manitoba, and an Independent Chairperson appointed by the Senior Advisory Committee (SAC), which consists of the President of the Treaty Land Entitlement Committee of Manitoba Inc., the Deputy Minister of Aboriginal and Northern Affairs Manitoba, and the Regional Director General of the Manitoba Regional Office of Aboriginal Affairs and Northern Development Canada. In the 2013-2014 fiscal year, the Chairperson and IMC Representatives (and Alternates) were as follows:

Independent Chairperson:	2012-2013 (January - September 27, 2013)	Irene Linklater
	2013-2014 (September 28, 2013 - July 8, 2014)	Vacant
	2014-2015 (July 9, 2014 - December 31, 2014)	Martin Egan
TLEC Representative:	Merrell-Ann Phare	Councillor Paul Chief
	Chris Henderson (alternate)	Terri Grasby (alternate)
	Laren Bill (alternate)	
MANA Representative (Manitoba):	Cynthia Beadle	George Ryle (alternate)
AANDC Representative (Canada):	Winona Embuldeniya	Diana Watson (alternate)

Under Article 31 of the Framework Agreement, each Party has agreed “that they will, in good faith, use their best efforts to fulfill the terms of” the Framework Agreement, and that they will assign appropriate personnel to discharge their obligations including those related to the functions of the IMC.

At the beginning of each fiscal year, the IMC submits a Work Plan for SAC approval. The IMC Annual Work Plan for 2013-2014 is found attached as Annex A; however, given the lack of a Chairperson during the final six months, the parties had recognized that it would not be possible to accomplish all of the planned activities. Sections 4 and 5 below provide an update of each of the items in the Work Plan as of March 31, 2014.

4.0 SUMMARY OF ISSUES OR MATTERS IN DISPUTE REFERRED TO IMC

The IMC provides for management of referrals of issues or matters in dispute received by the IMC. The activities during the 2013-2014 fiscal year are summarized in the table below. The highlight was the March 27, 2014 Binding Arbitration Hearing, which was the first such use of the binding arbitration provisions of the Framework Agreement.

Referral File	Short Title	Acres Affected	Status as of March 31, 2014	Next Steps
2007-TLEC-002	Hydro Easement	65,800	The parties continued to meet and exchange correspondence to discuss resolution options, without success.	Determine how issue can be resolved, through Binding Arbitration if necessary.
2004-BLFN-002	Material Failure re: Land in Severalty	36,800	IMC Chairperson wrote to Barren Lands First Nation on September 27, 2013 to inquire about First Nation's desire to proceed to Binding Arbitration framed as a "Material Failure".	Determine the First Nation's desire to proceed as is or to amend the referral, and to determine resolution options.
2006-Manitoba-005	Material Failure re: Portages	947	Pending resolution of 2007-TLEC-005.	To be determined with 2007-TLEC-005.
2007-TLEC-005	Crown Reservations for Portages	947	On March 27, 2014, a Binding Arbitration Hearing was conducted by the Adjudicator, Mr. Lawrie Cherniack, who rendered his decision on April 16, 2014 (and thus will be detailed in the 2014-2015 IMC Report).	Receive and implement the Adjudicator's Report, and issue Referral Resolution Notice.
1999-BPFN-001	Selections in Provincial Park	116.4	Issue referred to SAC by IMC Chairperson on September 23, 2013.	Schedule SAC Meeting to discuss issue resolution.
1999-NCN-003	TEA Effective Date	0	Issue referred to SAC by IMC Chairperson on September 19, 2013.	Schedule SAC Meeting to discuss issue resolution.
2003-BON-001	Surplus Federal Land – Kapyong	160	Pursuant to Section 34.08, IMC Chairperson contracted with Mr. A. Blair Graham of Thompson Dorfman Sweatman to obtain legal advice.	Receive the contracted legal advice, and action as required.
2006-Manitoba-001	Material Failure re: Knee Lake Lodge	1,511	IMC Chairperson wrote to Bunibonibee Cree Nation on September 27, 2013 to inquire about First Nation's desire to proceed to Binding Arbitration framed as a "Material Failure".	Determine the First Nation's desire to proceed as is or to amend the referral, and to determine resolution options.
2012-Canada/Manitoba-001	Acquisition Time Periods	Up to 111,552	All 6 Schedule B First Nations provided their respective detailed plan for the completion of land acquisition in fulfillment of the requirement under Article 4.02(4)(b) of the Framework Agreement.	Schedule IMC Meeting to discuss the possibility of exercising IMC's discretion under Article 4.02(4)(c) to extend the acquisition periods by up to two years.

5.0 SUMMARY OF OTHER IMC BUSINESS

5.1 Strategic Planning and Identification of EFN Priority Parcels

During the 2013-2014 fiscal year, the Parties continued to strengthen their collective planning processes and further integrate these multi-party processes into their individual party work planning efforts. The increased coordination and communication should soon generate the desired results of finalizing the Addition to Reserve proposals more efficiently. The primary product of these efforts is a jointly developed Work Plan of Entitlement First Nation Priority Parcels, and continued commitment to develop a more detailed Strategic Plan that addresses the longstanding issues of concern that have been preventing lands from being set apart as reserve. The Parties continue to discuss how to increase the usefulness of the Work Plan and how to ensure that the Key Milestones are reflective of the actual next steps required to be taken by each Party. An updated Work Plan is expected to be completed prior to every new calendar year and each Party will contribute to the update to ensure that all completed steps in the process are captured.

Some issues that may be included in a more detailed Strategic Plan and/or referred back to the IMC for further discussion could include:

- The AANDC Policy Directive that requires the letters of support from Rural Municipalities to be renewed every two years;
- Surveys:
 - The process for the parties to agree on notes for inclusion or removal on RSM's;
 - Legal Description processing times;
- Mineral Exploration Licenses and the issue of Surface Access Rights;
- The process to determine Reasonable Use and Tourist Impact areas;
- Status of Crown Lands being purchased for \$1/ acre.

5.2 Third Party Interests

The Parties continue to work collaboratively in resolving the Third Party Interests that exist on each of the selections and acquisitions. Some of the key Third Party Interests that could benefit from an agreed to method of resolution include:

- Hydro Easements: affecting 77 parcels totalling over 90,000 acres;
- Mining Claims, Mineral Leases and Quarry Leases: affecting 23 parcels totalling over 27,000 acres;
- Tourist Lodges, Camps and Outcamps, Residences and Trappers Cabins, and Reasonable Use areas: affecting 38 parcels totalling over 47,000 acres.

Cumulatively, this list includes 138 parcels totalling approximately 165,000 acres, making these issues a significant impediment to progress.

5.3 Surface Access Rights

Specifically with respect to Mining Claims, Mineral Leases and Quarry Leases associated with surface-only selections and acquisitions, the issue of Surface Access Rights of the Third Party mineral rights owner following reserve creation remains problematic. This on-reserve jurisdictional gap is a national issue, existing on-reserve throughout Canada and not just in Manitoba, created by the lack of federal legislative authority available to replace the provincial legislative authority that exists but then displaced as lands are set apart as reserve. Unless and until the Parliament of Canada passes a law to close this jurisdictional

gap, the best that can be done is that the inherent risks can be partially addressed or minimized through implementation of an agreement contemplated in Article 11.03(4). Up to March 31, 2014, no agreement in accordance with that Article had been approved by the Parties as an Agreed Form. Consequently, a total of less than 396 acres of surface-only lands have been set apart as reserve to date in accordance with the Framework Agreement, although approximately 22,000 acres of selections and acquisitions are currently awaiting some resolution of this situation.

5.4 MDSA and Municipal Relations

The Entitlement First Nations continue to engage municipalities in negotiations for the services that would be required once lands have been set apart as reserve. Despite longstanding negotiations, the only successfully negotiated MDSA during the 2013-2014 fiscal year was between Sapotaweyak Cree Nation and the Town of Swan River.

Some of the key issues that have arisen through the negotiations with Rural Municipalities include the differentiation between the actual costs of a service versus the current tax rate that is being applied to the lands. There have also been longstanding issues with parcels of land where no services are required, yet Rural Municipalities remaining adamant that an MDSA be entered into. In addition, there has even been an instance where a Rural Municipality has requested that an MDSA be signed despite the selection being on Crown Land where no tax is currently being applied.

In situations where no services are required, some progress has been made by Entitlement First Nations obtaining a letter from Rural Municipalities stating that they support the selected or acquired lands being set apart as reserve, and are willing to enter into future MDSA negotiations, if and when required. This is important in that a great majority of selections and acquisitions in Rural Municipalities include no infrastructure nor have any firm development plans attached to them, and therefore have no immediate servicing needs. Such letters of support can therefore suffice in the interim to facilitate the processing of the Addition to Reserve proposals; however, the Parties recognize that an Agreed Form for such letters could be beneficial. An Agreed Form MDSA was approved by IMC in 2002; however, it does not appear to be in general use at all, and therefore should be reviewed and amended if necessary.

5.5 Unsigned EFNs

There are six Entitlement First Nations that have not yet signed Treaty Entitlement Agreements: Fox Lake Cree Nation, Marcel Colomb Cree Nation, O-Pipon-Na-Piwin Cree Nation, Sayisi Dene First Nation, Shamattawa First Nation and York Factory First Nation.

During 2013-2014, Marcel Colomb Cree Nation communicated that it is prepared to sign a Treaty Entitlement Agreement, and has actively begun the preliminary work (e.g. development of the Trust, etc.) required to do just that. Given that Marcel Colomb Cree Nation was recognized through Band Division of Mathias Colomb Cree Nation following the latter's referendum vote to approve its Treaty Entitlement Agreement, Marcel Colomb Cree Nation can execute its Treaty Entitlement Agreement without an additional referendum vote. A similar situation exists for O-Pipon-Na-Piwin Cree Nation. In addition, the York Factory First Nation has previously conducted a referendum vote that approved the terms of a Treaty Entitlement Agreement, but Chief and Council have not yet executed the agreement. The other three unsigned Entitlement First Nations will need to conduct

referendum votes before executing their respective Treaty Entitlement Agreements; however, those First Nations have not yet communicated any plans to do so.

To ensure that unsigned Entitlement First Nations are in receipt of appropriate information and have an opportunity to explore the possibility of signing a Treaty Entitlement Agreement, TLEC conducted a workshop specifically for this purpose on January 29, 2014 in Winnipeg. The workshop included representatives from at least five of the six unsigned Entitlement First Nations, as well as TLEC, Manitoba and Canada. Some unsigned Entitlement First Nations expressed concerns about the release clauses in the TEAs, and what the impacts would be, if any, on any other disputes that these First Nations have with Canada. Further specific analysis is required by each of these First Nations to ensure that they fully understand the terms of the TEA and the Framework Agreement.

5.6 Finances

In accordance with Article 34.09(10)(d), an unaudited annual financial statement was prepared by the Finance Manager of the Treaty Land Entitlement Committee of Manitoba Inc., who took over the financial management of IMC in accordance with a service agreement entered into by the Chairperson at that time, and which served to provide some consistency whenever the Chairperson position became vacant during the fiscal year. The initial IMC 2013-2014 budget was \$150,000, with each of the three Parties committing to provide \$50,000. The total expenditures were only \$90,608, in large measure due to the Chairperson having vacated the position in September 2013. As a result, there was no expenditure for Chairperson Compensation between October 2013 and March 2014. The invoices on actual expenditures are sent to AANDC, Manitoba, and TLEC for their 1/3 share of costs. IMC typically does not receive payment until two months after invoicing, and this has posed cash flow challenges which include the Chairperson not being compensated on a timely basis. The Parties will need to investigate options available to address these challenges.

6.0 RECOMMENDATIONS

Given that my mandate as Interim IMC Chairperson extends from July 9, 2014 through to December 31, 2014, this is the one and only IMC Annual Report that I will author. Although my tenure is not within the term of focus for this 2013-2014 Annual Report, there are a number of issues that I am compelled to comment on and several recommendations that I would like to make based on my almost six months as Interim Chairperson. For this, I rely on Article 34.09 (10) (c) as my authority, which states:

The Chairperson may, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba other reports from time to time as the Chairperson deems appropriate.

My comments and recommendations relate to the following topics and are presented largely to draw attention to either best practices that I believe could assist the parties in moving forward, or areas where I believe a search for best practices may be helpful:

- a) The Duty to Consult;
- b) Options for Dealing with Third Party Interests;
- c) The Use of the First Nations Gazette;
- d) Lessons Learned.

a) [The Duty to Consult](#)

In my review of the notes from past meetings of the IMC and Senior Advisory Committee, and in discussions I have had with the parties including my appearance at the TLEC Annual Meeting in The Pas on June 25, 2014, and particularly considering the lack of progress over the last two years, it is abundantly evident that implementation of the Duty to Consult as part of the Additions to Reserve process has become the major stumbling block to TLE implementation and a huge point of contention among the parties. Therefore, this report would seem incomplete if I was silent on this complex and contentious topic.

I have read with interest from the October 8, 2013 Summary of Meeting Proceedings of the Senior Advisory Committee wherein the Manitoba Deputy Minister of Aboriginal and Northern Affairs “reiterated that he does not think crown consultation should be done on TLE transfers and Manitoba’s opinion is they are satisfying a treaty right and not taking anything away from other groups”. As a result, Manitoba apparently routinely executes Orders-in-Council to transfer the title and/or underlying jurisdiction of selections and acquisitions to Canada without consulting other aboriginal groups.

However, federal policy, which continues to evolve, requires that analysis, and consultation and if necessary accommodation, occur before the exercise of Governor-in-Council or Ministerial discretion to set apart land as reserve.

Although the scope of the federal policy includes the duty to consult other First Nations respecting the Addition to Reserve proposals of Entitlement First Nations, it is obvious that the main challenge to date has been how to deal with the situation respecting Metis rights. The Manitoba Metis Federation has asserted that its members have aboriginal rights throughout the province of Manitoba, and has therefore objected to all Addition to Reserve proposals.

As a result, Canada's first challenge has been to categorize the Addition to Reserve proposals in the hope of concentrating consultation efforts on those site-specific proposals where the analysis concludes that there may be a real risk of infringing Metis rights.

The second challenge will be to determine next steps respecting those specific proposals where consultation efforts confirm that infringement might occur. Specifically, the question will be what accommodation options, if any, exist? Engagement efforts have not yet reached the point of dealing with this second challenge.

I note that the "Metis Laws of the Harvest Revised 3rd Edition – Guide to Metis Hunting, Fishing, Trapping and Gathering" is available on the website of the Manitoba Metis Federation (see http://www.mmf.mb.ca/docs/Metis-Laws-of-the-Harvest_FINAL.pdf), and that it advises Metis Harvesters to "ensure that you are following the Metis Laws of the Harvest Revised 3rd Edition" (Step 2 on Page 19). Therefore, this Guide would appear to be the Manitoba Metis Federation's current definitive view of Metis harvesting rights in Manitoba.

That Guide advises Metis Harvesters to "hunt on privately owned land only if you have permission by owner or occupant" (Point 7 on Page 21). My understanding is that the difference between permission-based access and rights-based access is that there exists no duty to consult with respect to permission-based access. However, it is recognized that the situation is different on Crown land, and that rights may exist.

In the *Delgamuukw* case, the Supreme Court of Canada states that:

"In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably (paragraph 186)."

The dilemma for Canada is the interface between the Honour of the Crown duty of diligent implementation of the treaty-related obligations articulated in the Framework Agreement, and its duty to consult and if necessary accommodate other aboriginal groups respecting these implementation efforts. This dilemma has no obvious or easy answer; however, it is clearly not the same situation, and is perhaps the antithesis, of how the Supreme Court found Canada acted in, for example, the *Mikisew Cree First Nation* case. The Supreme Court's message in that case is instructive:

"...the honour of the Crown infuses every treaty and the performance of every treaty obligation (paragraph 57) ... and if the respective obligations are clear the parties should get on with performance (paragraph 63)."

The IMC, and the Parties, must deal with this topic over the coming months, in hope of finding some way to break the log jam and "get on with performance".

b) *Options for Dealing with Third Party Interests*

Part III of the Framework Agreement is dedicated to the resolution of Third Party Interests on or in the land selections and acquisitions so that the Additions to Reserve process can be completed. Specifically, Article 10.01(2) states that:

"Third Party Interests which affect any land which is otherwise eligible to be set apart as Reserve in accordance with the Principles must be resolved to the satisfaction of

Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the holder of the Third Party Interest prior to:

- (a) the transfer by Manitoba to Canada of administration and control of Crown Land or any interest in the Crown Land; or*
- (b) the Entitlement First Nation or a Person on behalf of the Entitlement First Nation providing to Canada a registerable transfer of title to the Other Land.”*

It would appear that during the negotiations of the Framework Agreement, the Parties expended considerable thought and energy to provide a slate of options, and to also include additional details on how various specific Third Party Interests should be addressed. That general slate of options is detailed in Article 10.02 and includes purchase, cancellation, continuation until expiration and conversion to interests under the *Indian Act* or any other applicable federal legislation. What I find of particular interest is the final general option:

“(h) in any other way which Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the Third Party may agree.”

It appears that this option has not been fully explored. Instead, the parties typically struggle with what appears to be the preferred option: to convert existing interests to instruments under the *Indian Act*. The problem with this is that third parties are often reluctant to engage as it cost them time and money. Furthermore, the third parties assume the real and/or perceived risk involved in acquiring a replacement interest based on a land regime that, with only few exceptions, was last amended in 1951 to provide the authorities needed by Indian Agents to manage reserve lands. That world no longer exists on so many levels, and the continued use of these authorities often resembles an exercise in trying to drive a square peg into a round hole.

In addition, it is noteworthy that Article 8.03 of the Framework Agreement states that:

“The Minister of Indian Affairs and Northern Development will recommend legislation or other measures to provide that Reserves to be established in accordance with this Agreement may be set apart for an Entitlement First Nation by order, declaration or other instrument made or issued by the by the Minister.”

Furthermore, Article 10.02(3) of the Framework Agreement states that:

“The Minister of Indian Affairs and Northern Development will recommend legislation to the Parliament of Canada to enable the Members of an Entitlement First Nation to “designate” within the meaning of the Indian Act land Selected or Acquired by an Entitlement First Nation prior to that land being set apart as Reserve for the purposes of authoring Canada to issue a Replacement Interest.”

In October 2000, Canada fulfilled these two commitments through the promulgation of the *Manitoba Claim Settlements Implementation Act* (S.C. 2000, c.33). In addition to providing the Minister with the authority to set apart land as reserve through Ministerial Order, and thus decrease the processing burden involved in doing so through Order-in-Council, that Act also includes measures to help deal with Third Party Interests, including the authority for pre-reserve designation in support of economic development. This allows for business interests attached to proposed reserve lands to continue to function without any of the additional risks typically imposed through the transition as the lands are set apart as reserve. It also facilitates the pursuit of new economic development activity by Entitlement First Nations during the Additions to Reserve process, instead of having to wait until after the land has been set apart as reserve.

Additionally, it would appear that the Act supports the “in any other way” option of dealing with Third Party Interests. Section 11(1) of that Act states that:

“The Minister may, in accordance with an agreement to which this Part applies, set apart as a reserve any lands the title to which is vested in Her Majesty in right of Canada.”

The Framework Agreement is listed directly in Section 9(a) of the Act as “an agreement to which” the Act applies. However, it is Section 11(2) that supports any flexibility that may exist in the Framework Agreement, and would appear to provide for an additional option of dealing with Third Party Interests:

“Lands set apart as a reserve under this section are subject to any right or interest of a third party in the lands or in its mines or minerals if (a) the agreement contemplates the continuation of rights or interests of that kind, and any requirement of the agreement with respect to the continuation of the right or interest has been satisfied.”

Therefore, if the parties agree “in any other way”, it would appear that the authority exists for the reserve to be set apart subject to that agreement. Furthermore, it may not be necessary to resolve some Third Party Interests, as the option exists to set apart the reserve “subject to” those existing interests if the parties can agree. In situations where this option could work, much time and effort would be saved.

To conclude my thoughts on this topic, it is recommended that the Parties seriously investigate the “in any other way” option, in particular in situations where solutions based on best practices have not been possible to achieve within the confines of the *Indian Act*. Specifically, I believe that the longstanding issues of Hydro Easements and Surface Rights Access, which together impact almost 90,000 acres of selected or acquired lands, could benefit from such an approach.

c) Use of the First Nations Gazette

I have observed over the years various challenges that First Nation Chiefs and Councils face in their dealings with other parties, including municipal governments, because of the lack of recognition from these other parties that Chiefs and Councils are acting as governments. It would seem to me that this lack of recognition could be mitigated or at least attenuated somewhat through the standardized use of formal governance institutions in situations where those exist.

One such situation relates to the First Nations Gazette (see <http://www.fng.ca>). The First Nations Tax Commission is mandated pursuant to s.34(2) of the *First Nations Fiscal Management Act*, to publish the First Nations Gazette. The mandate of the First Nations Gazette is “to provide public notice of First Nation laws, by-laws, land codes, and other First Nation legislation, and to otherwise serve as the authoritative reference for First Nation law in Canada”.

Part One of the Gazette is explicitly for “Notices”, as divided into three categories:

1. Notices and announcements by First Nation governments;
2. Notices and announcements by other governments;
3. Notices and announcements by corporations, law firms and other persons respecting Aboriginal matters.

The definition of “notices relating to lands” includes “treaty land entitlement, land management and additions to reserve “.

In addition, it is noteworthy that the First Nations Tax Commission undertook research which compared Municipal Boundary Expansion (MBE) to Additions to Reserve (see http://fntc.ca/index.php/research-publications/research/doc_download/3-comparing-municipal-boundary-expansion-to-additions-to-reserve) and concludes that "if Additions to Reserve could be made more like MBE, a great number of problems could be resolved and some of the economic development potential of Additions to Reserve could be delivered." Although the linked pamphlet is not dated, I am aware that it predates the expanded and enhanced scope of the First Nations Gazette, and therefore does not incorporate how the First Nations Gazette in its current enhanced form could further facilitate Additions to Reserve.

In my view, a best practice and one way of making Additions to Reserve more like MBE would be for an Entitlement First Nation to post notice in the First Nations Gazette of its Treaty Land Entitlement selections and acquisitions, and its intention to request the federal Minister of Aboriginal Affairs to set apart these lands as reserve. This could support First Nation consultation and negotiation efforts with municipal governments and third party interests, as well as help inform its citizens of the land selection and acquisition plans, and could also assist in the implementation of the Crown's duty to consult. If the Ministerial Orders setting apart the lands as reserve are also posted at the successful conclusion of an Addition to Reserve, then the First Nations Gazette could become the definitive source of all land-related information respecting Treaty Land Entitlement implementation through the Additions to Reserve process; a one-stop information source formatted in a manner that supports the credibility of Chief and Council acting as the First Nation government.

To conclude this recommendation, I want to emphasize that, since April 2014, the First Nations Gazette is available on-line only and is free of charge for both types of users: those posting Notices (etc.), and those viewing that posted information. It is disturbing to me that this existing governance institution is not being used to anywhere near its potential capacity, with all of the various benefits that could accrue.

d) Lessons Learned

In 1992, the Saskatchewan TLE Framework Agreement (SFA) was signed by Canada, Saskatchewan and the Federation of Saskatchewan Indian Nations, and has subsequently been used as the basis for all 36 TLE settlements to date in Saskatchewan. In 1997, Canada, Manitoba and the Manitoba TLE Committee Inc. signed the Manitoba TLE Framework Agreement (MFA). Generally, the Saskatchewan experience has been viewed as a success story whereas the Manitoba situation has been subject to criticism including from the Auditor General of Canada in 2005 and 2009.

Although the approach taken was roughly the same in the two instances, there are many key differences between the SFA and MFA which may have greatly impacted the ease of implementation of the Additions to Reserve provisions. Several examples appear in Chart 3. Unfortunately, the Auditor General did not acknowledge these differences nor appear to factor them into the analysis. However, further analysis of these differences could be useful in the development of best practices to be applied in future settlement agreements, and in potentially helping the MFA parties deal with various implementation challenges and disputes.

Chart 3: Comparison of Saskatchewan and Manitoba TLE Framework Agreements

Saskatchewan FA 1992	Manitoba FA 1997
EFNs to acquire 1,948,442 acres by way of purchase only (for both fee simple and Crown Land)	EFNs to select 985,949 acres of Crown Land, with 6 EFNs eligible to purchase 114,677 acres
Settlement total of \$446,404,164 for 26 EFNs	Settlement total of \$76,000,000 (plus Crown Land) for 21 EFNs
Purchased lands typically already surveyed	Manitoba Crown Lands not typically pre-surveyed
Replacement interests for public utilities negotiated by the parties and annexed to the SFA	No similar provisions
SFA addresses issue of taxation of public utilities	No similar provisions
SFA contemplates approval-in-principle under the ATR Policy before the EFN acquires the land	No similar provisions
SFA establishes a rural municipal compensation fund to address the tax loss of Rural Municipalities	No similar provisions
Municipal tax loss compensation set at 22.5 times annual levies, cost shared by Canada and Saskatchewan on 70/30 basis	No similar provisions

7.0 CONCLUSIONS

I would like to thank the Senior Advisory Committee, and my employer AANDC, for the opportunity of serving as the IMC Interim Chairperson from July 9, 2014 to December 31, 2014. Whereas I have produced this report without having had any first-hand experience with the IMC during the 2013-2014 fiscal year, I have relied extensively on the input from a number of people who were involved during that time. These include past and present IMC members, as well as TLEC staff. Of particular note were the contributions of Laren Bill, Chris Henderson, Merrell-Ann Phare and Glenda Myran of TLEC, and Winona Embuldeniya and Diana Watson of AANDC.

In addition, I would like to thank the current members of IMC for their positive contributions during my tenure as Interim Chairperson. Given the commitment and hard work that I have witnessed from the parties during my brief tenure, coupled with my confidence that solutions to some of the longstanding issues can soon be found, I will conclude by saying that despite the difficulties encountered throughout the 17 year history of the Framework Agreement, and the recent difficulties in setting apart land as reserve, I am convinced that better days lie ahead and that tangible results will accrue.



Martin Egan
IMC Chairperson
31 December 2014

‘ANNEX A’

2013-2014 IMC Annual Work Plan

The MFA provisions guide the IMC Work Plan, including; MFA 34.07 the IMC shall be generally responsible for facilitating implementation of the MFA and any TEA, including; establishing a budget in each fiscal year, monitoring the progress of implementation, making recommendations for resolution of an I/M in dispute on implementation of the MFA or a TEA, resolving any I/M to implementing the MFA or a TEA on Referrals to the IMC and considering an appropriate method of dispute resolution of an I/M to implementation of the MFA or a TEA in accordance with the MFA in Article 35.

In the MFA Article 34.06, Except in matters requiring the direction of the Chairperson provisions, IMC will operate with and by the consensus of all members.

In the MFA Article 31, The Parties undertake and agree they will, in good faith use their best efforts to fulfill the terms of the MFA including assignment of appropriate personnel to fully and effectively discharge obligations under the MFA and TEA undertakings, and in connection to the MFA in Article 32 to EFN's implementation responsibilities and best efforts.

WORK PLAN RESPONSIBILITY # 1.0: RESOLVING OR REFERRING DISPUTES							
IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.1	TLEC 2007-TLEC-002 [Hydro Easements] Referral Date: August 2, 2007 (2 separate letters dated August 2, 2007 addressing each issue)	TLEC Disagrees that: Manitoba should retain constitutional jurisdiction ("Administration and Control") over part of the reserve lands (Easement lands);{and seeks affirmation} the H/E rights will be contractually granted by Federal instrument with the Federal Crown retaining constitutional jurisdiction over the whole of reserve lands. TLEC Asserts: A reference in the (H/E) agreement should {state} how to the rights of EFNs in respect of their reserve lands and the inundation of those lands are to be reconciled; and. set out a process for the EFNS constitutionally recognized and affirmed rights.	Parties discuss options for resolution.	Chairperson Parties IMC	1 st Quarter	Discussions between Parties identified/confirmed issues and proposed means of resolution. IMC to review and determine status of referral and ongoing role if Parties reengage on this matter in concurrent TLE process.	No consensus at JWG-HE meetings noted in July 15, 2011 Report. January 13, 2012: TLEC confirmed EFN issues with draft H/E document and proposed options. Parties commenced meetings on draft document in July 2012, and TLEC co-presented alternated Draft H/E Agreement on Oct. 19, 2012 with BON, other four affected FNs attended, and MB Hydro as observer. Draft H/E review Meeting on "without prejudice" basis held March 1, 2013 of Parties and MB Hydro as observer.
		Decision by Parties on if consensus can be reached on a means to move forward.	Parties	3 rd Quarter	Consensus reached on Issue/Matter in dispute		
		If no consensus reached, IMC to proceed in accordance with the IMC MFA, Policies and Procedures Manual.	Chairperson	3 rd Quarter	Finalization of the Referral in the Form of the Protocol Document. Confirm if consensus reached. If no consensus by IMC, refer to SAC.		
		IMC to facilitate implementation of SAC decision, which could be arbitration.	SAC	3 rd /4 th Quarter	Decision by SAC or if no decision reached, identification by SAC of a specific dispute resolution mechanism to be engaged.		
		Administration of the specific Dispute Resolution Mechanism.	Chairperson	4 th Quarter	Management of specific Dispute Resolution Mechanism		

IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.2	<u>BARREN LANDS</u> 2004-BLFN-002 (Lands in Severalty) Referral Date: May 5, 2004 BLFN June 14, 2004 TLEC Referred to Binding Arbitration in 2005 <u>Binding Arbitration 'on hold' since Feb. 2006</u>	Barren Lands First Nation alleges Canada materially failed to comply with a fundamental term or condition of the in accordance with MFA 9.01(1) in that Canada failed to enter into a discussion with BLFN members pursuant to MFA 9.01(4) and 9.02.	BLFN to provide written reply to IMC inquiries specific to its views on the LIS issue and their plans for this referral.	BLFN	2 nd Quarter	BLFN provides written response	Feb. 2006: TLEC placed Arbitration 'on hold' on Canada's commitment to hold community meetings. TOR revised Apr. 2006 to focus on a "representative case study of the issue focusing on an individual member" on question of availability of the option to elect LIS; BLFN, Parties, Chairperson met July 20, 2010; Chairperson discussed issue with the Chief on Sept/11 and was advised the Reindeer Lake Regulation is BLFN priority; CP met with BLFN in Oct. 2011 and spoke to BLFN legal counsel on status of Arbitration on Feb.27/12; TLEC inquired to BLFN in April 2013 to update and advised other competing political priorities to be addressed.
			Reengagement of the Parties to discuss; status and Binding Arbitration proceeding or other MFA forms of dispute, and next steps	Canada/ BLFN Parties Chairperson	3 rd Quarter	Advance I/M towards resolution	
			IMC proceeds to binding arbitration in accordance with the MFA 36.01 and the IMC Policies and Procedures Manual and informs the Barren Lands First Nation.	Chairperson IMC	3 rd Quarter	Notice to inform BLFN, and Canada, referral proceeding to Binding Arbitration and option to withdraw	
			Administration of Binding Arbitration mechanism	Chairperson	4 th Quarter	Monitoring of Binding Arbitration process	

1.3	<u>MANITOBA</u> 2006-Manitoba-005 [related to maintaining an interest in portages] Referral Date: March 22, 2006 pursuant to MFA 36.01(2)	Manitoba disputes the material failure allegation put forward by Bunibonibee Cree Nation on Feb. 27/06 and TLEC Feb. 28/06 regarding the parcel selection at Trout Falls and Wanipapis Portage, whereby the letters allege that Manitoba materially failed to comply with MFA 7.01 (2).	IMC to make determination.	IMC	1 st Quarter	Decision reached by IMC	Chairperson advised TLEC and BCN by letter of Sept. 1/10 that given history of file, matter to now proceed to binding arbitration, and on MFA steps and information required from BCN that needs to be provided. Chairperson met with BCN to discuss referral and options on Aug.8/11 and with BCN Chief and Council Oct. 20/11 where BCN indicated it would await outcome of 2007-TLEC-005 Referral. Chairperson's March 30/13 letters sought BCN's "confirmation of intentions" and informed BCN of 2007-TLEC-005 proceeding to Binding Arbitration. No further information is received on BCN's intentions
			IMC proceeds to binding arbitration in accordance with the MFA 36.01 and the IMC Policies and Procedures Manual ; and informs Bunibonibee First Nation	IMC	2 nd Quarter	Notice to inform BLFN and Manitoba, referral proceeding to Binding Arbitration. Reference for Binding Arbitration determined	
			Administration of Binding Arbitration mechanism	Chairperson	3 rd / 4 th Quarter	Monitoring of Binding Arbitration process	

IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.4	<u>TLEC</u> 2007-TLEC-005 [Crown Reservation – Portages] BINDING ARBITRATION: March 22, 2013 Referral Date: July 18, 2007 (formerly 2006-BCN/TLEC-003)	TLEC asserted; a 'Portage' is defined as a "Crown Reservation" under MFA 1.01.(21) and transferrable to Canada MFA 7.01(2) and disputed Manitoba's view of a portage as a "reasonable competing consideration" for "public access" to portage areas, that makes BCN selection of Trout Falls and Wanipanipanis Portage ineligible.	IMC to proceed in accordance with the MFA and IMC Policies and Procedures Manual. MFA Reference for Binding Arbitration developed Identification of Adjudicator	Chairperson IMC Parties	1 st Quarter	Reference for Binding Arbitration determined. Recruitment and Selection of Adjudicator.	Referral Protocol to SAC on February 8, 2012. SAC meetings of May 16, 2012 and June 20, 2012 with No Consensus reached, referred I/M back to IMC pursuant to MFA 34.10 (7)(b) with SAC letters received to IMC MFA 34.10 (6)(a)(b). March 22, 2013: IMC referred matter to Binding Arbitration in accordance with MFA 34.06, 34.10 (7) (b), 35.01 and 35.02
			Arbitration Proceeds – Referral Materials are provided	Chairperson IMC	3 rd Quarter	Management of specific Dispute Resolution Mechanism Adjudicator is provided with Referral Materials.	
			Administration of Binding Arbitration mechanism		4 th Quarter	Monitoring of Binding Arbitration process	

1.5	<u>BUFFALO POINT</u> 1999-BPFN-001 [Selection within a Provincial Park] Referral Date: June 23, 1999	Buffalo Point First Nation disputes; Manitoba's assertion that selection in Birch Point Provincial Park is ineligible in its interpretation of MFA 3.03 (6) which states that an "EFN may not generally Select land in a provincial park".	Review of the Referral Protocol responses provided by the Parties	Parties / IMC	1 st Quarter	Parties and BPFN have written reply to Referral Protocol.	Referral Protocol circulated to the Parties on June 29, 2012 for review and feedback was to be received from all the Parties and BPFN.
			Meeting to discuss submitted comments and determine if a consensus can be reached	Parties / IMC	1 st Quarter	Consensus on the Referral Protocol or decision to advance the Referral to SAC	
			If no consensus reached, IMC to proceed in accordance with the IMC Policies and Procedures Manual	Chairperson	2 nd Quarter	Referral made to SAC.	
			IMC to facilitate implementation of SAC decision.	SAC	3 rd Quarter	Decision by SAC or if no decision reached, identification by SAC of a specific dispute resolution mechanism to be engaged. Inform NCN of SAC decision.	
			Administration of the specific Dispute Resolution Mechanism.	Chairperson	4 th Quarter	Management of specific Dispute Resolution Mechanism	

IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.6	NISICAWAYASIIK 1999-NCN-003 [Date of Execution TEA] Referral Date: August 25, 1999	NCN disputed; Canada's interpretation of "Date of Execution" of NCN TEA, as being "September 1, 1998" and being in accordance with MFA 30.03 "TEA for an EFN comes into force on the date executed by the parties and EFN"	Chairperson seeking discussion with NCN Chief and Council or NCN delegated representative on the draft Referral Protocol in proceeding to SAC to proposed interpretation and resolution	Chairperson	1 st Quarter	Update of NCN's views on the next steps and Referral Protocol to SAC.	NCN and Manitoba signed July 30, 1998 and Canada signed September 1, 1998 Canada provided its position on May 5, 2011. Chairperson wrote on Sept. 21/11 and March 29/12 to NCN Chief and Council for a meeting on status of referral protocol and discussed next steps, followed by phone calls. And further on March 20, 2013 Chairperson met NCN representative who advised the request to NCN meeting will be conveyed. Follow up calls made to NCN. No response and no meeting confirmed at year end 2012-2013. Due to the substantial period of time the Referral has not received further information from NCN Chief and Council (last discussion being prior to 2011) the IMC referred the matter to the SAC January 31, 2013.
			IMC to facilitate implementation of SAC decision.	SAC	3rd Quarter	Decision by SAC, or if no decision reached, identification by SAC of a specific dispute resolution mechanism to be engaged. Inform NCN of SAC decision.	
			Administration of the specific Dispute Resolution Mechanism.	Chairperson	4 th Quarter	Management of specific Dispute Resolution Mechanism	

IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.7	<u>BROKENHEAD</u> 2003-BON-001 [Disposal of Surplus Real Property and MFA process] Referral Date: January 22, 2003 Referral placed in abeyance by IMC on January 13, 2011.	Brokenhead Ojibway Nation; Selected; Surplus Federal land - Kapyong "Strategic Disposal" disputes Canada's interpretation of MFA and alleged Canada failed to provide notice to BON.	IMC observes that BON has an interest in the I/M in dispute in the "strategic disposal" The I/M matter in dispute is still in litigation although BON is no longer a party to the court action, the core of the issue is still before the courts.	IMC	1 st Quarter	The IMC supports the Chairperson in seeking independent legal advice. Pursuant to MFA 34.08	In 2002, Canada advised BON that the Kapyong Barracks was designated as a "strategic disposal" to be transferred to the Canada Lands Company for disposal; and that the MFA did not apply to the "strategic disposal process"
			IMC Chairperson to obtain independent legal advice pursuant to MFA 34.08 on whether a continuing court action has an impact on a Referral, to provide clarity to the IMC as to whether IMC has authority to continue, in advance of a court decision, on a Referral where I/M core issue is alive in a litigation	Chairperson	3 rd Quarter	Independent Legal Advice obtained.	In 2008 BON file Notice of Judicial Review to Federal Court and litigation began. At December 16 & 17, 2010 meeting IMC placed Referral in abeyance while matter in litigation. Chairperson by letter advised BON Jan. 31/11. BON legal counsel letter of Sept. 8/11. IMC that BON wishes to pursue IMC dispute resolution process and to meet. BON legal counsel advises IMC that BON discontinued legal proceeding. Chairperson requested BON for facts and documents and carried forward to Feb. 7/12 TLEC provide copies of materials pertaining to the Kapyong Barracks on the referral. Manitoba confirmed its continuing participation. Canada raised concern reconfirmed by April 5, 2012 letter that BON 'abandoned' IMC process and does not support two concurrent processes to I/M. BON contacted Chairperson in June 2012 that internal discussion in place. IMC by consensus agreed to await BON decision meetings of January 31, 2013 and March 22, 2013, that BON decision was still in progress.

IMC File #	Referral File by Priority #	Issue/Matter In Dispute	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
1.8	<u>MANITOBA</u> 2006-Manitoba-001 Referral Date: February 3, 2006	Manitoba disputes the material failure allegation put forth by Bunibonibee Cree Nation on Jan. 13/06 regarding the Knee Lake lodge selection, whereby the letter alleges that Manitoba material failed to comply with MFA 6.02(6) and 6.02(7).	IMC makes a determination.	IMC	1 st Quarter	Decision reached by IMC.	Chairperson advised BCN on January 11, 2011 that referral is to have proceeded to binding arbitration pursuant to MFA 36.01(5) that directs Chairperson to refer the matter to binding arbitration on August 8/11 and on. October 20/11 discussed options in detail. BCN identified concern with lack of funds to pursue binding arbitration and an option to resolving issue to pursue purchase of TPI Lodge owner's interests and, to Whether a collateral interest can be recorded against an existing TPI lease. Chairperson's letter of February 27, 2013 requested information and to meet on BCN's option to purchase TPI holder of Knee Lake Lodge. By year end 2012/13 BCN had not advised IMC if it would address the arbitration process, but BCN did indicate resuming purchase option approach.
			IMC proceeds to binding arbitration in accordance with the MFA 36.01 and the IMC Policies and Procedures Manual ; and informs Bunibonibee First Nation	IMC Chairperson	2 nd Quarter	Notice to inform BCN and Manitoba, referral proceeding to Binding Arbitration. Reference for Binding Arbitration determined	
			Administration of the Binding Arbitration process.	Chairperson	3 rd Quarter 4 th Quarter		

1.9	<u>CANADA/MANITOBA</u> 2012-Canada/Manitoba-001 Referral Date: April 20, 2012 (Acquisition Time Periods)	Canada and Manitoba submitted a joint referral by separate letters April 20, 2012 pursuant to MFA 4.02(3) to address the issue of the EFNs entitled to SCHEDULE B Lands will not have acquired their Other Land Amount within the timeframes set out in MFA 4.01 (b).	IMC examines options to addressing the timeframe issue for Schedule B EFNs – Acquisition Time Periods	IMC	3 rd Quarter	Options identified and reviewed	Schedule "B" EFNs are entitled to acquire Other Land for conversion to reserve. The Chairperson requested each Schedule "B" EFN by letter of June 13, 2012 for their Land Acquisition Plan for the Acquisition Minimums of each EFN's Minimum Entitlement Acres in accordance with MFA 4.02(4). The Schedule "B" EFNs have all provided their proposed plans by letters and requested extensions to the IMC during 2012 to 2013.
			IMC makes a determination	Chairperson	3 rd Quarter	Decision reached by IMC Schedule B EFNs are provided a response to each of their letters and notified of IMC decision	

WORK PLAN RESPONSIBILITY # 2.0: MONITORING MFA IMPLEMENTATION AND TAKING ACTION WHEN APPROPRIATE/NECESSARY TO FACILITATE IMPLEMENTATION OF THE MFA

#	Monitoring Topic	Description	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status	
2.1	<u>TLE STRATEGIC PLANNING:</u> The Parties are engaged in 3 Party TLE Strategic Planning to aid each Party in implementing its responsibilities under the MFA.	Parties to fulfill their Strategic Planning undertakings by due dates to facilitate the success of the TLE Strategic Planning Process.	Chair to participate in TLE Strategic Planning meetings and monitor performance of Parties in completing undertakings and make recommendations to Strategic Planning effectiveness.	IMC	2 nd Quarter Report	Bi-annual Charts are provided to IMC on the performance of the Parties with adopting and implementing the Annual Plan.	Land Transfer Charts brought to IMC in 2005 by TLEC for Parties to work together. The Manitoba OAG 2009 recommendation informed the process. Implemented of the TLE Strategic Pan in 2010. . AANDC Coordinated the Charts in 2010/11 to, 2012/13. At January 2013 IMC meeting requested other MFA parties to take coordinating responsibility	
			TLEC and Manitoba to take coordination lead and determine next steps to TLE Strategic Plan 2012-2013/2013-2014.		4 th Quarter Report			TLEC and MB to determine next steps on Strategic Plan 2012-2013 and 2013/2014
			IMC to monitor if Parties are on track in the development and implementation of the 3 Party TLE Annual Plan.		IMC			2 nd Quarter
			Promote and facilitate the 2014/15 Annual Plan preparation by the Parties during March 2014, ensure it is provided to SAC, and circulated to the EFNS.	IMC	4 th Quarter	2013/2014 TLE Annual Plan developed by the Parties and circulated to SAC and the EFNS		

2.2	<u>TPI RESOLUTION:</u> Third Party Interests (TPI) require resolution before selected land can be converted to reserve.	Numerous unresolved TPIs are hindering the progress of selected/acquired land moving towards reserve status. The Parties are addressing this within and as part of the TLE Strategic Planning process.	The Parties review the list of TPIs and encumbrances affecting parcels and analyze and determine consensual options to resolve issues specific to each parcel and those. TPIs/encumbrances when there is no consensus.	Chairperson Parties	4 th Quarter	Analysis Report	Several EFN priority parcels have third party interests on the parcels, and some do not have milestones. For example, there are no Surveys until the TPI is clarified.
	2.3	<u>EFN PRIORITY PARCELS:</u> Steady advancement of EFN priority parcels towards reserve status.	The Parties are committed to setting and reaching annual milestone targets, as part of the TLE Annual Plan with respect to advancing EFN Priorities through the land transfer process. IMC is to monitor the Parties progress and facilitate the achievement of the milestone targets.	IMC will monitor the achievement of the milestones set by the Parties for EFN Priority parcels within their TLE Annual Plan, and determine if the IMC can assist and facilitate the Parties reaching their common goals.	IMC	3 rd Quarter	

IMC File #	Monitoring Topic	Description	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
2.4	<u>INFORMATION MANAGEMENT:</u> Effective Management and Use of Information	Effective information management systems are in place to track the progress of EFN parcels through the land transfer process.	Monitor the effectiveness of the information being tracked, and if additional information is identified by the Parties, assess and consider recommendations.	Chairperson Parties	Annually	An effective information management system(s) is in use by the Parties to the MFA.	
		Adherence of the information management systems to <u>Land Transfer and Reserve Creation Process Manual</u> process.	Monitor and assess the effective use of the <u>Land Transfer and Reserve Creation Process Manual</u> by all three Parties on an annual basis.	Parties Chairperson	4 th Quarter	Adherence to the LTRCPM process steps by all Parties when tracking progress and communicating with the EFNs.	
2.5	<u>CROWN LAND SELECTIONS:</u> Many EFNs have not completed their Crown Land Selections in order for lands to be converted to reserve.	Ten of 15 Signed EFNs still to complete their Crown Land Selections. (NOTE: IMC extended timeframe for BLFN and NFN in recognition of unresolved severalty matter)	Encourage EFNs with outstanding selection acreage to confirm selections, and assist EFNs at Parcel Review meetings	Parties	Ongoing	100% of Selections confirmed	
			Monitor Progress.	Chairperson	Quarterly	100% of Selections confirmed	
2.6	<u>OUTSTANDING TEAS:</u> There are 6 EFNs without signed TEAs.	IMC Sessions with individual and or group EFN	IMC facilitated Session with individual or Group Session of Unsigned EFNs on TEAs	Chairperson IMC	3rd Quarter	Facilitation Session Planning is held and report in place.	

WORK PLAN RESPONSIBILITY # 3.0: REPORTING

#	Reporting Topic	Focus	Required Actions By IMC	IMC Lead	Timeline	Results By March 31, 2014	Status
3.1	<u>EFFECTIVE IMC OPERATIONS:</u> IMC Meetings are held to address the Work plan Required Actions by IMC and to meeting Timeline in conjunction with each Parties Undertakings arising from IMC Meetings regarding Referrals on issues/matters in dispute, Monitoring topics and Reporting, to facilitate and assist the IMC to discharge its responsibilities	Efficient and effective implementation of the IMC Work Plan. To meet to review progress made on the IMC Work Plan during each quarter,	IMC Meetings to review progress on the Work Plan in conjunction with the Undertakings each quarter, in accordance with the MFA.	Chairperson Parties IMC	Quarterly	Confirmed 2013-2014 IMC Work Plan by March 2014 each year. IMC meets Work Plan Results by set Timelines	
3.2	<u>LAND TRANSFERRED:</u> Land must be transferred to reserve in order for MFA to be fulfilled.	Monitor Three Party Selection and Acquisition Tracking Charts (March 31 and September 30) and report on progress in achieving milestone targets set by 3 Party TLE Annual Plan.	Report on Parties success in achieving Annual Plan milestones.	Chairperson		In Annual Report at year end.	
3.3	<u>FINANCIAL REPORTING:</u>	Effective financial administration within the approved IMC budget and reporting to the Parties on the actual revenues and expenditures of the IMC Office	Produce financial statements of revenues and expenditures on a monthly basis.	Chairperson	Monthly Reports	Acceptable financial reports within approved IMC budget levels produced throughout the fiscal year 2013/2014.	
3.4	<u>ANNUAL UNAUDITED FINANCIAL STATEMENTS</u>	Accountability for IMC Finances	Engage Administrative Services Agreement to include production of Unaudited Financial Statements.	Chairperson	June 30/14	Unaudited Financial Statement by June 30, 2014	
3.5	<u>ANNUAL REPORT:</u>	Annual Report to Parties summarizing MFA implementation, including the recommendations of the IMC and the Chairperson for implementation improvement, and a summary of the Issues/Matters in Dispute resolved and outstanding at year end.	Produce Annual Report	Chairperson	June 30/14	Annual Report produced by June 30, 2014.	

