

FINANCIAL ADMINISTRATION ACT**PART ONE
GENERAL****Title**

1. This Act shall be cited as the *Financial Administration Act*.

Definitions

2. In this Act,

‘approved annual budget’ means the annual budget approved by the First Nations Council as set out in subsection 17(1);

‘consolidated revenue fund’ means the consolidated revenue fund established as set out in section 8;

‘department’ means the Department of Finance established under subsection 6(1), except in section 5 where ‘department’ means all of the departments of the First Nations;

‘director’ means the person hired by the First Nations Council under subsection 6(3) to supervise and manage the activities of the department;

‘fund’ means a fund within the consolidated revenue fund and includes a trust fund, special fund or any other fund called by any other name that is established by the First Nations Council;

‘management committee’ means the committee appointed by the First Nations Council under subsection 5(1);

‘public body’ means

(a) every department, branch, office, program, secretariat or other similar executive agency of the First Nations; and

(b) every board, committee, commission, foundation, corporation or other similar agency established or incorporated as an agent of the First Nations

but does not include

- (a) a corporation of which the controlling share capital is owned by a person other than the First Nations or an agency of the First Nations; or
- (b) a court established by an enactment;

‘public money’ means all money and negotiable instruments received, held or collected by, for or on behalf of the First Nations, including

- (a) revenues of the First Nations, including interest on investments;
- (b) money in funds designated as special funds under this Act or by the First Nations Council;
- (c) money borrowed by the First Nations; and
- (d) money in trust funds;

‘public officer’ means a person who is an employee, casual employee or part-time employee, hired or appointed by the First Nations and includes a person who is a councillor or a person retained under contract to perform services for the First Nations;

‘public property’ means all property, other than public money, that belongs to the First Nations; and

‘trust money’ means

- (a) money held in trust by the First Nations, the First Nations Council or a public officer;
- (b) money held in pension funds maintained by the First Nations;
- (c) money held in a court established by an act;
- (d) money paid to the First Nations as a deposit or as security to ensure the doing of any act or thing; and
- (e) money that is paid to the First Nations, the First Nations Council or a public officer under an agreement or other undertaking or by way of a gift or bequest and that is to be paid to another person specified in the agreement or undertaking or by the donor of the gift or bequest, except for money received as reimbursement for or as a contribution or grant towards expenditures made or to be made by the First Nations,

but does not include trust money in the trust fund known as the Champagne and Aishihik First Nations Trust which was established by deed and came effect on April 1, 1999.

Conflicts and Inconsistencies

3. If there is a conflict between this Act and any other enactment enacted before or after this section comes into force, this Act prevails unless the other enactment

contains an express provision that it, or a relevant provision of it, applies notwithstanding this Act.

Fiscal Year

4. The fiscal year of the First Nations shall be the period from April 1 in one year to March 31 of the following year.

PART TWO ORGANIZATION AND ADMINISTRATION

Management Committee

5. (1) There shall be a committee to be called the management committee which may consist of the Chief and the senior official of each department as appointed by the First Nations Council.

(2) The management committee shall be responsible for the administration of the financial affairs of the First Nation, including matters relating to

- (a) establishing accounting policies and practices for the First Nations, including the form and content of public accounts;
- (b) the management practices of the First Nations;
- (c) the management of public money, public property and investments;
- (d) the management and control of revenue, disbursements and assets of the First Nations;
- (e) the evaluation of programs of the First Nations;
- (f) the management, control and direction of the public service of the First Nations, including classification of positions, establishment of a job evaluation system, review of rates of pay and benefits and discipline of employees of the First Nations; and
- (g) the internal audit of the First Nations.

(3) The First Nations Council may refer or assign any other matters relating to financial administration of the First Nations to the management committee.

(4) The management committee may, to assist in the performance of its powers and duties under this and any other enactment, issue directives which shall be followed by public officers.

Department of Finance

6. (1) The First Nations Council shall establish a department to be called the Department of Finance which shall be responsible for managing and carrying out the financial affairs of the First Nations.

(2) Without limiting the generality of subsection (1), the department is responsible for

- (a) the management and administration of the consolidated revenue fund;
- (b) supervision of the revenues and expenditures of the First Nations;
- (c) all matters relating to the fiscal policy of the First Nations; and
- (d) the direction of the financial affairs of the First Nations that are not assigned by this or any other enactment to management committee or any other person.

(3) The First Nations Council shall hire a director who shall be the senior official within the department.

(4) Subject to any direction provided by the management committee, the director shall

- (a) ensure the proper collection, receipt, recording and disposition of public money and ensure that proper authority exists for disbursement of public money;
- (b) establish the method by which the accounts of the First Nations are to be kept and the method by which any public officer or other person shall account for public money which comes into his or her hands;
- (c) maintain the accounts of the First Nations;
- (d) evaluate the accounting and financial management systems of the First Nations and, as necessary, recommend improvements to the First Nations Council;
- (e) prepare any financial statements and reports required by the First Nations Council, the management committee or other public body; and
- (f) perform other duties assigned to the director by the First Nations Council, the management committee or any other enactment.

(5) Notwithstanding any other enactment, the director shall have access at all times to all departments and branches of the First Nations and to their records and may

- (a) require from any public officer information and explanations necessary for the performance of his or her duties;
- (b) on the direction of the management committee, require from any person who receives or is responsible for public money such information and explanations as may be necessary to enable the director to determine

whether money paid from the consolidated revenue fund has been or is being

- (i) applied for the purpose for which it was authorized to be paid, and
- (ii) paid or dealt with in accordance with this or any other enactment.

Financial statements and public accounts

7. (1) The director shall prepare the financial statements and public accounts for the First Nations for each fiscal year in accordance with the First Nations' accounting policies established by the management committee and shall transmit the statements and accounts to the First Nations Council no later than the 30th day of September next following the end of the fiscal year to which the statements and accounts apply.

(2) The financial statements shall contain

- (a) a statement of the First Nations' accounting policies, as established by the management committee;
- (b) statements of the financial position of the First Nations as of the end of the fiscal year, the revenues and expenditures of the First Nations for that fiscal year and any changes in the financial position of the First Nations in that fiscal year relative to the previous fiscal year;
- (c) statements, prepared in a form directed by the management committee of
 - (i) appropriations for the fiscal year compared to the actual expenditures and the amount unexpended for that fiscal year,
 - (ii) the debt, if any, guaranteed by the First Nations as at the end of that fiscal year,
 - (iii) other accounts and information that are necessary to show the financial position of the First Nations with respect to that fiscal year,
 - (iv) any assets, debts and obligations written off in that fiscal year,
 - (v) any debts and obligations extinguished in that fiscal year; and
 - (vi) any other financial information required by the management committee to be included in the statements.

(3) The public accounts must contain

- (a) the financial statements of the First Nations, as described in subsection (1);
- (b) the report of the auditor appointed by the First Nations Council to review the financial statements; and
- (c) any other information required by the management committee to be included in the accounts.

Appointment of the Auditor

8. The First Nations Council shall appoint an auditor certified as a chartered accountant to audit and report upon the financial statements and public accounts of the First Nations.

**PART THREE
REVENUE****Consolidated Revenue Fund**

9. All public money and revenue over which the First Nations Council has the power of appropriation shall form a fund to be known as the consolidated revenue fund.

Collection and deposit of money

10.(1) The First Nations Council shall establish, in the name of the First Nations, accounts for the deposit of public money with

- (a) any bank or trust company that are members of the Canadian Payments Association; or
- (b) any local cooperative credit society that is a member of a central cooperative society having membership in the Canadian Payments Association.

(2) No person shall open or close an account for the receipt, deposit or transfer of public money or trust money except as authorized by subsection (1).

(3) Every person who collects or receives public money shall pay or give all public money coming into his or her hands to the director or deposit it to the credit of the consolidated revenue fund in an account authorized by the management committee.

(4) The director shall deposit all public money that he or she receives to the credit of the consolidated revenue fund.

(5) Every person who collects or receives public money shall keep a record of the money received in such form and manner as the director directs.

- (6) The First Nations Council may make regulations
- (a) authorizing payment from the consolidated revenue fund of a fee or commission to persons collecting, managing or accounting for public money as remuneration for all services performed; and
 - (b) set the rates or levels of commission and establish the methods by which fees or commissions may be paid.

Trust Fund

- 11.** (1) Trust money shall be paid into and shall be maintained in trust funds established by the director within the consolidated revenue fund.
- (2) The director shall record the amount received in trust and the reason why the money is being held in trust.

Revolving Funds

- 12.**(1) The First Nations Council may, by order, authorize the director to establish revolving funds for specific purposes.
- (2) All revolving funds shall be part of the consolidated revenue fund.
- (3) Any revolving fund shall be specific as to its purpose and shall include a dollar limit that shall not be exceeded without prior approval of the First Nations Council.
- (4) Where a revolving fund has been established as set out in subsection (1), the management committee may issue directives with respect to
- (a) the accounts and records to be kept for the fund;
 - (b) the method of charging and crediting the fund;
 - (c) the method of valuing the inventory of the fund; and
 - (d) any other matter relating to the operation and management of the fund.
- (5) Each revolving fund established shall be reported in the public accounts showing
- (a) the assets and liabilities of the fund; and
 - (b) a summary of transactions of the fund.

Refunds

13. Money received by the First Nations that is mistakenly paid or collected for any purpose that is not fulfilled shall be refunded from the consolidated revenue fund in part or in whole, as the circumstances require.

Write off of assets and uncollectable debts

14.(1) The First Nations Council may direct management committee to

- (a) write off all or part of a debt or an obligation that it considers to be unrealizable or uncollectable; and
- (b) authorize specified persons to write off all or part of a debt or obligation to the First Nations that the authorized person considers to be uncollectable.

(2) The write off of all or part of a debt or obligation under this section does not extinguish the right of the First Nations to collect the amount of the debt or obligation written off.

(3) Every account written off shall be reported in the public accounts for that fiscal year in which the account is written off.

Remissions

15.(1) If the First Nations Council considers it is in the public interest to do so in a case or class of cases where great public inconvenience, great injustice or great hardship to a person has occurred or is likely to occur, the First Nations Council may, by order, authorize the remission of

- (a) any tax, royalty, fee or other sum that is paid or payable to the First Nations and that is imposed or authorized to be imposed by an enactment;
or
- (b) any forfeiture, fine or pecuniary penalty imposed or authorized to be imposed by an enactment, even though all or part of it is payable to another person.

(2) A remission authorized under subsection (1) may be total or partial, conditional or unconditional, and a remission of an item referred to in paragraph (1)(a) may be granted before, during or after the course of any proceeding for the recovery of the money and either before or after any payment of it has been made or has been enforced by process or execution.

(3) If a condition of a remission authorized under subsection (1) is not performed, the authorization of the remission has no effect and proceedings may be initiated or continued as if the remission had not been authorized.

(4) Money required to be paid by the First Nations under this section may be paid out of the consolidated revenue fund.

(5) If an amount of not more than \$1 is owed to the First Nations, the debtor is entitled to a remission under this section.

(6) Every remission, other than those made under subsection (5), shall be reported in the public accounts for the fiscal year in which the remission is made.

Interest on overdue accounts

16.(1) The First Nations Council may make regulations requiring a person who owes or is liable to pay money to the First Nations pay interest on the money at a rate set out in the regulations.

(2) A rate prescribed under subsection (1) may be general or specific and interest is recoverable as a debt due to the First Nations.

(3) Regulations made under this section do not apply to any case where another enactment requires or authorizes the imposition of interest on money owed to the First Nations.

PART FOUR EXPENDITURES

Annual Budgets

17.(1) The First Nations Council shall cause an annual budget to be prepared for each fiscal year and shall, by order, approve for each fiscal year an annual budget containing estimates of revenues and expenditures by department, program and activity and for goods and services to be purchased in that fiscal year.

(2) Throughout the fiscal year, as required, the First Nations Council may cause an amended annual budget to be prepared and may approve the amended annual budget containing estimates of revenues and expenditures by department, program

and activity and for goods and services to be purchased in that fiscal year. If this occurs, the amended annual budget shall be considered the approved annual budget from the time of its approval until the end of the fiscal year to which it applies.

(3) The First Nations shall not approve any current-year liabilities beyond the amount of revenue for the current year and any accumulated revenue surplus of prior years in its approved annual budget.

(4) To assist in the preparation of annual budgets, the management committee may establish a multi-year financial planning system as part of the annual budgeting process.

Payments

18.(1) No payment shall be made at any time from the consolidated revenue fund for any purpose unless the approved annual budget authorizes the payment to be made for that purpose at that time.

(2) Notwithstanding subsection (1), the First Nations Council may, by order

- (a) authorize the payment of money from the consolidated revenue fund that is urgently required for the public good even though this money has not been identified in the approved annual budget; and
- (b) where a payment is authorized as set out in paragraph (a), the First Nations Council shall as soon as practicable, by order, approve an amended annual budget which includes the payment authorized as set out in paragraph (a).

(3) Money must not be paid out of a trust fund except in accordance with the enactment or the trust instrument or other authority by which money is held in trust.

(4) Money received by the First Nations as a deposit or as security to ensure the doing of anything shall be held and payments made from this money as set out in the contract or agreement relating to the money received, but if there is no contract or agreement or if the contract or agreement does not contain any provisions or insufficient provisions describing how money is to be paid, the money shall be paid in accordance with this Act and any directives of the management committee.

(5) All payments made under this section shall be reported in the public accounts for that fiscal year in which the payment was made.

Regulation of expenditures

19. The management committee may, by directive from the First Nations Council at a duly called meeting, control or limit payments from the approved annual budget and in doing so may

- (a) identify programs or projects within the approved annual budget and distribute money amongst these programs and projects;
- (b) transfer money between programs and projects identified in the approved annual budget;
- (c) distribute money among activities within a program or project or authorize a public officer to do so;
- (d) transfer money between activities within a program or project or authorize a public officer to do so; and
- (e) assign responsibility for the control and management of money for a program or project to a public officer.

Contracts

20.(1) The management committee may, by directive from the First Nations Council at a duly called meeting, authorize public officers to enter into contracts subject to such terms and conditions as the management committee considers necessary.

(2) Notwithstanding any other enactment, a contract shall not be entered into and is not enforceable against the First Nations unless entered into by a public officer authorized to do so under subsection (1).

(3) It is a term of every contract that money that becomes due under the contract is not payable unless a provision of this Act, another enactment or the annual approved budget authorizes the payment to be made in the fiscal year in which the payment falls due.

Advances

21. Subject to any directives of the management committee, the regulations and this Act, an advance may be made from the consolidated revenue fund to any person to enable that person to pay expenses that are authorized to be paid by this Act or the annual approved budget.

Record of commitments

22.(1) Every public officer shall keep records of commitments for the expenditures chargeable to the programs and projects for which she or he has been assigned responsibility under paragraph 19(e).

(2) Every person authorized to spend public money shall account for it in the manner provided under this Act or the regulations or as set out in a directive of the management committee.

**PART FIVE
ASSETS**

Power to invest

23.(1) If money in the consolidated revenue fund, other than money in a trust fund, is not immediately required for payments, it may, on terms and conditions approved by the First Nations Council, be invested in one or more of the following

- (a) securities that are obligations of or are guaranteed by Canada or a province;
- (b) fixed deposits, notes, certificates and other short term paper of or guaranteed by a bank, including swapped deposit transactions in the currency of the United States of America; and
- (c) commercial paper issued by a company incorporated under the laws of Canada or of a province, the securities of which are rated in the highest rating category by at least two recognized security rating institutions.

(2) If money in a trust fund is not immediately required for payments, it may, on terms and conditions approved by the First Nations Council, be invested by the person having authority to invest the money as set out in the trust deed or instrument establishing the trust or, if there are no provisions addressing investments in the trust agreement or instrument, the trust money may be invested in any investment permitted under subsection (1) or in any other kind of property, real, personal or mixed, but in doing so, the person authorized to make the investment shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise as a trustee of the property of others.

(3) An investment held under this section may be disposed of, or exchanged or traded for another investment authorized under this section.

(4) Subject to any enactment, if public money from a trust fund or money from a fund designated as a special fund by the First Nations Council is invested, interest earnings or proceeds from an exchange, trade or disposition in respect of the trust fund or the special fund may be paid into the appropriate trust fund or special fund.

(5) Any net income resulting in any fiscal year from the purchase, holding or sale of securities shall be credited to revenues of that fiscal year and any net loss shall be charged to an account within the annual approved budget for that purpose.

(6) The First Nations Council may appoint a person or group of persons to provide advice to them and to the management committee on the exercise of the handling of and other matters relating to investments made under this section.

Loans, advances and equity investments

24. (1) No loan of public money shall be made except as authorized by an order of the First Nations Council.

(2) The power to make loans, advances or direct equity investments from the consolidated revenue fund shall not be exercised except in accordance with the regulations.

Public property

25.(1) No disposition or loan of public property shall be made to any person except as authorized by a directive of the management committee.

(2) Subject to this Act, the management committee may issue directives authorizing and governing

- (a) the acquisition of property by the First Nations;
- (b) the custody and control of public property;
- (c) the disposal of public property; and
- (d) the deletion of public property from the inventory of the First Nations.

Charging for services or use of property

26. Subject to any other enactment, if a service or the use of public property is provided by the First Nations to any person, the management committee may, by

directive, set a fee or charge to be paid by the person to whom the service or the use of the property is provided.

PART SIX LIABILITIES

Authority to borrow

27.(1) No money shall be borrowed or security issued by the First Nation except as authorized by a regulation made under this Act.

(2) No money borrowed by the First Nations shall be used for any purpose other than that stated in the regulation, except that if, on completion of the work for which the money was borrowed, there remains an unexpended balance, the balance shall be used by the First Nations.

PART SEVEN ENFORCEMENT

Failure to account for public money

28.(1) If the First Nations Council has reason to believe that a person

- (a) has received public money for the First Nations and has not duly paid it over to the First Nations;
- (b) has received public money for which the person is accountable to the First Nations and has not duly accounted for it; or
- (c) has in the person's possession public money for a purpose and has not applied the money to that purpose,

the First Nations Council may direct the director to prepare a written notice to the person detailing the amount of money not paid, accounted for or applied and may, by notice, require the person with a reasonable time to be specified in the notice to

- (a) pay the money to the First Nations;
- (b) account for the money; or
- (c) apply it to its purpose and to provide to the director vouchers or receipts indicating that the person has applied the money as was intended.

Statement of account

29.(1) The notice described in section 28 shall be served by delivering it to the person or by mailing it to her or him by registered mail to the last known address of the person.

(2) If a person fails to comply with a notice served on them as set out in subsection (1) within the time stated in the notice, the director shall prepare a statement of account between that person and the First Nations, showing the amount of money not duly paid over, accounted for or applied, and charging interest on the whole or any part of it at a rate and from a date determined by the director.

(3) In a proceeding for the recovery of public money, a copy of the account prepared as set out in subsection (2), when certified by the director, shall be evidence that the amount stated in the account, with interest, is due and payable to the First Nations without proof of the appointment or signature of the director, and the amount and interest, at the rate established under subsection (2) to the date of recovery, may be recovered as a debt due to the First Nations.

Loss through misconduct

30.(1) If public money is lost or is not collected through the misconduct, neglect of duty or negligence of a person responsible for handling public money, the person is liable for the money and it may be recovered from him or her as a debt due to the First Nations.

(2) The First Nations Council may make regulations providing for the recovery from a public officer of the amount of any award or reasonable settlement in respect of damages for death, injury or private property damage as a result of the negligence or willful misconduct of the public officer in the performance of his or her duties or in the operation, care or custody of public property.

Evidence

31. An affidavit deposing to the facts and sworn by a person having knowledge of them shall be admissible in a court as prima facie proof of the facts stated in it in a proceeding for the recovery of public money from a person responsible for the collection, management or disbursement of public money where it appears from the following documents or things that she or he has received money

belonging to the First Nations and has refused or neglected to pay the money to the proper persons at the proper times

- (a) books or accounts kept by him or under his or her control;
- (b) an accounting by him or her; or
- (c) a written acknowledgement or confession by him or her.

Failure to deliver money or documents

32.(1) If a person refuses or neglects to deliver money or an account, statement, return or proper voucher to the public officer to whom the person is required under this or any other enactment to deliver it, the director may direct the person to deliver it within a stated time, not less than fourteen days after the date of service of the direction.

(2) The direction described in subsection (1) shall be served by delivering it to the person or by mailing it to her or him by registered mail to the last known address of the person.

(3) A person who does not comply with a direction under this section commits an offence.

Records respecting public money

33.(1) All records respecting public money that are kept or used by, or received or taken into the possession of a person who is or was responsible for the collection, management or disbursement of public money or the accounting for it, and all money, securities or things of value received or taken into his or her possession by reason of his or her responsibilities for public money, belong to the First Nations.

(2) The First Nations Council may make regulations authorizing the archiving and destruction of any records respecting public money.

(3) Any person who destroys records respecting public money, except as authorized by the regulations, commits an offence.

Recovery of penalties and forfeitures

34. The First Nations Council may sue for and recover on behalf of the First Nations a penalty of enforce a forfeiture imposed by any law relating to public money in any court.

Offence

- 35.** A public officer commits an offence when
- (a) in connection with the performance of his or her duties respecting public money, he or she willfully makes or signs a false entry, certificate, requisition, return or other document; or
 - (b) having knowledge or information of the violation of any enactment that provides for the expenditure or collection of public money or of fraud committed by any person against the First Nations, he or she fails to report such knowledge or information in writing to the director.

Defenses to action for recovery of public money

- 36.** (1) If money is paid to a person by the First Nations
- (a) in excess of the authority conferred in an enactment;
 - (b) without the authority of an enactment; or
 - (c) contrary to an enactment

and a right is asserted by the First Nations to recover the payments or part of it, or to retain other money in full or partial satisfaction of a claim arising out of the payment, the person against whom the right is asserted may, subject to subsection (2), rely on any matter of fact or law, including estoppel, which would constitute a defense in a proceeding brought to recover the payment as if it had been made under a mistake.

(2) Subsection (1) does not enable a person to rely on a defense that a payment made by the government was made under a mistake of law, and the right of the government to recover the money paid by it is not impaired by reason only that the payment was made under a mistake of law.

Penalty

37. A person who commits an offence under this Act is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or both.

Other remedies

38. Nothing in this Act affects or abrogates the right of the First Nations or any other person to institute any civil or criminal proceedings against a person contravening this Act, against the person's sureties or against any other person.

PART EIGHT
MISCELLANEOUS

Regulations

39. In addition to the regulations authorized to be made by any other provision of this Act, the First Nations Council may make regulations for the carrying out of the purposes and provisions of this Act.