

SAGKEENG LAWMAKERS ASSEMBLY

NOTICE OF LAWMAKERS ASSEMBLY

WEDNESDAY, JUNE 27, 2018

10:00 A.M – 4:00 P.M.

SAGKEENG ARENA COMPLEX

AGENDA

- **ELECTION LAW UPDATE**
- **CONSERVATION LAW UPDATE**
 - **HYDRO ACCORD**
 - **PROCESS AGREEMENT – SAGKEENG/MANITOBA HYDRO**
 - **JUDICIAL REVIEW – MANITOBA MINNESOTA TRANSMISSION PROJECT**
 - **CONSULTATION AND ACCOMMODATION PROTOCOL**
- **PROCESS LAW**
 - **DELEGATES COUNCIL REGULATIONS**
- **SAGKEENG JUSTICE LAW**
 - **RESOLUTION TO PROCEED**
 - **REVIEW OF DRAFT SAGKEENG JUSTICE LAW**

SAGKEENG LAWMAKERS ASSEMBLY REPORT TO THE COMMUNITY June 6, 2018

Introduction

In the past the Sagkeeng Lawmakers Assembly has accomplished the following milestones:

- Amended the Process Law
- Worked on and ratified the Election Law
 - Amended the Election Law
- Worked on and ratified the Conservation Law

The following updates will be addressed at the scheduled Lawmakers Assembly to take place on Wednesday, June 27, 2018 at the Sagkeeng Arena Complex.

Election Law Update

On January 13, 2018 the Sagkeeng Lawmakers Assembly ratified the amended Sagkeeng Election Law. On May 24, 2018 the Minister of Indian Affairs signed an order that removed Sagkeeng First Nation from the application of the election provisions of the *Indian Act*.

This means that Sagkeeng has taken an important step in asserting our sovereignty. If we are to be a self governing nation, we must take on the responsibility of selecting our own leadership and making them accountable to the community.

Under the *Indian Act* past Councils were more answerable to the Federal Government than they were to their own people. Under our own Law there will now be means of correcting Councils who are in error. They will now be able to be recalled and removed.

There are many other changes that must be examined together as a community:

- Six council members instead of four
- Four year terms instead of two
- Criminal record checks for candidates
- Selection of Electoral officer by the community
- New nomination procedures

- Strict controls on mail in ballots
- Selection of Appeals Committee

The Lawmakers Assembly will be conducting meetings to completely review the Election Law and all of its provisions. The planning of these meetings will take place at the next Lawmakers Assembly.

Conservation Law Update

The Conservation Law was also ratified on January 13, 2018. The purpose of dealing with this Law as a priority had to do with the need for a Law that would help guide the negotiations with the new Hydro Accord. It also began Sagkeeng's assertion of our Treaty Rights within our ancestral lands and traditional territories. In addition to Manitoba Hydro – Sagkeeng has to deal with Manitoba Conservation, timber and mining companies and any other economic activities that take place within our territories.

At the heart of protecting our rights was the concept of the duty to consult and accommodate.

In recent meetings with the Executive Council the Province of Manitoba has informed Council that the province would be drafting their own Duty to Consult regulations that they then expected to impose on First Nations.

Although the Conservation Law created the framework for how Sagkeeng would now deal with outside parties it became apparent that we would have to expand the protocols for Consultations and Accommodation. This was accomplished by drafting the *Sagkeeng Anicinabe Consultation and Accommodation Protocol* made pursuant to the Conservation Law.

The Delegates Council is currently reviewing these draft protocols and they will be presented to the Sagkeeng Lawmakers Assembly to review and adopt.

Hydro Accord Update

The Sagkeeng Lawmakers Assembly was delegated the responsibility of restarting the negotiations surrounding the Hydro Accord. Manitoba Hydro has attempted to stall these negotiations and it was necessary to apply pressure before they finally

agreed to further the Process Agreement that would drive these negotiations. We now have a signed Agreement that will guide and fund these negotiations. The Executive Council has commissioned studies that will help to provide a foundation for our expectations.

The Process Agreement provides for:

- Community consultation
- Traditional Land Use Study and Impact Assessment
- Environmental/Operational Report
- Legal costs

Copies of the Process Agreement and the study plans will be made available at the next Lawmakers Assembly.

Manitoba Minnesota Transmission Project/Other

While we were involved with the new Hydro negotiations it became apparent that Manitoba Hydro had done little to offer fair compensation for their placing this project within our territories. Our lawyers were instructed to commence a Judicial Review of the project on the grounds that they had failed in their duty to consult and accommodate. They had only offered a token payment to Sagkeeng for our endorsement. This Judicial Review is now before the courts.

Also, as a direct result of our concerns with our own Hydro Accord negotiations, OKT Law made representation to the Public Utilities Board and argued that Manitoba Hydro should not apply increases to hydro rates within all First Nations in Manitoba. The Public Utilities Board agreed. Sagkeeng will not be facing new increases in hydro bills in the near future.

Manitoba Hydro is now appealing this PUB ruling but we have made it known that we are now determined to fight for our rights.

The Sagkeeng Justice Law

Each of the ratified laws will require ongoing interpretation and enforcement. The same will be true of any new laws which are enacted by the community. This is where the establishment of a Judicial Council will be required through the adoption of a new Sagkeeng Justice Law.

Process Law

The Process Law is the law which allows for all of the procedures involved in making new laws. There are also provisions within it that both the Delegates Council and the Chief and Council/Executive Council must follow and adhere to.

In addition to the provisions within the Process Law - the new Delegates Council Regulations that have been developed state that if the Delegates Council do not follow these regulations they may be removed. If the Chief and Council/Executive Council chose to ignore the Process Law or any other Law they may also be removed from office.

These provisions give the power back to the community and help to make all elected representatives more accountable to the community.

The Judicial Council will be responsible.

Election Law

The Election Law is the first Sagkeeng Law that has been formally accepted and recognized by the Federal Government. In doing so the Federal Government also implicitly recognized our Process Law and the Sagkeeng Lawmakers Assembly.

For the first time in the history of Sagkeeng First Nation since the signing of the Treaties the community now has ultimate authority over their elected officials. Under the Indian Act Election Regulations, it was virtually impossible for the community to rid itself of abusive or fraudulent members of Council.

Within this law there are provisions for recall of elected Chief and Council/Executive Council if they breach any sections of this Law or any other Laws.

The Judicial Council will be responsible.

Conservation Law

The Conservation Law identified how outside parties interacted with our community with regards to our traditional territories and ancestral lands and our resources. In the past individuals from the band administration and members of the Chief and Council/ Executive Council took it upon themselves to enter into

meaningless consultation and then enter into agreements without any real consultation or ratification taking place with the community.

The Conservation Law puts an end to this as it pertains to our natural resources and our traditional territories. The community is now firmly in control of what can be accepted by our elected officials and they are ultimately responsible and accountable for what their administration does.

Any breach of this Law is cause for removal.

The Judicial Council will be responsible.

The need for a Judicial Council

The idea of the creation of a Judicial Council Law is not new. In the original Process Law that was adopted in 1997 the need for a Judicial Council was written into that version of the Law.

The Judicial Council must:

- Help in interpretation and enforcement of the Laws
- Provide protections for due process of individuals including during the recall of officials
- Rule on appeal of elections if called upon

The phased approach to the Judicial Council

There were many considerations in the establishment of the Judicial Council. Many of these had to do with jurisdictional issues and the types of cases it should handle. What we are talking about is the establishment of a court system within Sagkeeng.

As a first step it was felt that the emphasis should be on the creation of a Judicial Council whose main focus would be the interpretation and enforcement of our own laws. From here the mandate of the Judicial Council and Sagkeeng's court would expand to take on more duties and responsibilities. Like any of the other Laws the Sagkeeng Justice Law could be amended and expanded to reflect these new realities.

The Judicial Council as a Federal Tribunal

One of the most interesting characteristics of establishing the Judicial Council is the possibility of it becoming recognized by outside courts as a Federal Tribunal. While it would still be possible for the membership to take their disputes into Federal Court for settlement once the Sagkeeng Judicial Council is established the Federal Court would look at its rulings for guidance in making their own decisions.

In addition, there are retired Federal Court judges that have indicated that they may be open to sitting on our Judicial Council thus adding to its relevance and respectability. The remaining members of the Council would be drawn from our own membership in a manner defined in the new Law.

The Sagkeeng Justice Law

A draft *Sagkeeng Justice Law* has been developed as a starting point for discussion. It will be delivered door to door and made available digitally before the next Lawmakers Assembly to be held on June 27, 2018.

Conclusion

When the Sagkeeng Lawmakers Assembly took on the responsibility of creating new Laws that would be based upon our customs and traditions many people did not understand what was being proposed. The most basic foundation of the laws has always been the belief that the members themselves were the ultimate authority on the way we choose to live with one another. The community is taking back its power. This is the most traditional thing of all.

At the same we are serving notice to all outside parties that we will assert our Treaty Rights to our resources and territories.

We are also telling the Federal and Provincial Governments that under the Treaties we remain a sovereign people. We have the right to make our own laws that we as a people will live together with.

We will not allow outside governments to impose outside legislation aimed at the extinguishment of our Treaty Rights. The Indian Act never protected our Treaty Rights. And new outside legislation involving Lands, Membership, Education, Finance, etc. already exists and will still have to be confronted by our people.



MAY 25 2018

4218/262

Votre référence - Your file

Notre référence - Our file

Chief and Council
Sagkeeng First Nation
PO BOX 3
FORT ALEXANDER MB R0E 0P0

Dear Chief and Council:

I am pleased to inform you that the Minister of Indian Affairs and Northern Development signed an order on May 24, 2018, which removes the Sagkeeng First Nation from the application of the election provisions of the *Indian Act*. The order will be registered by the Clerk of the Privy Council in the coming days. A copy of the order is enclosed.

Please note that the name appearing on the order is Fort Alexander, as this is the name that appeared on the *Indian Band Council Elections Order*, from which the First Nation is being withdrawn.

It is also important to note however, that the Chief and Councillors currently in office were elected under the *Indian Act* election system. Thus the vacancy provisions of section 78 of the *Indian Act* continue to apply to them, and the *Indian Band Council Procedure Regulations* continue to apply to meetings of the Council. The community election law begins to apply only at the time at which a first election process launches under this law.

I wish you the best in future elections held under the community election law.

Sincerely,

Marc Boivin
Director
Governance and Implementation Policy Directorate

c.c.: Stephen Traynor, RDG, Manitoba Region
Kevin McKeever, Manager, Estates, Revenues and Band Governance,
Manitoba Region
Corey Shefman, Olthuis, Kleer, Townshend LLP

Encl.

Canada

Whereas, by Order in Council P.C. 1701 of March 25, 1952, it was declared that the council of the Fort Alexander Band (also known as Sagkeeng), in Manitoba; shall be selected by elections to be held in accordance with the *Indian Act*;

Whereas the council of that First Nation adopted a resolution, dated February 28, 2018, requesting that the Minister of Indian Affairs and Northern Development terminate the application of the *Indian Bands Council Elections Order*^a to that council;

Whereas the council of that First Nation has provided to that Minister a proposed community election code that sets out rules regarding the election of the chief and councillors of that First Nation;

And whereas that Minister no longer deems it advisable for the good government of that First Nation that its council be selected by elections held in accordance with the *Indian Act*;

Therefore, the Minister of Indian Affairs and Northern Development, pursuant to subsection 74(1) of the *Indian Act*, makes the annexed *Order Amending the Indian Bands Council Elections Order (Fort Alexander)*.

Gatineau, le 24 Mai 2018

Attendu que, dans le décret C.P. 1701 du 25 mars 1952, il a été déclaré que le conseil de la bande de Fort Alexander (également connue sous le nom de Sagkeeng), au Manitoba, serait constitué au moyen d'élections tenues conformément à la *Loi sur les Indiens*;

Attendu que le conseil de la première nation a adopté une résolution le 28 février 2018 dans laquelle il demande à la ministre des Affaires indiennes et du Nord canadien de le soustraire à l'application de l'*Arrêté sur l'élection du conseil de bandes indiennes*;

Attendu que ce conseil a fourni à la ministre un projet de code électoral communautaire prévoyant des règles sur l'élection du chef et des conseillers de la première nation;

Attendu que la ministre ne juge plus utile à la bonne administration de la première nation que son conseil soit constitué au moyen d'élections tenues conformément à la *Loi sur les Indiens*,

À ces causes, en vertu du paragraphe 74(1) de la *Loi sur les Indiens*, la ministre des Affaires indiennes et du Nord canadien prend l'*Arrêté modifiant l'Arrêté sur l'élection du conseil de bandes indiennes (Fort Alexander)*, ci-après.

Gatineau, le 24 Mai 2018

La ministre des Affaires indiennes et du Nord
canadien,



Carolyn Bennett
Minister of Indian Affairs and Northern
Development

^a R.S., c. I-5

^b SOR/97-138

^a L.R., ch. I-5

^b DORS/97-138

**Order Amending the Indian Bands Council
Elections Order (Fort Alexander)**

**Arrêté modifiant l'Arrêté sur l'élection du
conseil de bandes indiennes (Fort Alexan-
der)**

Amendment

1 Item 11 of Part IV of Schedule I to the *Indian Bands Council Elections Order*¹ is repealed.

Modification

1 L'article 11 de la partie IV de l'annexe I de l'*Arrêté sur l'élection du conseil de bandes indiennes*¹ est abrogé.

Coming into Force

2 This Order comes into force on the day on which it is registered.

Entrée en vigueur

2 Le présent arrêté entre en vigueur à la date de son enregistrement.

¹ SOR/97-138

¹ DORS/97-138