



A proposal to review and modernize the Indian Referendum Regulations

   **11th National Land Managers
Gathering**
September 13, 2018





Purpose

- Introduce a proposal to launch a review of the *Indian Referendum Regulations*.
- Highlight potential for updating the *Regulations*, including modernising voting tools and procedures and building in options modelled on other voting processes.
- Suggest potential next steps for a First Nations-led process of reviewing the *Regulations* and proposing modifications.



What are the *Indian Referendum Regulations*?

- The *Indian Referendum Regulations* (IRR) are regulations made pursuant to the *Indian Act* that govern referenda on the designation or surrender of reserve land.
- The IRR set out a detailed process for :
 - Preparing for the vote
 - Conducting the vote
 - Counting and communicating the results
 - Conducting a review; as well as
 - Defining the roles of the electoral and deputy electoral officers
- The IRR govern only the procedure for conducting a referendum and *do not* govern legislatively prescribed approval thresholds, entitlement to vote, and circumstances in which a vote must be held. These are all prescribed in the *Indian Act* itself.



Past Amendments to the *Indian Referendum Regulations*

- In response to the ruling of the Supreme Court of Canada in *Corbiere v. Canada* (1999) in 2000, amendments were made to provide off-reserve members with a mechanism to participate in the process through mail-in ballots.
- In 2013, amendments were made to the land designation sections of the *Indian Act*, and minor amendments were made to the IRR to reflect these changes.
 - Lowered the voting threshold for designations to a simple majority from a majority-of-a-majority, rendering a second vote unnecessary;
 - Changed the responsibility for approving designations to the Minister from the Governor in Council; and,
 - Provided that a band council resolution must either accept or decline the results of the community vote.



Why Review the *Indian Referendum Regulations*?

- The Government of Canada looks for opportunities to work in partnership with First Nations to modernize legislation, policies and practices so that they can become useful tools for First Nations to reach their goals and objectives.
- The IRR were last substantially amended in 2000, in response to the 1999 Supreme Court Corbiere decision. Since that time, significant advances have been made in both technological and institutional development, with First Nations often on the leading edge.
- In addition to being used for land designation and surrender, the IRR are also used as a model and reference for other community ratification processes.
- An efficient, open and transparent community decision making process is key to economic self-determination and economic development.



What Issues Could a Review Address?

The Regulations are highly prescriptive and do not provide options that would enable First Nations to adapt them to suit community needs, including introducing innovative tools and methods.

- Methods for voting are limited to a physical polling station and mail-in ballots. No provisions for introducing alternative voting methods or even advance polls that would improve access to the vote.
- Information must be mailed-out to all off-reserve electors, which is expensive and ineffective. No provisions for alternative methods of informing voters.
- The review procedure is administered by the Department and decided by the Minister. No provisions for appeals to be considered by an alternative institution or process.
- The Electoral Officer must be an officer of the Department and is solely responsible for most elements of the process. No provisions for a First Nations Electoral Officer to be appointed, or for the Deputy to take on additional tasks.

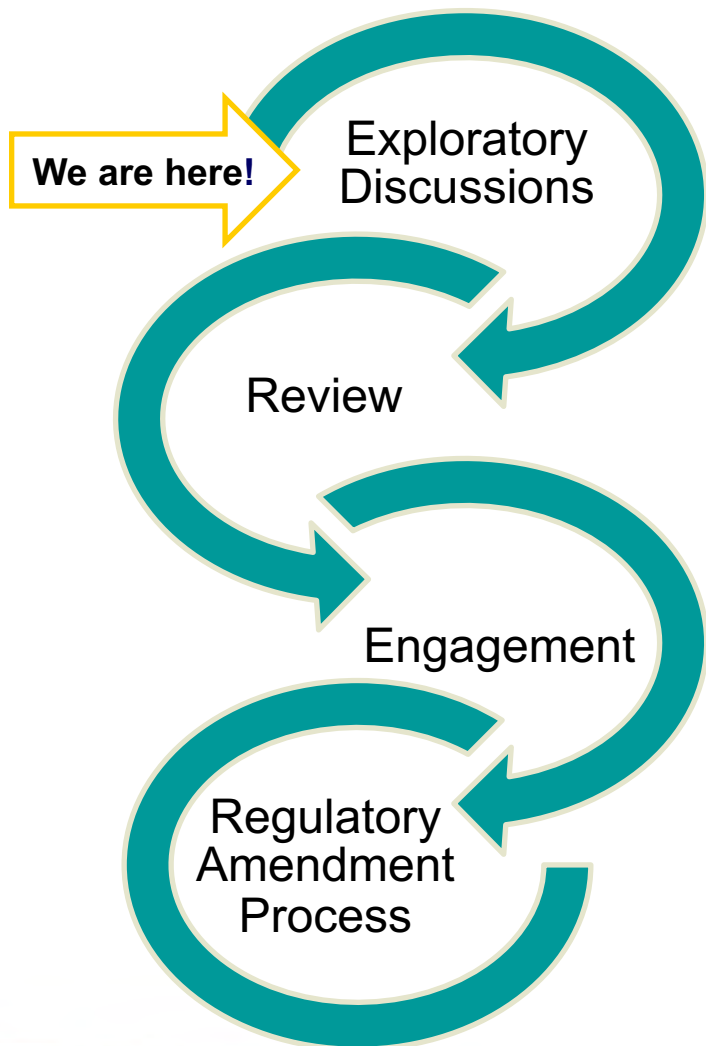


What Could Potential Modifications Look Like?

- **Greater First Nation role in vote administration**
 - Option to choose to appoint a First Nations Electoral Officer
 - Option for tasks to be delegated to the Deputy Electoral Officer
- **Increasing options for informing voters**
 - Option for voters to choose to receive information by email or post.
- **Improving access to the vote**
 - Option to choose to use additional vote methods, including online, telephone, advance and mobile polls.
- **Reconsidering the review process**
 - Option to choose alternative review procedure.
- **Other**
 - Further proposals for modernising the IRR will likely emerge during engagement with First Nations.



Proposed Next Steps



- Outreach to stakeholders to clarify interest and set agenda (2018)
- Roundtables led by First Nations experts to review the IRR and propose options for modernising them (2018-2019)
- Engagement with First Nations and other stakeholders on the co-developed options (2019)
- Government of Canada Regulatory Amendment process (2019-2020)



Questions or Comments