

TRANSITIONING TO A COMMUNITY EDUCATION AUTHORITY (OR NOT)

One of the most interesting innovations in the Canada-First Nation Education Jurisdiction Agreement (Jurisdiction Agreement) is that a Participating First Nation may, if it chooses to, establish a separate legal entity as its Community Education Authority (CEA) under the sole authority of the First Nation's own education law.

The Jurisdiction Agreement states as follows:

3.1 ... the Participating First Nation may make laws establishing a Community Education Authority to operate, administer and manage the Education system for the Participating First Nation and setting out the powers, duties, composition and membership of the Community Education Authority.

3.4 Where the Participating First Nation establishes a Community Education Authority under paragraph 3.1, the Community Education Authority will have the capacity, rights, powers, and privileges of a natural person conferred on it by the First Nation Education Law and will perform the duties and be subject to the liabilities imposed on it by the First Nation Education Law.

3.6 As an alternative to establishing a Community Education Authority under paragraphs 3.1 to 3.5, the Participating First Nation may identify an existing or newly-established legal entity established under federal or provincial law as its Community Education Authority for the purposes of this Agreement. The Participating First Nation may confer additional rights, powers and privileges and impose restrictions on the legal entity that are not inconsistent with the federal or provincial law under which the legal entity was established.

It is important for each Engaged First Nation to consider which of the following pathways it wishes to follow in order implement jurisdiction over education in its community.

Option #1 – Creating new CEA (School currently operated by First Nation)

1. Decide if your First Nation wants to establish a CEA.
2. If yes, determine whether you want to establish a CEA: (a) under the sole authority of your First Nation's education law, or (b) as a society under the *Societies Act*.¹
3. If you want to establish a CEA under the sole authority of your law, that law will have to establish the CEA as a legal entity, and set out the powers, duties, composition and membership of the CEA, etc.
4. If you want to establish a CEA under the *Societies Act*, your First Nation's education law will have to describe the role of the CEA in a manner that is consistent with the *Societies Act* and the society's constitution and bylaws. Under this option, you will need to identify the new society as your CEA in accordance with paragraph 3.6 of the Jurisdiction Agreement.

¹ All of the discussion regarding "societies" under the "*Societies Act*" would apply equally in the case of a "not-for-profit corporation" under the "*Canada Not-for-profit Corporations Act*."

Option #2 – Creating new CEA (School currently operated by existing society)

1. Decide if your First Nation wants to replace your existing society established under the *Societies Act* with a CEA established under the sole authority of your First Nation Education Law.
 - An important consideration in making this decision is whether your existing society has been recognized as having “charitable status” by the Canada Revenue Agency and is benefitting from this status. You can apply for charitable status for your newly established CEA (noting that this may be challenging, since it will be the first legal entity of its kind to make such an application). You should consider delaying any formal transition to the new CEA, until it has obtained charitable status.
2. Your First Nation’s education law will have to establish the CEA as a legal entity, set out the process for appointing directors of the CEA, the powers and duties of the CEA, etc.
3. Once the new legal entity has been established, steps will have to be taken to transfer employees, obligations and assets from the existing society to the new CEA.
4. Once the transfer of assets and obligations is complete, the existing society should be dissolved (unless it is being used for a different purpose).

Option #3 – School currently operated by existing society (leaving it “as is” for time being)

1. Need to identify your existing society as the CEA in accordance with paragraph 3.6 of the Jurisdiction Agreement.

Option #4 – School operated by First Nation (not intending to establish CEA for time being)

1. No additional steps required, since there would be no need to transition to a CEA.

N.B. Legal advice is critically important for any First Nation that is considering establishing a CEA or is taking steps to establish a CEA.