



# Dispute Resolution under the Framework Agreement and Land Codes

**TMPD Webinar**  
**July 14, 2022**

**11:00 AM PDT**  
**1 Hour**

# Welcome



## Today we will cover:



An overview of the dispute resolution mechanisms under the Framework Agreement on First Nation Land Management



Review of First Nation dispute resolution considerations under a Land Code and Law Making in relation to lands, environment and resources



Discuss culturally appropriate alternative dispute resolution strategies which promote healing as well as resolution of disputes



Mute Devices



Recorded Session



Closed Caption



Presentation & Materials



Questions & Comments

# TODAY'S WEBINAR PRESENTER



**Andrew Beynon**

Director, Land Code Governance

## Dispute Resolution

Mechanisms under Framework Agreement

Considerations under Land Code & Law Making

Strategies and Culturally Appropriate Alternatives



# Mechanisms under Framework Agreement



## Developmental Process

- Disputes may arise between the “Parties” to the FA ...  
Canada and First Nations which have “adhered” to the FA ...  
operational and developmental First Nations
- Verifier authority to deal with disputes regarding
  - a) exclusions from land codes; and
  - b) “specifics” of the “transfer of administration”
- The specifics of the transfer of administration are likely any issues arising in the negotiation of the Individual Agreement
- Verifier cannot deal with disputes regarding funding



## Developmental Process

- The FA says that the verifier has the “...power to make final decisions...” on these matters
- Unfortunately, Canada has not respected the “final” authority of the verifier in the past
- We are exploring an FA amendment to clarify First Nation lead role in deciding whether to exclude lands ... Canada should not seek to exclude lands they agree form part of a reserve

## Operational Disputes

- Disputes may arise between the “Parties” to the FA ... Canada and First Nations which have “adhered” to the FA ... operational as well as developmental
- Part IX of the FA deals with the disputes which can arise between Canada and operational First Nations
- Specifically disputes regarding the FA, federal legislation (the FNLMA and in future the FAFNLMA), and Individual Agreements

## Operational Disputes

- General commitment to try to resolve disputes through negotiation and mediation ... out of court
- RC can assist in disputes with federal officials
- LAB can assist at the “political” level (Ministers)
- It is difficult to resolve disputes with Canada ... you are not alone, try to find solution oriented federal officials, keep a “paper trail”, suggest potential solutions, elevate concerns up to Regional DG, Deputy Minister, and Ministers
- Persistence and patience ... or compromise and live to fight another day?

## Operational Disputes

- In addition to negotiation and mediation, the FA provides for “neutral evaluation”, a formal process leading to non-binding recommendations
- The FA also provides for “arbitration” which is supposed be to a binding decision on a dispute
- Arbitration only applies if both Parties agree to an arbitration ... but for the exceedingly rare possibility of a dispute over compensation for a federal expropriation, the FA says the dispute goes to arbitration.
- Unfortunately, these dispute resolution processes are likely to be slow ...taking many years.



## Operational Disputes

- The FA says that Canada, the LAB, and First Nations will maintain a roster of dispute resolution experts, including arbitrators ... but in practice that has not been implemented
- The FA suggests that decisions of verifiers and arbitrators will be “final and binding” with limited circumstances for judicial review
- Courts would likely intervene in those narrow cases for judicial review even if the FA were silent

# Considerations under a Land Code and Law Making

# REDUCING THE NEED FOR DISPUTE RESOLUTION

## Reducing the risk of a disagreement

- Engage and educate the community
- Incorporate culture, values, traditions
- Develop programs to make compliance easy

## Early intervention

- Seek Individuals who can help fix disputes before damage is done and attitudes harden

## Using Elders, Mediation, Alternative Approaches

- Promotes healing and can be more effective than adversarial win-lose dispute resolution or court imposed orders

## Strong Governance Systems

- Lands records and information, monitoring systems, coordination of laws, permit and lease systems, etc., policies and procedures ... easy to lose in dispute resolution without evidence

## Partnerships

- Potential to draw in advice, recommendations from other communities?
- Expert mediators other than expensive lawyers?



## Managing the Risk of Disputes – Avoidance

Planning,  
reporting, and  
accountability

Records, minutes  
and decision  
accessibility

Audits and  
evaluations

Adjustments to  
what is not  
working well

Education:  
Identify and fill in  
gaps

Track and apply  
lessons learned



PART 8  
DISPUTE  
RESOLUTION

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Purpose

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Disputes

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Processes

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Roster Panel Established

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Impartiality

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Arbitration

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Powers

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Dispute Resolution

This approach suffers from some of the same disadvantages as the similar dispute resolution process under the FA



## NEW Model Land Code

Council may establish processes, or enact Land Laws, for the resolution of disputes in respect of any matter related to Land.

Land Codes	Dispute Resolution Laws	Environmental Laws
Residential Tenancy Laws	Spousal Property Laws (MRP)	Cultural Heritage Resource Laws
Community Protection Laws	Community Approval Laws	Committees Laws
	Allotment Laws	



# Strategies and Culturally Appropriate Alternatives



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Circle of Justice, traditional approaches base on cultural relevance

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Dispute resolution tools which recognize ongoing relationships amongst community members

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Community healing vs. western win/lose approach to disputes

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Creative approaches to programs and services to help individuals move beyond disputes – a dispute may be a symptom of another problem

## Interactive Poll

1. Have you established dispute resolution process in your land code or otherwise?
2. What are your views on a traditional or community healing approach to dispute resolution?
3. What do you think is the highest priority for dispute resolution under your land code?



# Questions & Discussion



Dispute Resolution  
mechanisms under the  
Framework Agreement

Dispute Resolution  
considerations under a  
Land Code & Law Making

Culturally appropriate  
Alternative Dispute  
Resolution strategies

## **Virtual Networking**

- Knowledge Sharing
- Breakout Room
- Open Discussion
- Frequently Asked Questions



# 2022 TMPD EVENT SCHEDULE

• First Nation Land Registry Fundamentals for the CITRIX User

Jan 13



• Records Management & Data Governance Considerations under Land Code

Feb 10



• Considerations for Commercial & Residential Leasing (A to A Leasing) under Land Code

Mar 9-10



• Approaches to Managing Legacy Issues under the Framework Agreement

Apr 7



• Land Governance Office – Considerations for Operational Start Up & Implementation of Land Code

May 12



• Developing a Climate Change Strategy for Resilient Communities under the Framework Agreement

Jun 8-9



• Dispute Resolution under the Framework Agreement and Land Code

Jul 14



• Land Governance Authorities under Framework Agreement & Land Code

Aug 11



• Natural Resource Management under the Framework Agreement

Sep 7-8



• Update on the new model Land Codes

Oct 13



• Land Development Approaches under Land Code

Nov 10



• Environmental Management under Land Code

Dec 7-8



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**Webinars** 1 Hour Sessions 11:00 – 12:00 PT / 2:00 – 3:00 ET

**Workshops** 2 Day Sessions 9:00 – 12:00 PT / 12:00 – 3:00 ET



**T M** Training, Mentorship &  
**P D** Professional Development

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Workshops & Webinars

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Online Courses

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Knowledge Paths Tool

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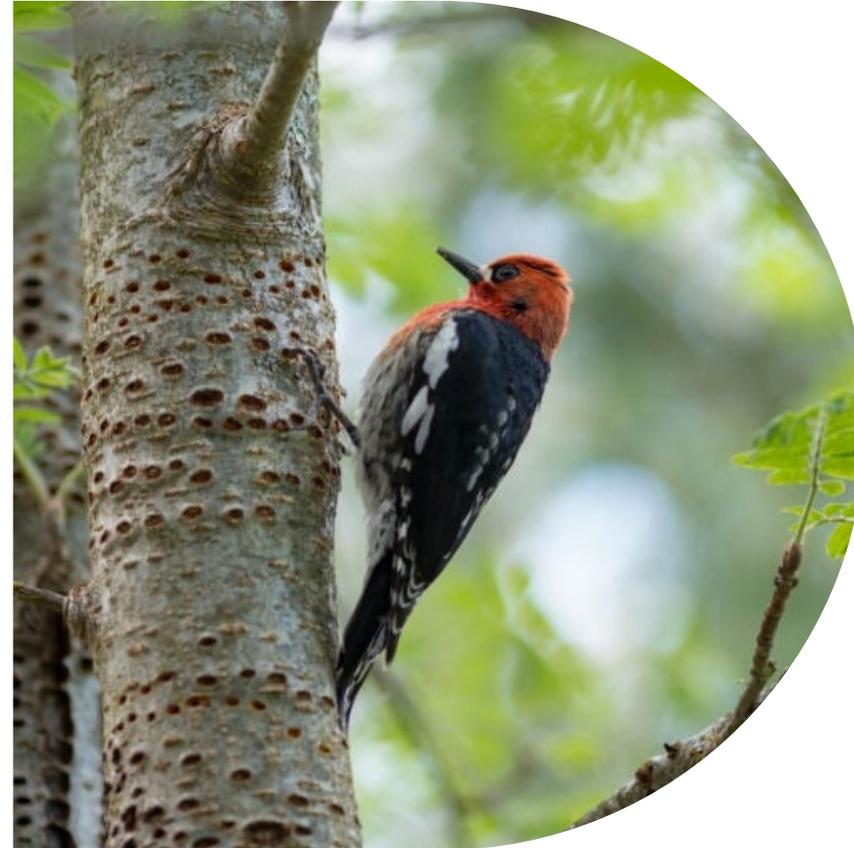
Land Governance Manual

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Knowledge Repository

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Direct Community Support (1:1)

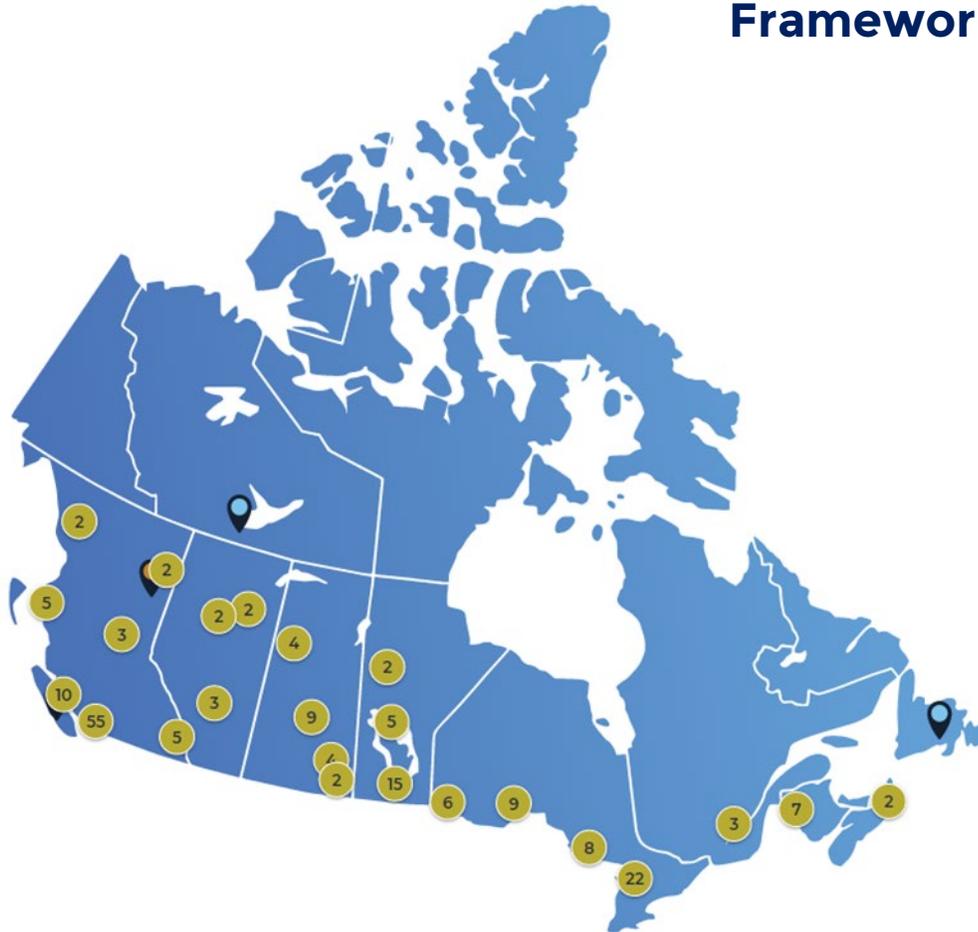




## Framework Agreement Signatory First Nations across Canada

As of July 14, 2022

<b>Total Signatories</b>	<b>194</b>
Operational	100
Developmental - Active	57
Developmental – Inactive	10
Self Governing	3



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## Employment Opportunities



[Opportunité pour étudiants autochtones – Québec](#)  
Defence Construction Canada

Quebec

Full Time



[Coordinator Construction Services \(Indigenous Youth Employment Opportunity\) – Goose Bay](#)  
Defence Construction Canada

Goose Bay, NL

Full Time



[Coordinator Construction Services \(Indigenous Youth Employment Opportunity\) – Pacific](#)  
Defence Construction Canada

British Columbia Canada

Full Time



[Indigenous Youth Employment Opportunity \(Atlantic\)](#)  
Defence Construction Canada

Atlantic Canada

Full Time

# THANK YOU



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