

# ***FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT*** **Law Development: Enforcement & Ticketing Laws**

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# First Nation Law Making Authority

The **Framework Agreement** is a First Nation-led exercise in self-government.

- Enforcement of First Nation Laws is essential to First Nation selfgovernment, the Rule of Law, and for social and economic well-being.



**First Nations under a Land Code have the authority to develop laws** respecting the development, conservation, protection, management, use and possession of First Nation land.

This **First Nation law-making authority is independent** of any other government.

- **First Nation laws** can provide for clear enforcement authorities and limits to liability, establish offences, and identify adjudication processes.

# Examples of First Nation Laws



Trespass & Community Protection



Residential Tenancy



Business Permitting and Licensing



Emergency Laws



Recycling, Solid Waste Management and  
Garbage Disposal



Land Use, Zoning, and Development



Allotments, Interests and Licences



Environmental Assessment and  
Protection



Natural Resource Management



Environmental Emergencies and Natural  
Disasters



Enforcement & Ticketing

# Achieving Compliance

- If not enforced, laws will be ignored
- Traditional Laws, Procedures & Penalties
- Police and the court system are just one option
  - Court process is expensive & time-consuming
- Other Options:
  - Education & Outreach
  - Monitoring for Compliance
  - Warnings, Tickets & Compliance Orders
  - Cooperative Enforcement Plans
  - Contracts



# Enforcement and Adjudication Options under Land Code

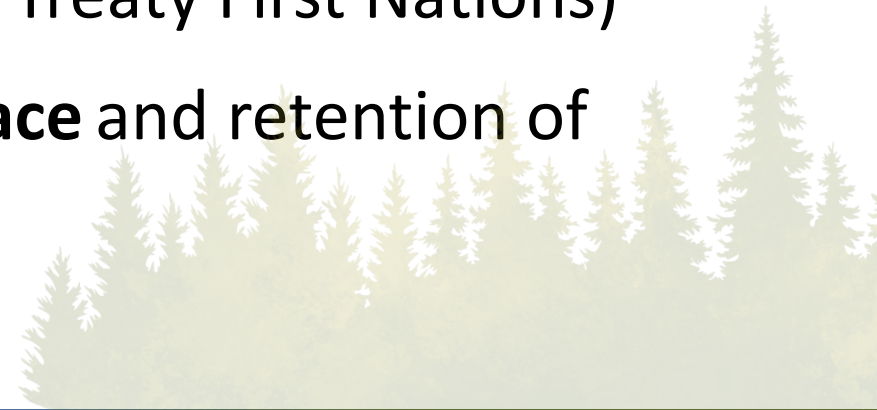
- Prior to charges:
  - Administrative Remedies (e.g., warnings, stop work orders, etc.)
- Prior to charges or at any point when an offence is committed:
  - Restorative Justice, Traditional Healing, & Diversion Programs
- When an offence is committed:
  - Ticketing processes, either by creating a ticketing scheme or by “tapping into” an existing municipal, provincial or federal system
  - The Criminal Code Summary Conviction Procedure



# How Some Framework Agreement First Nations are Enforcing their Laws



- **Private prosecutions** in Provincial Courts: Criminal Code Proceedings (see Case Law Summary handout)
- **Driving changes to provincial offence legislation** to expressly refer to First Nation laws in provincial laws dealing with enforcement procedures (Saskatchewan, Manitoba, BC – for Treaty First Nations)
- **Appointment of First Nation Justice of the Peace** and retention of private prosecutors (K'omoks)





# What is an Enforcement & Ticketing Law?

- Land Code First Nations have the option of creating an Enforcement & Ticketing law to avoid dealing with enforcement in every First Nation Law
- Land Code First Nations have the option of creating an Enforcement Law without “ticketing”
- the procedural law developed by a First Nation to establish how violations of their other First Nation laws will be administered and prosecuted
  - Can establish procedures for dealing with minor offences (e.g., warnings and tickets) and more serious, higher risk offences (e.g., matters to be brought before the court or Justice of the Peace for resolution)
  - Can establish procedures for traditional healing and restorative justice processes
  - Can include processes for appointing Justices of the Peace and Enforcement Officers, and establish their enforcement authorities and powers

# Benefits of the Enforcement & Ticketing Law Option

- Creates a consistent and efficient enforcement process across all laws of a First Nation
- Removes the need to repeat enforcement details in every law
- Supports enforcement staff in focusing expertise on one central law
- Reduces the reliance on the mainstream court system while preserving that pathway when needed
- Contributes to the recognition and legitimacy of First Nation laws within the mainstream court system





# Criminal Law: An Overview

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- Canada has jurisdiction over the criminal law and criminal law procedure (Parliament: section 91(27) *Constitution Act*, 1867).
- Provinces have jurisdiction over the Administration of Justice, including Courts of Civil and Criminal Jurisdiction (Legislatures: section 92(14) *Constitution Act*, 1867).
- Provinces have jurisdiction over fines, penalties, or imprisonment for enforcing laws within provincial jurisdiction (Legislatures: section 92(15) *Constitution Act*, 1867).



# Types of Criminal Law in Canada

Federal Law	Provincial Legislation	First Nation Laws
<ul style="list-style-type: none"> <li>• Criminal Code of Canada</li> <li>• other Federal Laws</li> </ul>	<ul style="list-style-type: none"> <li>• Provincial and Municipal Laws</li> </ul>	<ul style="list-style-type: none"> <li>• Inherent &amp; Treaty Rights</li> <li>• Self Government Agreements</li> <li>• Indian Act</li> </ul>
<b>Examples:</b> Criminal Code of Canada, Canadian Environmental Protection Act, Species at Risk Act, Transportation of Dangerous Goods Act	<b>Examples:</b> Highway Traffic Act, Environmental Laws	<b>Examples:</b> Trespassing, Environmental Laws
<ul style="list-style-type: none"> <li>• Indictable &amp; Summary Conviction Offences</li> </ul>	<ul style="list-style-type: none"> <li>• Summary Conviction Offences</li> </ul>	<ul style="list-style-type: none"> <li>• Traditional Remedies</li> <li>• Summary Conviction Offences</li> </ul>
<b>Procedure:</b> <ul style="list-style-type: none"> <li>• Criminal Code Indictable Offence Procedures</li> <li>• Criminal Code Summary Conviction procedures</li> <li>• Other Federal Laws</li> </ul>	<b>Procedure:</b> <ul style="list-style-type: none"> <li>• Provincial Summary Conviction Offence Acts</li> </ul>	<b>Procedure:</b> <ul style="list-style-type: none"> <li>• First Nation Enforcement &amp; Ticketing Law</li> <li>• Criminal Code Summary Conviction procedures</li> <li>• (possibly) Provincial Summary Conviction Offence Acts</li> </ul>

# Criminal Code Offence vs. Provincial Offence

- Can be similar federal and provincial offences
- Distinguished by their nature, criminal vs regulatory, and penalty

Criminal Code Offence	Provincial Offence
<b>Dangerous operation</b>  320.13 (1) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public	<b>Highway Traffic Act</b>  <b>130</b> (1) Every person is guilty of the offence of driving carelessly who drives a vehicle or street car on a highway or in a specified place without due care and attention or without reasonable consideration for other persons using the highway or specified place.

# Elements to Prove an Offence

- Standard of proof is beyond a reasonable doubt
- Criminal Code offences require proof of both physical act and intent to commit the offence
- Some federal and provincial laws only require proof of physical act (but not intent)
- Some laws establish a “due diligence” defence if the accused took all reasonable steps to prevent the offence (e.g. In the case of environmental spills, providing a defence of proof of training and education to prevent spills)
- This raises important issues regarding drafting of your First Nation laws:
  1. A First Nation can expressly require intent and the physical act
  2. The model Enforcement & Ticketing Law only requires the physical act
  3. First Nation can establish a “due diligence” defence

# How is a Criminal Charge Initiated?

- a charging document (stating the charge)
- initiation of process (to compel a response or appearance)

Criminal Code: Summary Conviction Offence Procedure	Provincial Offences: Provincial Offences Act	First Nation Offences: First Nation Enforcement and Ticketing Law
<ul style="list-style-type: none"><li>• an informant (person) lays an information (charges) before a justice</li><li>• process is issued, summons or warrant</li><li>• 12-month limitation period to lay charge</li></ul>	<ul style="list-style-type: none"><li>• Certificate of Offence signed by a provincial offences officer</li><li>• an informant (person) lays an information (charges) before a justice</li><li>• process is issued, summons or warrant</li><li>• 6-month limitation period to lay charge</li></ul>	<ul style="list-style-type: none"><li>• ticket</li><li>• Provincial Offences Act</li><li>• Criminal Code Summary Conviction Procedure</li></ul>



# Private Prosecutions

## s.507.1 of the Criminal Code of Canada

- 507.1 (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

### Two Steps:

1. Lay an information before a justice
2. Conduct a process hearing in front of a judge

- Attorney General is given notice of the private prosecution
- Attorney General may stay the proceeding at any time after the information is laid, and may withdraw the charge after process is issued
- If process is not issued, the private prosecution effectively ends

# Thank You

## Questions?

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