

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 self-government, 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
 - First Nations can decide to establish adjudication processes consistent with traditional laws, procedures and penalties

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

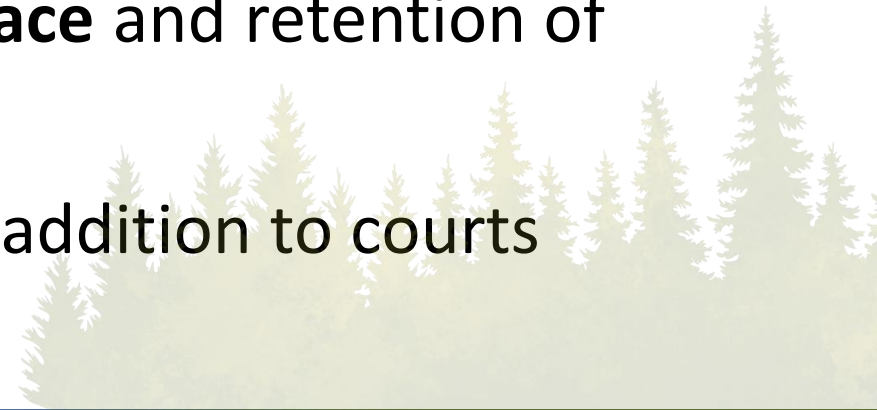
- Prior to charges:
 - Administrative Remedies (e.g., warnings, stop work orders, etc.)
- Prior to charges or at any point when an offence is committed:
 - Restorative Justice, Traditional Healing, & Diversion Programs
- When an offence is committed:
 - Ticketing processes, either created under a Land Code law or under an agreement with a province, or
 - Prosecution using a “long form information”



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)
- **Traditional and Restorative Justice options** in addition to courts



What is an Enforcement & Ticketing Law?

- A procedural law developed by a First Nation to establish how violations of their other laws will be administered and prosecuted
- An **option** for Land Code First Nations
- The law can include the following:

How to deal with minor and more serious offences

Procedures for traditional healing and restorative justice processes

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 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



First Nation Laws

First Nation Laws
<ul style="list-style-type: none">• Inherent & Treaty Rights• Self Government Agreements• Indian Act
Examples: Trespassing, Environmental Laws
<ul style="list-style-type: none">• Traditional Remedies• Summary Conviction Offences
Procedure: <ul style="list-style-type: none">• First Nation Enforcement & Ticketing Law• Criminal Code Summary Conviction procedures• (possibly) Summary Offences Procedure Act



Elements to Prove an Offence of First Nations Law

- Standard of proof is beyond a reasonable doubt
- Only have to prove the physical act and do not have to prove intent
- Offences may be strict liability which allow for an accused to raise a defence of due diligence, accident or necessity
- A defence of “due diligence” can be proven where an 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)
- Offences may also be absolute liability which do not have a defence due diligence, accident or necessity
- This raises important issues regarding drafting of your First Nation laws:
 1. A First Nation can expressly require intent and the unlawful act
 2. The model Enforcement & Ticketing Law only requires the unlawful 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">• an informant (person) lays an information (charges) before a justice• process is issued, summons or warrant• 12-month limitation period to lay charge	<ul style="list-style-type: none">• Certificate of Offence signed by a provincial offences officer• an informant (person) lays an information (charges) before a justice• process is issued, summons or warrant• 6-month limitation period to lay charge	<ul style="list-style-type: none">• ticket• Summary Offences Procedure Act• Criminal Code Summary Conviction Procedure

Private Prosecutions

The Criminal Code provides for a “private prosecution” which is a prosecution started by a private individual who is not acting on behalf of a law enforcement agency or prosecution service.

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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