

*Framework Agreement on First Nation
Land Management:*
Law Development & Enforcement

**Links to Learning
Feb 1, 2023**



**FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

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Presenters



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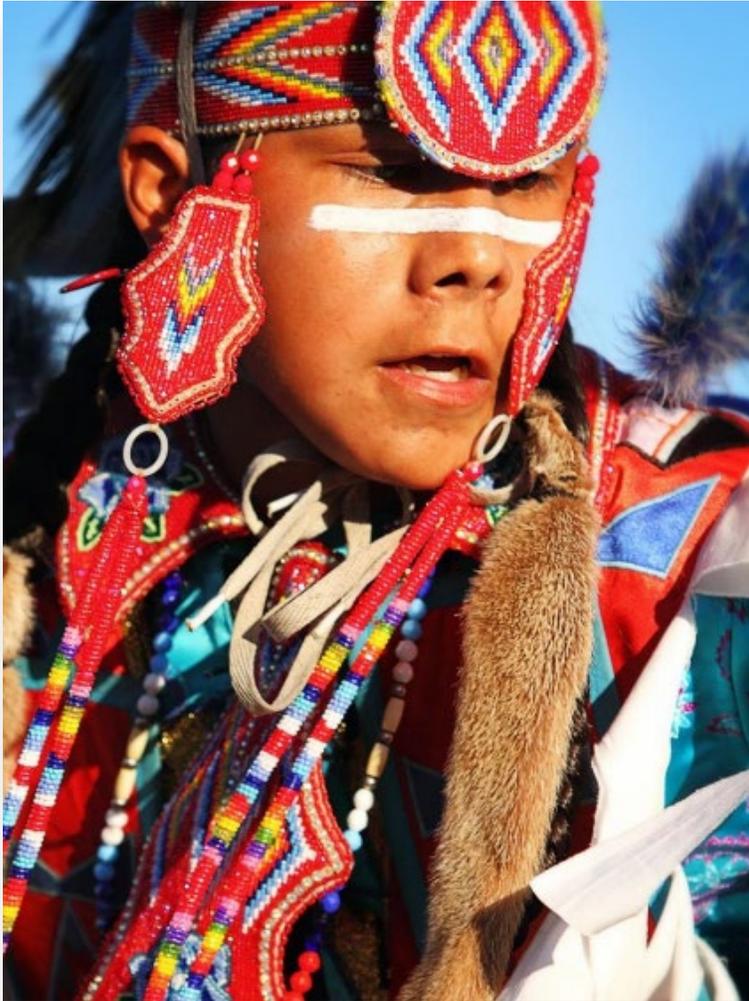
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Framework Agreement on First Nations Land Management – Law Development & Enforcement



First Nations Land Management Resource Centre (RC)

Framework Agreement on First Nations Land Management

Law Making Authority under the Framework Agreement

Development of First Nation Laws

Enforcement and Adjudication under Land Code

- What is Enforcement?
- Fines and Remedies Enforcement?
- Who can Prosecute?

RC Support for Enforcement

First Nations Land Management Resource Centre (RC)

A First Nations organization dedicated to serving and supporting First Nations communities who want to re-establish control over their lands, natural resources, and environment through the historic government-to-government *Framework Agreement on First Nation Land Management*.

RC was established by the LAB to undertake its technical responsibilities to FNs, through:



"Supporting First Nations to exercise their Inherent Right to govern their Lands, Environment and Resources."

The Framework Agreement on First Nations Land Management (Framework Agreement)



The *Framework Agreement* was launched in the late 1980's by a small group of First Nation Chiefs and it is a Government-to-government agreement through which the federal government recognizes First Nation self-government authority over their reserve lands, natural resources and the environment.

It identifies the jurisdiction assumed by First Nations, which includes decision-making authority as well as the power to design and enforce laws over reserve lands and resources.

The *Framework Agreement* is ratified by enacting a Land Code; once Land Code is enacted, the land management provisions (approx. 44 sections) of the *Indian Act* no longer apply.

Law Making Authority

Law Making Authority under the Framework Agreement

First Nations under Land Code has the authority to develop land laws that are applicable to those lands as described in their Land Code

- Currently those laws under Land Code do not extend past the boundaries into traditional lands.



Law Making Authority cont. ...

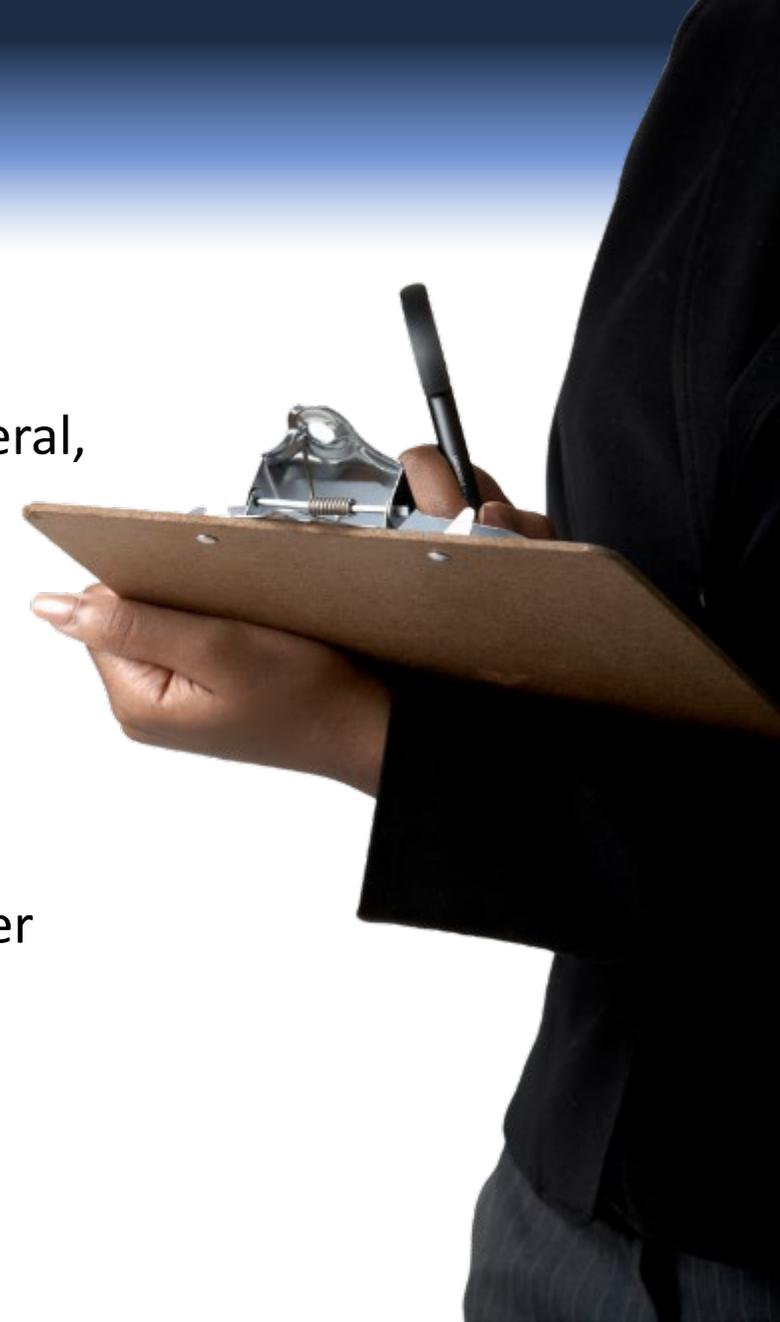
Law Making Authority under the Framework Agreement

Establish comprehensive enforcement procedures consistent with federal, provincial or territorial law, including

- 1) inspections, searches, seizures and
- 2) compulsory sampling, testing and
- 3) the production of information;

Council can provide for the collection of nontax debts, fees or charges owed to the First Nation using taxation collection remedies made under First Nation taxation laws

- ✓ First nations can apply to Small claims or Superior Court of the province to collect debts owed to the nation.



Law Making Authority cont. ...

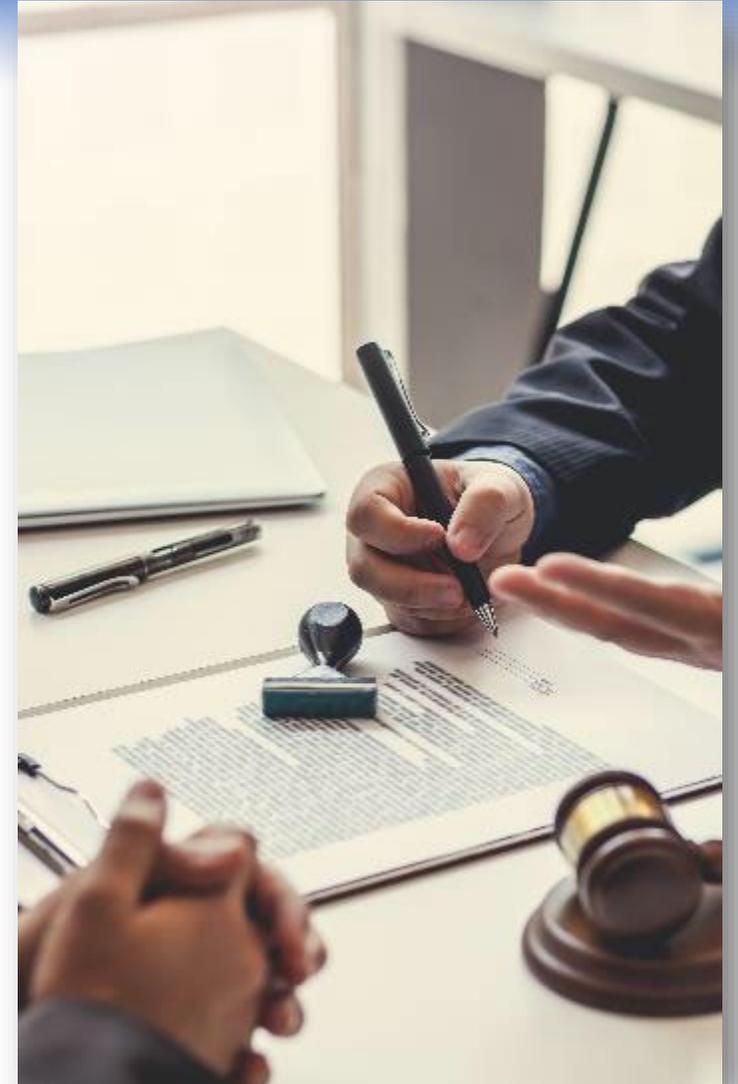
Law Making Authority under the Framework Agreement

Council has the power to develop within their laws

- Providing limits of liability when acting within the law
- Defenses and immunity

Council may enter into agreements with federal, provincial and municipal governments;

- Enforcement services
- Policing agreement services
- For services such as solid waste management
- Animal control
- Support for emergency response



Development of First Nation Laws

Section 18.1 of the Framework Agreement:

The council of a First Nation with a land code in force will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.



Development of First Nation Laws cont. ...



First Nation Laws defined in the *Framework Agreement* are a new group of laws separate and apart from the *Indian Act* or by-laws enacted under the *Indian Act*.
"First Nation law" means a law enacted by a First Nation in accordance with its land code*;

- ✓ Historically, weak and poorly drafted *Indian Act* by-Laws have resulted in a reluctance to enforce and prosecute, have not provided the proper authorization for the police and woefully inadequate remedies and fines.
- ✓ A clear understanding by government and policing officials to understand and recognize the development of First Nation's laws are robust land laws, providing proper authorities, offences and adjudication process.

* [Framework Agreement](#)

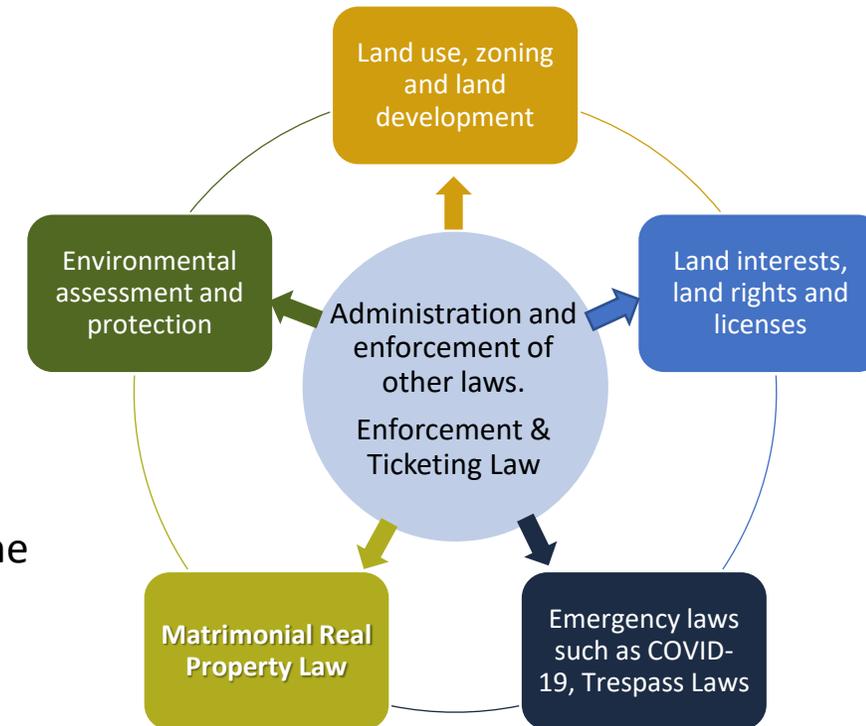
Development of First Nation Laws cont

The Framework Agreement recognizes the power of Land Code First Nations to make laws, in accordance with their Land Codes, for matters relating to:

- Land use, zoning and land development (i.e., Subdivision, Development and Servicing Law)
- Land interests, land rights and licenses (i.e., residency law)
- Environmental assessment and protection, and other environmental matters
- The provision of local services and imposition of equitable user charges
- The provision of services for the resolution, outside the courts, of disputes in relation to First Nation Land
- Matrimonial Real Property
- Emergency laws such as COVID-19 to deal with urgent situations that threaten the health and safety of the community (in accordance with their Land Code).

First Nations also have the power to develop laws to further support those land and environmental laws:

- Enforcement Law
- Ticketing Law



Enforcement and Adjudication under Land Code

What is Enforcement?

- Compelling and encouraging the observance of or compliance with a law, rule or obligation
- Educating, preventing, and sanctioning with the option to discipline breaches of a law, rule or obligation



Enforcement and Adjudication under Land Code cont. ...

Achieving Compliance



- Laws are just words
- If not enforced, laws will be ignored
- Options:
 - Education
 - Voluntary Compliance
 - Co-operative enforcement plans with neighbours, e.g. Municipalities and Regional Districts
 - Traditional laws, procedures & Penalties
 - Checking and monitoring for compliance
 - Compliance Orders and Warnings
 - Contracts
- Police and the court system are just one option
 - Court process is expensive & time-consuming

Enforcement and Adjudication under Land Code cont. ...

Promoting Compliance & Respect for Laws

The *Framework Agreement* provides for the prosecution of laws, recognizing the authority to impose fines and imprisonment for violation of laws

Promoting compliance and respect for laws is important as it helps to avoid excessive and costly reliance on prosecutors and courts.

Examples of enforcement strategies for promoting compliance and respect for laws and for resolving disputes of First Nation laws include:

- **Reduce the risk of violation of laws** - community engagement; education and raising awareness of community plans, programs, laws, and policies; community outreach initiatives In years gone by this was called community-based enforcement.
- **Elders, Mediation, Dispute Resolution** – potential avenues to resolve disputes and promote healing - more effectively than typical court punishments?
- **Diversion of charges in cooperation with the Police** – e.g., Qwi:qwelstom Wellness Team, Chilliwack, British Columbia

Enforcement and Adjudication under Land Code cont. ...

Fines and Remedies

- The *Framework Agreement* provides not just for penalties through fines and imprisonment but also “restitution, community service, and alternative means for achieving compliance” (*Framework Agreement* 19.1 (b))
- There is also clear authority to establish in First Nation laws: “...comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information” (*Framework Agreement* 19.1(c)).
- First Nation laws may be designed to work alongside applicable federal and provincial laws, so an offender might be charged with a violation of First Nation law as well as federal or provincial laws for actions on First Nation land.



Enforcement and Adjudication under Land Code cont. ...

Fines and Remedies

The *Framework Agreement* provides for enforcement of First Nation laws on "summary conviction" - fines up to \$5000 and up to two years imprisonment for non-environmental laws ([Framework Agreement Sec 19.3](#)) (Criminal Code of Canada Sec 787)



The *Framework Agreement* authorizes higher penalties for violation of environmental laws. Environmental protection standards and punishments will have at least the same effect as those in the laws of the province of the First Nation (Ontario). ([Framework Agreement Sec 24.3](#))

First Nations have flexibility in establishing fines within the limits recognized in the *Framework Agreement*

- for example, a First Nation can specify a maximum \$100 fine for certain minor environmental violations and maximum of \$1,000,000 fines for more serious environmental violations if that penalty also applies under provincial law

Enforcement and Adjudication under Land Code cont. ...

What is the Enforcement Process?

What happens when a person is found committing an offense under First Nation law?

- Option prior to charges- Education, Administrative Remedies – Restorative/Diversion Programs.
- Two main enforcement processes available when an offense is committed:
 - The *Criminal Code* summary conviction procedure; and
 - Ticketing processes, either by creating a ticketing scheme or by “tapping into” an existing municipal, provincial or federal system



Enforcement and Adjudication under Land Code cont. ...

Framework Agreement – Summary Conviction Offences



- The vast majority of cases will hopefully be resolved through education, warnings, establishing a ticketing system, or dispute resolution.
- There **needs to be a clear** and widely recognized **pathway forward for the fraction of cases that require prosecution.**
- **First Nation laws** established under Land Code and in accordance with the *Framework Agreement* are **recognized as the equivalent laws enforceable by “summary conviction”** processes under the Criminal Code (*Framework Agreement* 19.1 (a)).
 - To initiate charges an Information (Form 2) and Summons are sworn before a Justice of the Peace and filed with provincial courts.
 - Currently, court administrators are unfamiliar with the *Framework Agreement* and First Nation laws.

Enforcement and Adjudication under Land Code cont. ...

Justices of the Peace (JP)

First Nations have authority to appoint Justices of the Peace for enforcement of laws..... “to try offences established by or under a land code or a First Nation law”

- First Nations must “...*protect the independence of each Justice of the Peace it appoints in a way similar to that in a province, for example tenure, removal and remuneration*”
- Given the requirements for independence of Justices of the Peace and potential appeals to the provincial courts, it may be helpful to explore having a First Nation Justice of the Peace cross-appointed under provincial law.
- Ideally, a Justice of the Peace appointed by a First Nation should have some legal training or experience but also be respected by community members and be familiar with the First Nation’s traditions and culture

Enforcement and Adjudication under Land Code cont. ...

Policing

Policing can be relevant to issues such as trespassing, curfews, matrimonial real property disputes, problematic residential tenancies, property vandalism, emergency management and response, traffic control and some serious environmental issues such as preventing illegal dumping, and unauthorized use and harvesting of natural resources.

- Enforcement of many First Nation laws may require technical experts without triggering policing considerations (e.g., a First Nation law may describe the authority of an inspector to issue stop work orders or to revoke permits)
- Enforcement of other laws may require police assistance in support of compliance efforts by First Nation officials and technical experts (e.g., accompanying lands officers when changing locks on residences, disputes arising at construction sites etc.)

Enforcement and Adjudication under Land Code cont. ...

FOR CONSIDERATION – Ticketing/Minor Offences

Many First Nations are exploring the development of enforcement and ticketing laws

- Enforcement and ticketing laws provide standardized administrative processes and general provisions that apply to all FN laws that support other laws.
- similar in structure to the *Offences Act* in BC (Traffic tickets)
- Or an Administrative Monetary Penalty system (used by Canada Border Services and other regulatory agencies)

Providing the authority to issue warnings, and tickets with not only monetary fines but diversionary solutions in keeping with their customs and traditions.

Enforcement of many First Nation laws may require technical experts without triggering policing considerations but may require police or other investigative expertise for investigative practices.



Enforcement and Adjudication under Land Code cont. ...

Who can Prosecute?

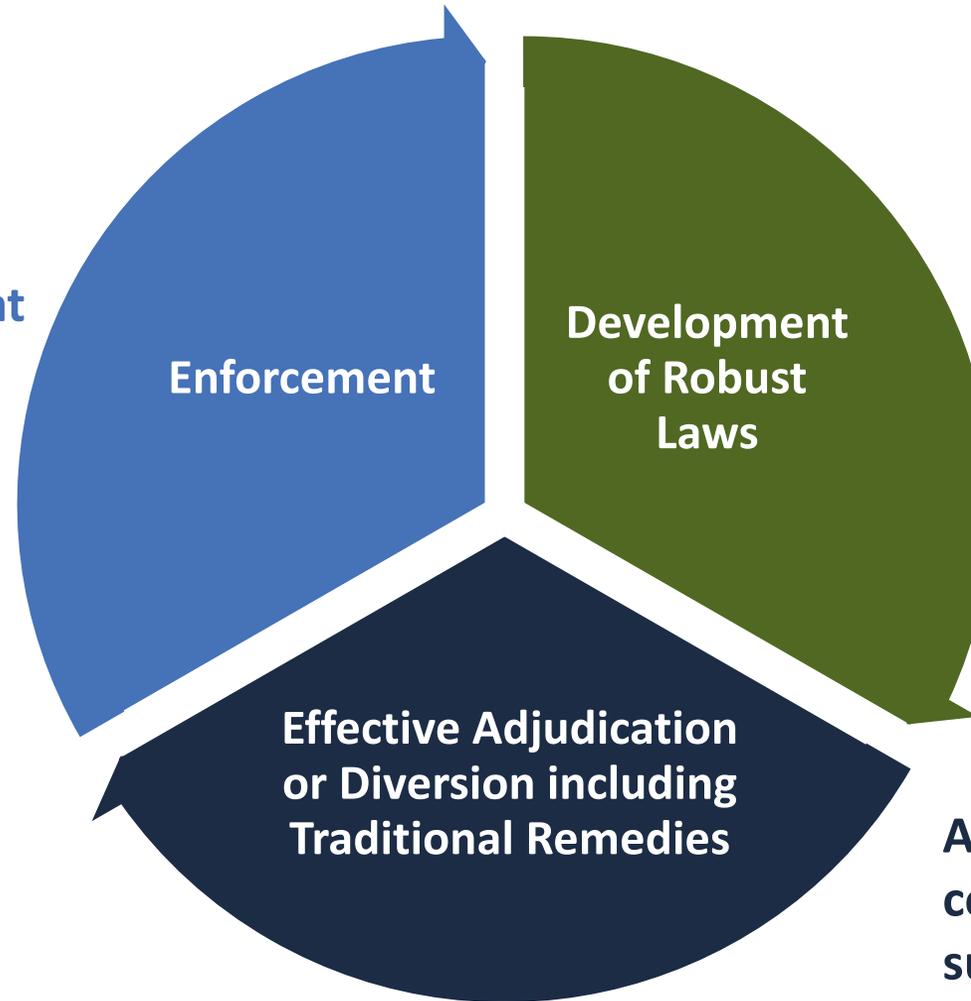
- **Section 19.10 of the Framework Agreement currently provides First Nations options for prosecution:**
 - Private Prosecution by retaining their own prosecutor; or
 - Enter into an agreement with a province or territory to arrange for a provincial or territorial prosecutor.
- So far, no land code First Nations have agreements for the use of federal or provincial prosecutors
- The K'omoks First Nation on Vancouver Island hired a private prosecutor for their landlord-tenant dispute.

➤ [K'omoks First Nation vs RYAN THORDARSON AND AMELIA SORBIE](#)

Note: some prosecutors specialize in regulatory offences (as opposed to criminal or financial offences) – challenges: regulatory offence prosecutors are oversubscribed already and don't know enough about land codes

Support for the Enforcement and Adjudication of First Nation Laws

The Resource Centre(RC) provides support and guidance to First Nations in the development of laws that will support the Nation working with the Policing agencies and Prosecutors.



RC support for enforcement does not replace the need for a First Nation to retain independent legal advice but can work with the First Nation and help reduce legal costs for law development and adjudication

All laws are vetted by the community's legal counsel before submitting to Council.

Support for the Enforcement and Adjudication of First Nation Laws

Law Development Support

- Law Development Planning (is a law needed, prioritizing law development)
- Review and comment on draft laws
- Ensure appropriate enforcement and administrative provisions are included in draft laws

Enforcement Training & Support

- Notebook, photos, and report writing for inspections and investigations
- Ticket writing, record-keeping, law development training
- Assistance preparing court briefs for use in courts
- Preparing Enforcement officers for court appearances
- National Online Conversation

Policing Agreements

- Assisting First Nations in negotiating policing agreements with federal and provincial governments
- Support for meetings with policing agencies for First Nation law enforcement

Enforcement Pilot Projects

- Providing funding and technical support to First Nations to promote partnerships for enforcement and recognition of First Nation Laws
- Whitecap Dakota, Muskoday First Nations pilot project
- Membertou Pilot Project

Promoting Recognition of First Nation Laws

- Writing campaigns to federal and provincial Ministers and Departments
- Participation in federal/provincial working groups on enforcement of First Nation laws
- Financial support for adjudication of Land Code and Land Law to develop precedence in provincial courts

RESOURCE CENTRE SUPPORT TO FIRST NATIONS

Land Code Governance Support



**First Nation
Requests
Support**



**RC Support
Services**



Environment

**Surveys &
Legacy Issues**

Land Registry

**Land Use
Planning**

**Solid Waste
Management**

**Law
Development &
Enforcement**

**LGM &
Knowledge Path
Tools**

**Communication
& Public
Relations**

**GIS & Traditional
Knowledge**

Meet the B.C. & F.V. Teams



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QUESTIONS & DISCUSSION

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