



**OVERVIEW OF ENFORCEMENT
UNDER THE FRAMEWORK
AGREEMENT**

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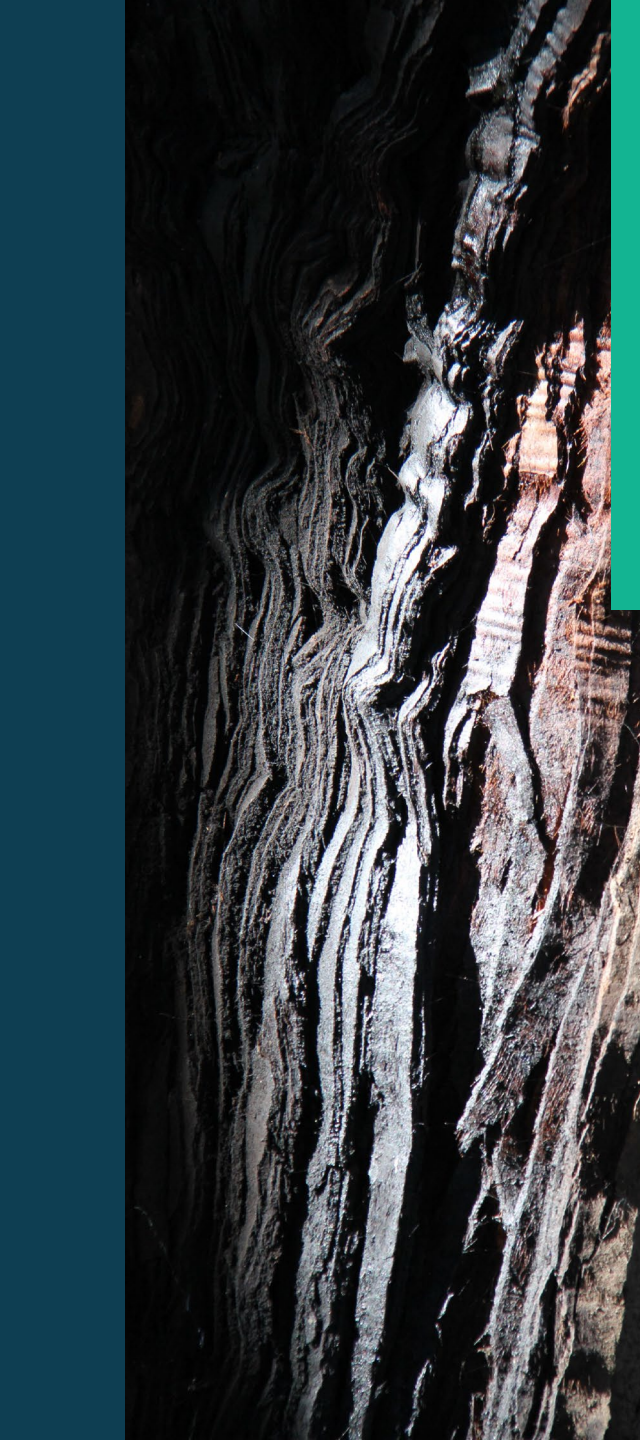
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RESPECT & COMPLIANCE



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- Self Government derives from First Nation history and traditions and is not granted by, nor created by, federal or provincial governments
 - The Framework Agreement is a government to government agreement through which the federal government recognizes self government authority, including law making powers over reserve lands, natural resources and the environment
 - Federal government recognition of this self government over reserve lands sends an important signal to other governments, businesses, non member residents, courts, police forces etc.....Parliament backs this exercise of self government power
 - The Indian Act land system has failed in part because there is no enforcement of by-laws and regulations
 - The Framework Agreement provides options for building more effective enforcement on an ongoing basis as an exercise of self government authority



Framework Agreement – Fines, Imprisonment

The Framework Agreement provides for enforcement of First Nation laws on "summary conviction" - fines up to \$5000 and up to six months imprisonment

The Framework Agreement authorizes even higher penalties for violation of environmental laws, with penalties equivalent to prevailing provincial standards

First Nations have flexibility in establishing fines within the limits recognized in the Framework Agreement (eg a First Nation can specify a maximum \$100 fine for certain minor environmental violations and maximum \$1,000,000 fines for more serious environmental violations if that penalty also applies under provincial law)

First Nations set the maximum financial fines and terms of imprisonment (within the limits in the Framework Agreement) with the courts deciding the actual fine within those limits and deciding whether or not to impose any imprisonment





Framework Agreement – other enforcement measures

Framework Agreement First Nation laws are 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.

The Framework Agreement provides not just for penalties through fines and imprisonment but also “restitution, community service, and alternate means for achieving compliance” (see 19.1 (b) of Framework Agreement)

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” (see 19.1(c) of Framework Agreement).





Framework Agreement – Summary Conviction Offences

Parliament has agreed that Framework Agreement First Nation laws should be recognized as the equivalent of laws enforceable by “summary conviction” under the Criminal Code

The vast majority of cases will hopefully be resolved through warnings, tickets, or dispute resolution but there needs to be a clear and widely recognized pathway forward for the fraction of cases that require prosecution

Summary conviction offences are typically considered by provincial courts but currently court administrators are unfamiliar with Framework Agreement First Nation laws





Framework Agreement Amendments

Amendments to the Framework Agreement have expanded recognized First Nation self government authority and enforcement powers

Phase 1 of amendments will simplify voting procedures, expand on powers to make matrimonial real property laws and include examples of environmental law making powers

Phase 1 of amendments also includes some improvements to enforcement powers, recognizing First Nation authority to adopt enforcement procedures consistent with provincial and territorial laws (currently just federal enforcement procedures)

Phase 1 amendments clarified that prosecutors will either be appointed by First Nations or be provincial prosecutors (current option of federal prosecutors will be dropped)

Phase 2 has yet to be negotiated with Canada – but the Lands Advisory Board has proposed recognition of additional law making powers (eg species at risk) and an expanded description of enforcement powers.





Who can Prosecute?

The Framework Agreement currently provides for First Nations to appoint their own prosecutors, or to turn to federal or provincial prosecutors.

Note that Phase 1 Framework Agreement amendments will drop the express reference to federal prosecutors because Canada is unlikely to appoint their prosecutors given the specialized expertise of federal prosecutors

So far, no land code First Nations have agreements for the use of federal or provincial prosecutors

The Komoks First Nation on Vancouver Island hired a private prosecutor for their landlord-tenant dispute. Note provincial Attorneys General have authority to “stay” private prosecutions.

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





Which Court has Jurisdiction to Enforce Laws?

- The Framework Agreement provides an option to appoint Justices of the Peace - a ruling by a Justice of the Peace can be appealed to provincial courts – other provisions of the Framework Agreement refer to courts of competent jurisdiction
- Given provincial court jurisdiction for summary conviction offences, the vast majority of offences will be within provincial court jurisdiction (some high dollar environmental fines may be within superior court jurisdiction)
- Komoks case on Vancouver Island is not determinative in Ontario or Atlantic Canada – but it is a precedent establishing provincial court jurisdiction to consider land codes and First Nation laws under land codes
- Some First Nations may wish to establish their own traditional courts – consider linkages or separation from provincial courts





Justices of the Peace (JP)

First Nations have authority to appoint JP's for enforcement of laws..... "to try offences established by or under a land code or a First Nation law"

There is also an option to request that Canada appoint a JP.....this option is not being pursued because Canada has no clear program or track record of appointing JP's to assist in exercising self government

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 JPs and potential appeals to the provincial courts, it may be helpful to explore with provinces having a First Nation JP cross appointed under provincial law.

Ideally a JP 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





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 some First Nation laws may require technical experts without triggering policing considerations (eg 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 (eg accompanying lands officers when changing locks on residences, disputes arising at construction sites etc.....)





Policing

Police assistance and improved policing of First Nation laws may help contribute to policing of more serious criminal activity – for example improving trust and relationships with key community leaders - and may help strengthen enforcement across neighbouring jurisdictions

First Nation laws can include measures to address potential liability of police forces (recent Framework Agreement amendments recognize express authority to limit liability of officials within the limits under provincial law)

Policing agreements can help identify land code laws for which police assistance may be required – and mechanisms for police to have access to authoritative and up to date versions of laws (again – the recent Framework Agreement amendments expressly provide an option to enter into agreements with other governments and agencies)





Promoting Compliance & Respect for Laws

The Framework Agreement provides for prosecution of laws, recognizing authority to impose fines and imprisonment for violation of laws – but we recognize the importance of promoting compliance and respect for laws to avoid excessive and costly reliance on prosecutors and courts

Examples of enforcement strategies for promoting compliance and respect for laws as well as resolving disputes arising under Framework Agreement First Nation laws include:

Reduce the risk of violation of laws - community engagement; education and raising awareness of community plans, laws, and policies; community outreach initiatives (eg special hazardous waste collection drives), signage, systems for monitoring and inspections.....

Resolving violations of laws – accidental non-compliance? inspector's orders, revocation of permits.....

Elders, Mediation, Dispute Resolution – potential avenues to resolve disputes and promote healing - more effectively than typical court punishments?





Promoting Compliance & Respect for Laws

Strong governance systems – land records and information, monitoring systems, traditional knowledge, coordination of laws with permit and lease systems, connecting lands and environment managers with housing, public works, schools, timely issuance of permits and approvals, reasonable fees for permits.....

Partnerships – economies of scale in working with other First Nations in appointing JP's, building inspectors, environmental experts....? Potential partnerships with other governments? Framework Agreement amendments expressly recognize an option for a First Nation to confer authority on another government or agencies

Promoting respect and compliance for laws is important but establishing clear and widely recognized processes for full enforcement is vital to promoting compliance and respect for laws





THANK YOU
For more information

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