



**FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

**Legal Drafting - Enforcement
Considerations under Framework
Agreement**

Presented by
Kevin Broughton





- 1. What to consider when developing a law**
- 2. Basic requirements and considerations when drafting a law**
- 3. Administration and authority**



What to consider when developing a law

- Identify the area of Lands the Nation wishes to develop laws: Trespass, Tenancy, Hunting/Fishing, Fire Protection, Waste Management
- This requires a collaboration of community members to discuss and have input from different perspectives.
- The points raised must be fluid and may vary during the building and creating of the law. Respect each members views.
- Consult with legal counsel, Resource Staff and consult with other communities, get samples of existing law:
 - Reference to wordings in sections, section set up etc.

What to consider when developing a law

Consideration for Implementing a Law

- When drafting a law, the law should be in a recognizable and readable format
- Laws should include preamble that refers to the authority from your Land Code

What to consider when developing a law

This Preamble states the authority for a FN to enact laws

Whereas the “XYZ “ Indian Band has a profound relationship with the land;

Whereas First Nations and Canada entered into the *Framework Agreement on First Nations Land Management* with Canada on February 12, 1996 ("Framework Agreement"), which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act (1999)*;

Whereas the “XYZ “ Indian Band has ratified the Framework Agreement and brought its Land Code into effect on May 27th, 2003; and

Whereas pursuant to the “XYZ “ *Indian Band Land Code* (and subsequent amendments), the “XYZ “ Indian Band may make laws to protect land, regarding the use and benefit of land, the occupation of and residence on land, and the creation of offences, penalties and remedies for violations of “XYZ “ Indian Band land laws;

NOW THEREFORE, THIS LAW IS HEREBY ENACTED AS A LAND LAW OF THE “XYZ “ INDIAN BAND.

What to consider when developing a law

Definitions

- The law must have a Definitions section that follows an alphabetical order.
- The definitions provide interpretation and clarification of words and terms used in the law. The definitions of words and terms should explain those words and terms relieving any ambiguity.
 - EG. ‘XYZ **Land**’ means the lands described in Section 5 of the XYZ First Nation Land Code as amended from time to time.
- The use of acronyms can be utilized but must be defined and should be limited in law. The law should be easily read and followed.
- **Any cross reference must be accurate and consistent.**

What to consider when developing a law

Set out sections defining the offences under the law;

Offence

- Every person who is not acting under a right or authority conferred by the “ABC” Constitution, the “XYZ” Land Code, a “XYZ” First Nation law, a resolution of Council, or other effective lawful right , and who,
- (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises on Mississauga Land when entry is prohibited under this Law, or
 - (ii) engages in an activity on premises on Mississauga Land when the activity is prohibited under this Law; or
 - (b) does not leave the premises on Mississauga Lands immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

What to consider when developing a law

Set out sections defining the offences under the law;

- E.g. Trespass or Right of access offence has been committed.

Right of access or Trespass offences can be committed in many ways. Set out the manner or ways that a person would commit a Trespass. Land Codes can contain sections of who has a right of access.

The following persons have a right of access to “XYZ” First Nation Land:

- a) a lessee and his or her invitees;
- b) a person granted a right of access under a permit;
- c) Members and their Spouses and children and his or her invitees;
- d) a person who is authorized by a government body or any other public body, established by or under an enactment of the “XYZ” First Nation, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey provided that the person received written authorization from Council; or
- e) a person authorized in writing by the Council or Lands Committee or by a “XYZ” First Nation Land Law. Any person, who resides on, enters or remains on “XYZ” Nation Land other than in accordance with a residence or access right under this Land Code is guilty of an offence.

What to consider when developing a law

Signage, Public Notices and Individual Notices

- The setting out notices and who issues the notices should be included in the law.

Signage and Public Notices

- The notices have to be clear when restricting access to portions or the community as a whole.
- Banishment This should be used in very extreme situations when all other means of compliance have been exhausted or situations are of the most extreme cases.

What to consider when developing a law

- It is recommended the notices and forms set out a minimum criteria or format either in the law or under a regulation or schedule.
- Any signage restricting or prohibiting access should be legible and visible to the members and the public.

What to consider when developing a law - Administration and authority

Authorities

- It is recommended that the law sets out the authorities for Band Council, Enforcement Officers, Police and their authorities to carry out duties with respect to the law.
 - Entry onto a site or residence.
 - Access and service of notices, demand proof of identification, the examination and seizure of certain documents and evidence.
 - Stopping and demanding identification
 - If there is a possibility of investigation off reserve that the Enforcement powers of search and seizure, demanding of records and investigations off reserve set out in the authorization and authority given to Enforcement Officers or Inspectors.

What to consider when developing a law - Administration and authority

- The Framework Agreement does not provide provisions for arrest and forcible removal of occupiers, therefore these authorities must be carefully considered set out in the law.
- It may be carefully considered that the forceable removal be through an order of the court and directed towards Police Officers only.
- In any law that a notice served on an occupier, person, or organization, it is highly recommended that a Policy or Guidelines be developed outlining the steps for those situations when an occupier, person, or organization is defiant.
- Consult with Senior Administration, Council and the Police

What to consider when developing a law - Administration and authority

Penalty Section

- If the community wishes to have alternative compliance methods then the law should allow the Enforcement personnel use those compliance methods.
- This could range from a warning, compliance notice or attend remedial meetings as directed. In some cases the penalty could be community service work - giving back to the community.
- The encouragement of compliance through education and community support has many benefits from costs, reducing resentment towards enforcement, resistance to compliance and respect for the community.
- A movement away from the offence, ticketing and penalty system should be encouraged.

What to consider when developing a law - Administration and authority

Penalty Section

- It is recommended in a Penalty section that minimum fines be set when using a ticketing system. If the penalty section is left out then the penalties revert back to the Summary Conviction provisions.
- A fine of not more than \$5000.00 or 6 months in jail or both.
- It is recommended to have a penalty schedule appended to the law stating the offences and the specified penalty for each offence.
- A law may contain many offences under one section or different sections throughout the law.
- If there is an intent to have escalating fines then they have to be set out in the penalty section stating the increments and time frame.

What to consider when developing a law - Administration and authority

Forms

- If there is certain forms are required from applications, notices, tickets or information and summons, those forms to be used should be set out as a schedule under the law;
- Some examples: Applications, ticket forms, applications to the courts, Band Council orders or notices to persons or organizations, agreements through dispute resolution process, etc.

Laws & Policy Development

Law

- ⑩ Is a system of rules passed by the government (FN) that must be obeyed by all.
- ⑩ Set out standards, procedures and principles that must be followed
- ⑩ A law is enforceable by judicial system
- ⑩ A law can reflect and make reference to FN policies
- ⑩ May be accompanied by a set of regulations such as penalty schedule, conditions or set out specifics to be adhered to by a specific law

Policy

- ⑩ A guiding principle used to set direction in an organization
- ⑩ A procedure is a series of steps to be followed as a consistent and repetitive approach to accomplish an end result
- ⑩ Together they are used to empower the people responsible for a process with the direction and consistency they need for successful process improvement

Laws & Policy Development

- Regulations are used to elaborate on requirements set out in laws.
- Policies are stated objectives; laws are rules to be followed compulsory
- Policies or guidelines are made and have them passed to give these policies a concrete shape of laws
- Policies and Regulations, give direction to the public or staff and the processes to be followed.

Different types of laws

- Land Registry
- Interest & Rights
- Allotment
- Land Use and Zoning
- Business Licencing/Permitting
- Leasing and Permitting
- Environmental Assessment and Protection
- Traditional/ Custom Holdings
- Dispute Resolution

Laws & Policy Development

- Enforcement Administration policies should be considered to provide guidance however not restrict the requirement enforcement in accordance with the law.
- You should provide the Enforcement authorities or procedures mealy in the terms of a policy.
- Put your authority in the law and legal procedure e.g. the process of serving documents in the law,
- Dress and deportment, reporting requirements, should be in policies.
- Items to consider should include a reporting system and records management.
- Reports should be used for substantiating reports back to Band Council
- Reporting to outside agencies such as the Local police service;
- If charges are preferred then those reports form part of the Crown Brief for court;
- The reports can form part of the basis if the Band is considering hold back of funds, granting a loan or mortgage;
- Establishes past history.

Questions and Comments



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THANK YOU!

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