

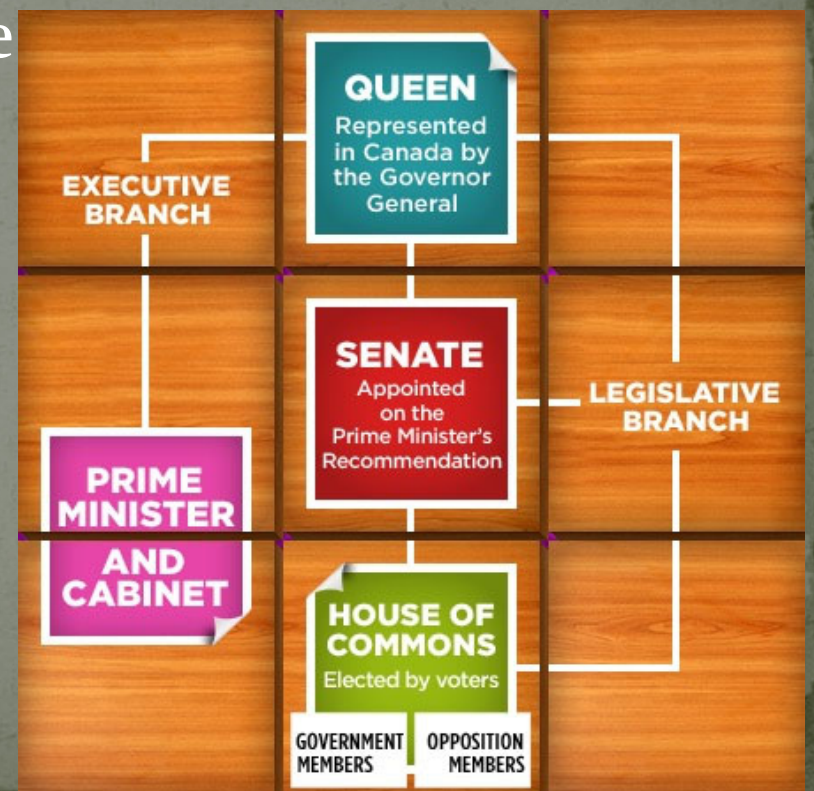
Land Code and First Nation Law Enforcement

Taking Matters Into Your Own Hands

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Enforcement of Law in Canada

- Police enforce law (e.g. the *Criminal Code*)... but why?
- We elect Members of Parliament; they create laws; those laws are approved by the senate and passed by the GG.



We see this: police enforce laws

- Police are mandated to prevent offences against the laws of Canada (federal law) and the laws in force in any province (federal or provincial law).
- Democratically passed laws *must* be enforced by the police.

Is Land Code a law?

- The Canadian Constitution (s 91) provides that First Nation issues fall within federal jurisdiction
 - This is why the *Indian Act* is a Federal Law;
 - Similarly, this is why *Indian Act* Bylaws (passed pursuant to Federal Law are considered Federal Law).
- Similarly, the *Framework Agreement / First Nation Land Management Act* is federal legislation.
 - Also similarly, laws passed pursuant to Land Code are effectively passed pursuant to s.91 of the Constitution and thus, are Federal Laws.

Trouble Is....

- The police don't seem to have direction from Canada to enforce Land Code or laws made pursuant to Land Code... creating a jurisdictional vacuum on First Nation reserve land.



→ Anyone in this room ever run into this problem?

Chief Rempel on Thordarson Case; Relationship with RCMP; Issues in Community; Etc

The screenshot shows the website for K'ómoks First Nation. At the top, there is a navigation bar with links: Comprehensive Community Plan, Land Use Plan, Map, Culture & Events, Galleries, Links, and Video. Below this is the K'ómoks First Nation logo, which includes a stylized canoe and the text "K'ÓMOKS FIRST NATION". To the right of the logo are navigation tabs: ABOUT US (with subtext "who we are"), HISTORY (with subtext "our past"), TREATY (with subtext "reports"), MEMBERS (with subtext "info & tools"), BUSINESS (with subtext "commercial projects"), and CONTACT (with subtext "get in touch").

The main content area features a historical timeline. A vertical strip on the left shows a landscape with mountains and a blue sky. The timeline itself is a horizontal bar with years: 1750, 1755, 1792, 1850, 1857, 1860, 1862, 1875, 1876, 1876, 1878, 1883, 1886, and 1940. The year 1850 is highlighted in red. Below the timeline is a double arrow icon pointing right.

The selected year 1850 is associated with a black and white photograph of a group of people sitting in front of a large, rectangular building made of vertical wooden planks. A large, carved wooden figure is mounted on the wall of the building. To the right of the photograph is a text box with the following text:

1850

The then British Colony, the Province of Canada passed *An Act for the Better Protection of the Lands and Property of Indians in Lower Canada* and *An Act for the protection of Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury* statutes into legislation.

On the far right of the screenshot is a large, vertical wooden carving of a stylized face with blue and red accents, likely a traditional Indigenous artifact.

K'omoks First Nation v. Thordarson and Sorbie, 2018 BCPC 114

- K'omoks Nation has a Land Code which (like most) says it is an offence to be on the land without a lawful right to be there.
- K'omoks had a lessee, refusing to pay a CP holder rent or leave.
- We won in Court.
 - i. “K'omoks is entitled to a remedy”;
 - ii. “the Band has established a case that should go forward in Provincial Court”;
 - iii. “the Information be served by a Peace Officer”;
- Ultimately, we went to Court again and won again. The Court ordered them out!
- Police must enforce a Court Order (no question about that one!)



What does this Ruling do?

- Establishes precedent that:
 1. Land Codes are law.
 2. Land Codes are enforceable in Criminal Court.
 3. If police refuse to enforce Land Code, First Nations can get court orders on their own (which police will have to enforce– subject to officer safety of course).

So What?

- No more vacuum



- Law which are enforced will be respected... or else!



Enforcing Law = A Step Towards Reconciliation

- This is a great opportunity for Canada (Justice) to put its money where its mouth is (this isn't happening yet!)



- Land Managers / Nations need to insist that Canada / Justice start enforcing First Nation Laws!

The Law Enforcement Regime

- Build an Enforcement Law that allows for the registration of Court Orders in Provincial registries.
- Ask RCMP to enforce.
- Ask Justice to prosecute (the current hang-up as I understand it... maybe there's someone in this room than can explain the Federal perspective?).
- It goes without saying, this is only fair (reconciliation?)

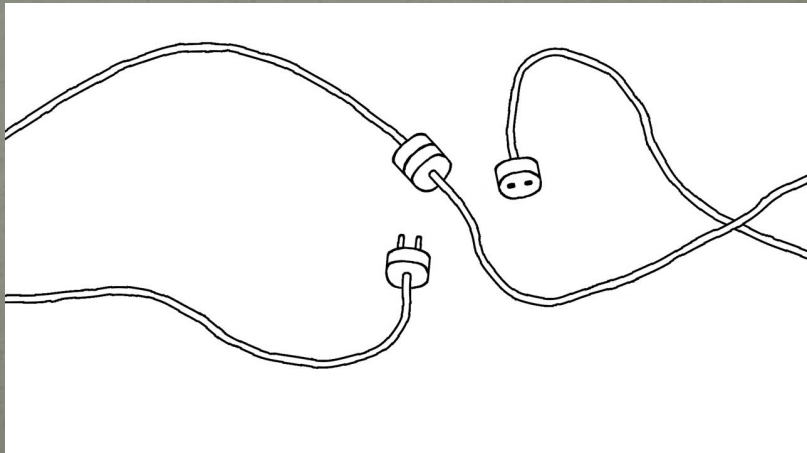
BREAK: Switch To McLeod Lake Slide Deck.

The Law Enforcement Regime

- Law Enforcement Regime:
 1. Creation of Enforcement Officer (RCMP if they'll do it; someone designated by Council if they won't);
 2. Creation of decision making body (could be Council; Justice of the Peace; retired judge; elders; etc.);
 3. Establish Procedure for decision making body (more on that later);
 4. Issuance of Orders;
 5. Allow an appeal (more on that later)?
 6. Registration of Orders in Provincial Court;
 7. Turn enforcement of court order over to RCMP! (now it's a court order so they have to enforce).

Plug and Play

- Enforcement Regime designed to be applicable to any law you want to enforce;
- Trespass Law; Dangerous Animal Law; Dangerous Substance Law; etc.
- Environmental Laws?
- Gaming Laws?



Break: Switch to Procedural Fairness Deck