

## Land Code and First Nation Law Case Law Summaries

### Legal Framework:

The Framework Agreement on First Nation Land Management, ratified by the *Framework Agreement on First Nation Land Management Act*, provides for the development of land codes by Signatory First Nations, which are enforceable as federal law, allowing provincial courts to adjudicate disputes under specific conditions.

The following is a summary of relevant case law, organized by province, pertaining to First Nation land codes and First Nation laws developed under a land code. This document is current to the date noted above and will be updated as new case law arises.

### British Columbia cases

#### **Waterslide Campground v. Goulet, 2008 BCSC 532**

*Westbank First Nation (WFN) applied for an order to compel the British Columbia Provincial Court to register an arbitrator's order under WFN law arising out of a landlord-tenant dispute.*

WFN applied to the Provincial Court of British Columbia to file an Arbitrator's Order made under WFN Law, arising out of a landlord-tenant dispute, so that the Order could be enforced in the Provincial Court. The Provincial Court did not accept the Order for filing, and WFN appealed that decision to the Provincial Supreme Court. The Supreme Court of British Columbia ordered the Provincial Court of British Columbia to register the WFN Arbitrator's Order and affirmed that the WFN Act and WFN Self-Government Agreement law-making powers were authorized by an enactment of Canada.

#### **Milestones**

- While this case was related to a First Nation Self-Government Agreement rather than a Land Code, it did establish that:
  - A decision made under a First Nation Law is registerable and enforceable by provincial courts.
  - First Nation Laws can be considered "enactments of Canada" for the purposes of enforcement by provincial courts.

Source for Provincial Court Case:

<https://www.canlii.org/en/bc/bcpc/doc/2006/2006bcpc297/2006bcpc297.html>

Source for Supreme Court Case:

<https://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc532/2008bcsc532.html>

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

*Non-members trespassed on a Land Code First Nation, British Columbia Provincial Court*

Two non-members occupied a home on Certificate of Possession (CP) land and refused to vacate or pay rent. They were charged with trespassing, contrary to the K'omoks First Nation Land Code. When the RCMP, BC Prosecution Service, and the Public Prosecution Service of Canada would not take action on behalf of K'omoks First Nation, a private prosecution was commenced by K'omoks First Nation in BC Provincial Court. The two accused were found guilty, fined \$1000 each, and were prohibited from being on K'omoks First Nation Land.

#### **Milestones**

- First filing of an Information and Summons in Provincial Court under a First Nation's Land Code.
- The written decision affirmed that a First Nation's Land Code is enforceable by Provincial Courts.
- The successful prosecution in Provincial Court of an offence against a First Nation's Land Code resulted in the removal of trespassers.

Source: <https://www.canlii.org/en/bc/bcpc/doc/2018/2018bcpc114/2018bcpc114.html>

### **Lower Nicola Indian Band v. Caldwell & Pockrant, 2024 Provincial Court of British Columbia**

*Lower Nicola Indian Band (LNIB) private prosecution of two non-members living on LNIB community land contrary to the LNIB Land Code and LNIB Trespass Law*

Two non-members were living in a motorhome on LNIB community land contrary to the LNIB Land Code. After all other reasonable efforts to remove the trespassers were unsuccessful, LNIB commenced a private prosecution of the trespassers. Following the process hearing, multiple court appearances, and pre-trial conferences, the accused entered guilty pleas on the opening day of their trial in early June 2025. Both were sentenced with three-year probation orders restricting them from residing on LNIB land as well as nominal fines. They have until the end of the month to remove all their property.

#### **Milestones**

- Process Hearing re-affirmed that, "...the Framework Agreement and Land Code create valid and enforceable laws which are subject to the Criminal Code summary conviction process."
- When the accused persons did not attend court for the Land Code offences, arrest warrants were issued by the court and acted on by the RCMP.

Source : <https://www.firstpeopleslaw.com/files/file/66c6810c7bec9/Lower-Nicola-Indian-Band-v-Barb-Caldwell-and-Mike-Pockrant.pdf>

## **Ontario cases**

### **Shawanaga First Nation v. Ladouceur et al. Superior Court of Justice- Ontario - 2021 ONSC 871**

*Members trespassed on a Land Code First Nation's land, Ontario Provincial Superior Court (Civil)*

Shawanaga First Nation (SFN) purchased Certificate of Possession (CP) land from a SFN member. Prior to the purchase, occupants of the home on the CP land (Ladouceur and Gascon), who are also members of SFN, stopped paying rent. The occupants also did not pay rent nor establish any sort of tenancy with SFN following the purchase and refused to vacate. SFN sought eviction authority through the Ontario Superior Court by an Order of Possession. The Court declared that Ladouceur and Gascon were trespassing and unlawfully occupying CP land.

#### **Milestones**

- Established the Ontario Superior Court as the court of competent jurisdiction over these types of land disputes.
- The Court reinforced that CPs are one of the strongest legal forms of land tenure on reserve and determined that SFN did have legal tenure over the land in question.
- The land tenure decision allowed the Court to issue an Eviction Order and a Restraining Order to Ladouceur and Gascon to prevent them from entering or occupying the property.

Source: <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc871/2021onsc871.html>

### **Mississauga First Nation v Witty and Pilon, 2024- ONCJ- April 2024 (Pilon still before the court)**

*Non-members trespassed on a Land Code First Nation, Ontario Provincial Court*

Two non-members were issued orders under the Mississauga First Nation (MFN) Community Protection Law to vacate a home on MFN lands due to alleged involvement in criminal activities. The non-members did not comply and were charged with trespass-related offences under the MFN Community Protection Law and the MFN Land Code. One accused (Witty) pleaded guilty to the trespass-related charges and was issued a \$1000 fine. The other accused (Pilon) is still before the court.

#### **Milestones**

- First successful filing of an Information and Summons in Ontario Provincial Court under First Nation Land Code and First Nations Law.
- The Ontario Provincial Court recognized the enforceability of a Land Code and First Nation Law.
- First successful private prosecution in an Ontario Provincial Court of a First Nation's Land Code.

Source: <https://www.firstpeopleslaw.com/files/file/66c6816a7c1ee/Mississauga-First-Nation-v-Witty.pdf>

### **R v D. TOULOUSE - 2024- ONCJ- December 2024 (ongoing prosecution)**

*Non-member charged by the Ontario Provincial Police (OPP) with Criminal Code and First Nation Law offences*

Blind River OPP Detachment charged a non-member with criminal code offences and Mississauga First Nation (MFN) Community Protection Law trespass-related offences following an incident that occurred on MFN lands. As of June 2025, this case remains before the courts; its outcome may further define enforcement practices.

#### **Milestones**

- The first occurrence of a provincial policing agency laying charges under a First Nation law.
- The OPP laying charges under a First Nation law demonstrated First Nation matters could be heard alongside criminal matters in Provincial Bail Court.

Source: <https://www.sootoday.com/opp-beat/35-year-old-accused-of-breaking-into-mississauga-first-nation-home-10151581>