

FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT

Law Development: Enforcement & Ticketing Laws

Presented by:

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The *Framework Agreement on First Nation Land Management*

- Originally signed between First Nations and Canada in 1996.
- A government-to-government agreement that recognizes First Nations inherent right to self-government.
- Driven by First Nations to re-establish land governance through the development and approval of their own Land Codes and Land Laws.



First Nation Laws Under the Framework Agreement

The **Framework Agreement** is a First Nation-led exercise in self-government.



First Nations under a Land Code have the authority to develop laws respecting the development, conservation, protection, management, use and possession of First Nation land.

This **First Nation law-making authority is independent** of any other government.

- **First Nation laws** can provide for clear enforcement authorities, establish offences, and identify adjudication processes.
- **Enforcement of First Nation Laws** is essential to First Nation self-government, the Rule of Law, and for social and economic well-being.

First Nation Law Making Authority

Council has the power to develop within their Laws:

Limits on liability, defences and immunity when acting under the land code or First Nation law

Agreements with other governments for enforcement, collection of fines and penalties

Establish offences punishable on summary conviction

Provide for fines, imprisonment, restitution, alternative means for achieving compliance

Enforcement procedures consistent with federal and provincial law

Appoint Justices of the Peace

- Follow the Law-Making process outlined in your Land Code.
- It is good practice to seek independent legal advice when drafting a law.



Examples of First Nation Laws



Trespass & Community Protection



Land Use, Zoning, and Development



Residential Tenancy



Allotments, Interests and Licences



Business Permitting and Licensing



Environmental Assessment and Protection



Emergency Laws



Natural Resource Management



Recycling, Solid Waste Management and Garbage Disposal



Environmental Emergencies and Natural Disasters



Enforcement & Ticketing

Achieving Compliance



- If not enforced, laws will be ignored
- Police and the court system are just one option
 - Court process is expensive & time-consuming
- Other Options:
 - Cooperative Enforcement Plans
 - Traditional Laws, Procedures & Penalties
 - Education & Outreach
 - Monitoring for Compliance
 - Contracts
 - Warnings, Tickets & Compliance Orders

Enforcement and Adjudication Options under Land Code

- Prior to charges:
 - Administrative Remedies (e.g., warnings, stop work orders, etc.)
- Prior to charges or at any point when an offence is committed:
 - Restorative Justice, Traditional Healing, & Diversion Programs
- When an offence is committed:
 - Ticketing processes, either by creating a ticketing scheme or by “tapping into” an existing municipal, provincial or federal system
 - The Criminal Code Summary Conviction Procedure



How Some Framework Agreement First Nations are Enforcing their Laws



- **Private prosecutions** in Provincial Courts: Criminal Code Proceedings (see Case Law Summary handout)
- **Driving changes to provincial offence legislation** to expressly refer to First Nation laws in provincial laws dealing with enforcement procedures (Saskatchewan, Manitoba, BC – for Treaty First Nations)
- **Appointment of First Nation Justice of the Peace** and retention of private prosecutors (K'omoks)

What is an Enforcement & Ticketing Law?

- **An option** to set out in one law the procedural law developed by a First Nation to establish how violations of their other First Nation laws will be administered and prosecuted
 - Can establish procedures for dealing with minor offences (e.g., warnings and tickets) and more serious, higher risk offences (e.g., matters to be brought before the court or Justice of the Peace for resolution)
 - Can establish procedures for traditional healing and restorative justice processes
 - Can include processes for appointing Justices of the Peace and Enforcement Officers, and establish their enforcement authorities and powers



Benefits of the Enforcement & Ticketing Law Option

- Establishes a consistent, efficient and effective enforcement process that can be applied to all laws of a First Nation
- Eliminates repetition in each First Nation law
- Enforcement staff become experts in the Enforcement & Ticketing Law
- Ticketing reduces First Nation reliance on the overcrowded mainstream court system, but the law can still allow for that connection when needed
- May improve respect for and enforcement of First Nation laws in the mainstream court



Criminal Law: An Overview

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- All authority for criminal law arises from statute
 - Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.)
- Division of legislative power
 - s.91(27) **Parliament of Canada** has jurisdiction over the criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters
 - s.92(14) **Provincial Legislature** has jurisdiction over the Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- Attorney General of Canada vs Attorney General of Province

Types of Criminal Law in Canada

Federal Criminal Law	Provincial Regulatory Law	Municipal Enforcement
Criminal Code of Canada, RSC, 1985, c.C-46	Provincial Legislation	Municipal Bylaws
<ul style="list-style-type: none"> Everything from breach of the peace to murder <p>Example: Controlled Drugs and Substances Act, SC 1996, c.19: drug offences</p> <ul style="list-style-type: none"> every other federal enactment <p>Procedure: Criminal Code</p>	<p>Example: Motor Vehicle Act</p> <p>Procedure: BC Offence Act</p>	<p>Procedure:</p> <ul style="list-style-type: none"> - administrative bylaw ticket - municipal ticket - Municipal or Offence Act procedure

Criminal Code Offence vs. Provincial Offence

- Can be similar federal and provincial offences
- Distinguished by their nature, criminal vs regulatory, and penalty

Criminal Code Offence	Provincial Offence
<p>Dangerous operation</p> <p>320.13 (1) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public</p>	<p>Careless driving prohibited</p> <p>144 (1)A person must not drive a motor vehicle on a highway</p> <p>(a)without due care and attention,</p> <p>(b)without reasonable consideration for other persons using the highway, or</p> <p>(c)at a speed that is excessive relative to the road, traffic, visibility or weather conditions.</p>

Elements to Prove an Offence

➤ **Actus Reus** – guilty act

➤ **Mens Rea** – guilty mind

Criminal Offence	Regulatory Provincial Offence
<p>Mens rea, knowledge and intent must be proven</p> <ul style="list-style-type: none">• Murder: have to prove intended to kill• Manslaughter: have to prove intended an unlawful act that resulted in death• Example: dangerous operation of motor vehicle, objective assessment, have to prove that a reasonable person in similar circumstances ought to have been aware of the risk and of the danger involved in the conduct manifested by the accused	<p>Strict liability, where the act is proven, failed to take reasonable care / defence of due diligence</p> <ul style="list-style-type: none">• Example: careless driving: have to prove lack of care and attention <p>Absolute liability, where the act is proven, no defence of due diligence</p> <ul style="list-style-type: none">• Example: speeding

How is a Criminal Charge Initiated?

- a charging document (stating the charge)
- initiation of process (to compel a response or appearance)

Criminal Code: Indictable offences vs summary conviction offences

- many offences are hybrid and be either but some, like murder are always indictable
- criminal record

Provincial Offences: Offence Act

- violation ticket or summary conviction process
- violation ticket is signed by a designated official, e.g., speeding ticket
- summary conviction process, based on the Criminal Code
- an informant lays an information before a justice (Justice of the Peace)
- process is issued, summons or warrant

Private Prosecutions

s.507.1 of the Criminal Code of Canada

- 507.1 (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

Two Steps:

1. Lay an information before a justice
2. Conduct a process hearing in front of a judge

- Attorney General is given notice of the private prosecution
- Attorney General may stay the proceeding at any time after the information is laid, and may withdraw the charge after process is issued
- If process is not issued, the private prosecution effectively ends

Thank You

Questions?

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