

	WHAT IS IT?	LEGALLY BINDING?	EASILY AMENDED?
<b>LAWS UNDER LAND CODES</b>	<ul style="list-style-type: none"> <li>The Land Code (LC) is approved by members and First Nation (FN) laws are enacted by Council in accordance with the land code</li> <li>LC and LC laws establish enforceable rules applicable on reserve to members, non-members and corporations</li> </ul>	Yes, offences can be addressed through traditional mechanisms, by Justices of the Peace, and through provincial & territorial courts.	<ul style="list-style-type: none"> <li>LC difficult to amend - may require a vote of members</li> <li>LC laws must follow amendment procedures contained in LC</li> </ul>
<b>EMERGENCY LAWS UNDER LAND CODES</b>	<ul style="list-style-type: none"> <li>Like a LC law, but one that is needed urgently for public health and safety or to protect the FN and its members</li> <li>Enacted by Council without following all the enactment procedures and typically expires in a short period of time</li> </ul>	Yes, offences can be addressed through traditional mechanisms, by Justices of the Peace, and through provincial & territorial courts.	<ul style="list-style-type: none"> <li>LC difficult to amend - may require a vote of members</li> <li>Given they expire in a short period, the law can be amended in a subsequent version</li> </ul>
<b>REGULATIONS UNDER LC LAWS</b>	<ul style="list-style-type: none"> <li>Some Regulations can only be made under a LC law if the LC law authorizes their development</li> <li>Regulations are subordinate to the LC law and contain details that make a LC law work</li> </ul>	Yes, offences can be addressed through traditional mechanisms, by Justices of the Peace, and through provincial & territorial courts.	<ul style="list-style-type: none"> <li>Can be easier to amend than LC and LC laws if the LC law specifies simplified regulation amendment procedures</li> </ul>
<b>BYLAWS UNDER INDIAN ACT</b>	<ul style="list-style-type: none"> <li>Indian Act by-laws are subordinate to the Indian Act and regulations made under the Indian Act</li> </ul>	Yes, but long history of little to no enforcement	Yes
<b>POLICIES &amp; GUIDELINES</b>	<ul style="list-style-type: none"> <li>Guiding principles that are used to set direction and maintain consistent processes and decision-making</li> <li>Policies and guidelines can help with the implementation of your LC laws, regulations under LC laws and even Indian Act bylaws</li> </ul>	<ul style="list-style-type: none"> <li>No - Policies and guidelines are not laws and are not enforceable against members, non- members etc.</li> <li>In some circumstances, courts might decide that a policy or guideline is enforceable against the FN government or employee (e.g., Human Resource Policy, Conflict of Interest Policy). Consult your legal counsel</li> </ul>	Yes
<b>BAND COUNCIL RESOLUTION (BCR)</b>	<ul style="list-style-type: none"> <li>BCRs typically record decisions, approvals, or political positions of Council</li> <li>LC may establish a requirement for a BCR to record the decision to enact a LC law (majority of Councillors present, names of Councillors in attendance, date of enactment etc.), but they are not a LC law</li> </ul>	<ul style="list-style-type: none"> <li>No, BCRs are not laws</li> </ul>	Yes

**NOTE:** Your Land Code contains your community-approved law development process, including details on how a law can be proposed, community consultation and approval requirements, and limits to the duration of emergency laws. Please refer back to your Land Code before developing a Land Code law.

## What is Land Code Law?

- A system of rules that a First Nation, operational under the Framework Agreement on First Nation Land Management (FA), recognizes as regulating the actions, on reserve, of its members, non-members and corporations, and that may be legally enforced by the imposition of penalties
- Legally binding
- May create penalties and offences
- Authorizes enforcement powers and measures
- A Land Code law passed under an original source of jurisdiction (FA and a First Nation's Land Code) vs. by-laws which are delegated
- Before a law is enacted, it must go through a series of steps that allow it to be debated and amended
- Follow the requirements in your Land Code for community consultation and approval before a law is enacted by Council
- It is important to confirm that there is authority under the Land Code for the type of law that is being developed
- Consider incorporating the traditions, teachings and culture of your First Nation into your Land Code laws

## When is a Law the best tool?

- When required by your Land Code
- When there are issues of fundamental importance
- When there are sufficient resources for to allow for compliance, implementation, and enforcement When mandatory standards or prohibitions need to be set
- When enforcement tools are required

## When is Law NOT the best tool?

- When there are a lot of details that needs to be regularly revised. Laws take time to amend; usually changeable details go into regulations or policies
- If there are not sufficient resources for members to comply with the law, or for the First Nation to implement and enforce it
- When the goal is educational or aspirational

## What are Regulations?

- Contain the details to make a Law work (e.g. if a Law requires a meeting to be held, the regulations would set out how when the meeting must occur, the form of meeting notice, fees, etc.)
- May deal with required forms, applications, approval procedures, etc.
- Can be amended more easily than laws
- Are usually created under delegated authority established in the law they support
- Council may delegate regulation-making powers through the “parent” law Are legally binding (compared to policies which are not)
- Are still legally binding (compared to policies which are not)

## When are Regulations the best tools?

- A non-controversial aspect of the law may need to be altered easily or often
- To clarify details required to implement a law
- It is clear in the law who has the authority to make and amend the regulations

## Regulations should NOT:

- Limit personal rights or freedoms
- Deal with matters of fundamental importance - these should be contained in the law itself
- Allow for the transfer or sub-delegation of the power to make regulations to other parties
- Exceed the limits set out in the law that created them
- Include vision statements or educational goals
- Include items that are not enforceable

## What are Policies & Guidelines

- Help maintain consistency in decision-making
- May support laws, or implement a non-legislative government objective Are NOT legally binding
- Give direction to program managers and staff about how to make decisions (e.g., how to decide when a fee should be waived, etc.)
- Provide guidance to applicants about application procedures (e.g., what forms to use, how long processing takes)

## When are Policies & Guidelines the best tool?

- When the goal is to educate, promote, or implement, rather than ensure compliance
- When there are repeated actions, applications or decisions required under a law or regulation (a policy may assist with consistency)
- To fill minor gaps in the implementation of laws or regulations
- A decision must be made about how to spend pre-determined funding or manage programs
- To simplify or explain a law to the people who are required to follow it (such as members or applicants)

## Band Council Resolution (BCR)

- Used to authorize or approve numerous transactions under the Indian Act
- Some First Nations may still use BCRs for their own government approval processes BCR's are not considered laws
- BCRs are not required to enact a law under the Framework Agreement but in some cases, may be a requirement under a First Nation's Land Code law-making process to officially record Council's decision to enact a law
- BCRs are not considered laws