



Support for First Nation MRP Law Making

First Nations Land Management Resource Centre Support for MRP

MRP Engagement Session – Kelowna, BC

January 30-31, 2018



FNLMRC Support for MRP

- *Framework Agreement (FA)* Requirements for MRP
- Support for Land Code Development
- Support for MRP Law Development
 - Sample laws
 - Building on experiences from other FN's
 - Drafting your MRP law
 - Communication Plans
 - Courselets and other resources
 - Legal support
- Support for MRP Enforcement & Implementation
 - Enforcement considerations when drafting MRP Laws
 - FNLMRC Enforcement Experts
 - Building partnerships with local law enforcement agencies



FA Requirements for MRP

From the *Framework Agreement on First Nations Land Management (FA)*:

5.4 In order to clarify the intentions of the First Nations and Canada in relation to the breakdown of a marriage as it affects First Nation land:

- a) a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of First Nation land and the division of interests or land rights in that land;
- b) for greater certainty, the rules and procedures referred to in clause (a) shall not discriminate on the basis of sex;
- c) the rules and procedures referred to in clause (a) shall be enacted in the First Nation's land code or First Nation laws;
- d) in order to allow sufficient time for community consultation during the community process referred to in clause (a), the First Nation shall have a period of 12 months from the date the land code takes effect to enact the rules and procedures;
- e) any dispute between the Minister and a First Nation in respect of this clause shall, notwithstanding clause 43.3, be subject to arbitration in accordance with Part IX;
- f) for greater certainty, this clause also applies to any First Nation that has voted to approve a land code before this clause comes into force.

Note that unlike MRP laws enacted under FHRMIRA, MRP laws enacted under the FA cannot address estates (i.e., division of family interests upon the death of a spouse). This is expected to change with amendments to the FA.



Support for Land Code Development

- A FN's Land Code sets out the Law Making, Community Approval, Dispute Resolution, and Conflict of Interest procedures, all of which are relevant to your MRP law
- In accordance with the *FA*, the Land Code also includes the requirement to develop an MRP law
- FNLMRC technicians and staff experts support FN's throughout the Land Code development process and provide continued support once the Land Code has been enacted
- Although there isn't a specific pot of funding for MRP law creation under the *FA*, funding is provided to FN's during their developmental and operational phases as well as transitional/environmental funding for the first two years after the Land Code is enacted
- The FNLMRC is also compiling a database of possible funding sources to further assist FN's with land & environmental management



Support for MRP Law Development

- Sample laws
 - FNLMRC has drafted sample laws FN's can use as templates, customizing them to fit the needs, issues, and traditional practices of their FN
- Building on experiences from other FN's
 - FNLMRC can also provide you with example laws and contacts from other FN's so you can build on their experience
- Drafting your MRP Law
 - Definitions for key terms (i.e., spouse, common-law, dependent, family home, etc.)
 - Powers and authority
 - Matrimonial real property and its exclusions
 - Domestic contracts
 - Orders and prohibitions
 - Mediation
 - Access to Court of Competent Jurisdiction
 - Offences and Enforcement



Support for MRP Law Development

- Communication Plans
 - FNLMRC can assist with communication plans, creating communication materials, presentations at meetings, community surveys and information gathering, etc.
- Courselets (www.labrc.com) and other resources
 - The FNLMRC has developed a suite of courselets on key issues relevant to FN Land Management, for self-guided learning
 - Sample workplans, HR tools, communications tools, etc., have also been created or shared from other FN's
 - National and regional meetings and conference calls on MRP
 - Land Governance Manual (soon to include a section on MRP)
- Legal Support
 - FNLMRC has legally trained staff who can work with the First Nation's own lawyers on some aspects of the legal drafting and review to ensure your MRP Law meets the requirements of the FA and is non-discriminatory

Note that the FNLMRC recommends that in addition to the advice provided by our legally trained staff, FN's should retain their own legal advisors to assist with the development of their MRP law



Support for MRP Enforcement & Implementation

- Enforcement considerations for drafting FN MRP Laws
 - MRP situations can in sometimes involve family violence or child protection and so it is helpful to consider the interaction between land code, MRP, and policing or child protection authorities
- FNLMRC Enforcement Experts
 - FNLMRC has experts on staff with considerable policing experience who can assist you when developing the enforcement provisions of your MRP law
 - They can help you to address issues such as:
 - what powers for enforcement will be included in your MRP law (i.e., orders, inspections, investigations, etc.)
 - who will be responsible for enforcement
 - what will be considered an offence
 - what are the penalties for committing an offence
 - Proper records management for ongoing inspections or investigations
 - etc.



Support for MRP Enforcement & Implementation

- Building partnerships with local law enforcement agencies
 - The FNLMRC Environment & Enforcement team is also working on building and/or expanding upon FN's enforcement relationships with local law enforcement agencies such as:
 - First Nation Police Services (i.e., Anishinabek Police Service)
 - Ontario Provincial Police
 - BC Police Services (Abbotsford, North Vancouver, Vancouver)
 - RCMP (BC)
 - Qwi:qwelstom Traditional Dispute Resolution
 - Child Protection Agencies
 - This includes fostering recognition of FN Laws enacted under the FA, educating local law enforcement agencies on FN laws enacted under the FA, and developing agreements regarding responsibilities for enforcement and adjudication
 - Looking at pilot enforcement partnership projects in Ontario and BC to use as an example for other FA FN's





If you require further information please contact:

First Nations Land Management Resource Centre Inc.

Jennifer Predie

Environment & Enforcement Specialist

c: 705-203-0597

e: Jennifer.Predie@labrc.com

www.labrc.com

