



# Enforcement of Whitecap Dakota First Nation and Muskoday First Nation Laws Pilot Project

October 28, 2020

# Enforcement of Laws: Pilot Project

Muskoday First Nation (“**MFN**”), Whitecap Dakota First Nation (“**WDFN**”) and the Province of Saskatchewan (the “**Province**”) have been working together to establish a process for the enforcement of the First Nations’ Laws.

# Memorandum of Understanding (“MOU”)

- On October 18, 2019, MFN, WDFN and the Province signed a Memorandum of Understanding which creates a joint working group (the “**Trilateral Task Group**”) to find solutions to issues associated with the enforcement of the First Nations Laws.
- Issues include investigations, laying of charges, prosecutions, and adjudication.

# The Trilateral Task Group

- Members of the Trilateral Task Group include representatives from all 3 parties.
- The MOU also recognizes that the federal government has an important role with respect to the enforcement of First Nations Laws and may be invited to participate

# Deliverables of the Trilateral Task Group

- The Trilateral Task Group's role is to draft mechanisms and processes for the enforcement of First Nations Laws
  - Includes processes for prosecutions and scoping out the role of Saskatchewan's Provincial Court.
- The Trilateral Task Group will also consider the costs of enforcement and who will be responsible for what costs

# Existing Procedures

- The Framework Agreement and most of MFN's and WDFN's own laws provide that offences will be prosecuted through the "summary conviction" procedures under the Criminal Code
  - Summary conviction offences are usually heard in Provincial Court
- The Framework Agreement sets out that a First Nation may appoint their own prosecutors or enter into an agreement with a province to use provincial prosecutors
- The Framework Agreement also sets out that a First Nation may appoint Justices of the Peace to enforce their laws

# Work of the Trilateral Task Group

- Given those existing procedures, the Trilateral Task Group is working through all of the jurisdictional issues that arise with enforcing First Nations laws in the provincial court system
  - Issues include the jurisdiction of provincially-appointed Justices of the Peace, Provincial Court judges and prosecutors to enforce First Nations laws
  - Further, if provincial employees are to be involved, the Trilateral Task Group will have to address proper training for provincial employees who will be working with First Nations laws

# Memorandum of Agreement (“MOA”)

- The Working Draft of the MOA sets out the agreement between the parties to the Trilateral Task Group regarding the enforcement of the First Nations Laws, and specifically deals with:
  - Management Committee
  - First Nation Law Enforcement Officers
  - Prosecutions
  - Justices of the Peace
  - Indigenous Courts

# Management Committee

- The parties agree to establish a Management Committee, which will consist of one person appointed by each party and will meet once every 3 months for the 1<sup>st</sup> year, and twice annually thereafter
- This will serve as the formal mechanism and forum for the parties to discuss the administration and enforcement of First Nations Laws
- Disputes regarding the MOA will be dealt with by the Management Committee

# First Nation Law Enforcement Officers

- The MOA provides that MFN and WDFN will each hire and train their own respective First Nation Law Enforcement Officers
- Where requested, Saskatchewan agrees to recognize and support these Officers in the exercise of their duties

# Prosecutions

- The parties agree that MFN and WDFN have inherent and statutory jurisdiction over the prosecution of First Nation Laws
- Saskatchewan agrees to prosecute First Nation Laws pursuant to the Framework Agreement (s. 19.10) and the FNLMA (s. 22(3)(b))
  - Draft MOA proposes that there will initially be no cost to MFN and WDFN
  - Track costs and discuss with federal government
- The Management Committee will work towards the creation of an autonomous prosecutorial regime for MFN and WDFN.

# Justices of the Peace

- Parties agree that the Provincial Court of Saskatchewan has jurisdiction to adjudicate First Nation Laws
  - *The Provincial Court Act, 1998*, section 5(2)(c)
  - Framework Agreement, section 19.4
  - *FNMLA*, section 25(5)
- Parties will work with the Management Committee to appoint JP's to adjudicate First Nation Laws

# Indigenous Courts

- Nothing in the MOA prohibits MFN or WDFN from exercising any inherent or statutory authority to enact an adjudication process consistent with the effective administration of First Nations Laws
- The parties agree to work toward the creation of an autonomous adjudication process which will hear and determine prosecutions of offences of First Nations Laws

Questions?

