

# First Nation Laws - Framework Agreement on First Nation Land Management



First Nations National Lands Governance & Economic Development  
Conference

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# Plans, Policies, Laws & Land Instruments – Tools for Economic Development



# Framework Agreement as Self-Government

- Framework Agreement on First Nation Land Management allows for considerable flexibility in choosing which tools to use – each First Nation determines which tools (laws, policies, regulations etc.....) can contribute to economic development or other goals
- Land policies, land codes, land use plans and leases etc.... all these tools should align properly.....and should work well with other First Nation governmental activities (like housing policies)
- Laws generally establish rules and penalties – and can apply widely to members, non-members, visitors, businesses, government officials etc...
- Policies provide guidance – for the public affected by laws and lands officials applying laws
- Policies are generally not legally binding – but too much flexibility destroys the guidance a policy should provide



# Building a Quality Inventory of Laws



# Laws

- High quality laws send powerful signals to businesses, real estate and financial institutions, provinces and municipalities, non member residents on reserve etc....
- First Nation laws under the Framework Agreement are not by-laws
- First Nation laws under the Framework Agreement can establish rules as strong as in neighbouring governments.....unlike the inadequate Indian Act system
- Canada has agreed in the Framework Agreement to well recognized and understood penalties and procedures for enforcement as summary conviction offences – and significant penalties for violation of environmental laws
- Prosecutors and courts are still unfamiliar with the Framework Agreement – enforcement will need to build over time
- Drafting quality – plain language is helpful in establishing rules that can be clearly understood – even by the courts
- Individual First Nations have the flexibility to establish rules that resonate with community members – but helpful precedents are available (see [www.labrc.com](http://www.labrc.com))



# Framework Amendments – Expanding the Tool Chest





# Framework Agreement Amendments

- The Framework Agreement can only be amended with agreement of at least 2/3 of land code First Nations.....but Canada also needs to agree
- The most recent amendments from 2018 include:
  - **UNDRIP clause**
  - **Changes to voting**
  - **Expanded list of self government law making powers**
  - **Expansion of Matrimonial Real Property authority**
  - **Limitation of liability for First Nation governments**
  - **Indian moneys**
  - **Authority to move beyond federal administration of the First Nations lands register**
  - **Additions to reserve**



# For Exploration – Next Round of Amendments?

The next round of amendments requires further exploration – and ultimately would require approval of the Lands Advisory Board and land code First Nations – but some ideas for exploration are as follows:

- potential to expand the successful Framework Agreement as an option for Aboriginal title lands (not just reserves)?
- expand addition to reserve provisions to include timelines & dispute resolution – including for municipal service agreements?
- option for oil and gas First Nations to opt out of IOGA?
- respect First Nation authority to enact environmental assessment laws – without reference to Canada’s statutory standards?





# For Exploration - Next Round of Amendments?

- First Nation authority to make laws with respect to species at risk – federal power under same limits as apply to provinces?
- clarify natural resource law making powers – possible to address some fisheries?
- Expressly provide for A to A leasing?
- additional fiscal provisions to track Canada-First Nation fiscal relationship work? specify grant based funding in Framework Agreement?
- enforcement – expressly state that First Nation laws are not by-laws?



# Big and Small



# Repeal the First Nations Land Management Act (FNLMA)

- The Lands Advisory Board has repeatedly called on Parliament, Ministers and federal officials to respect the government to government relationship established by the Framework Agreement by repealing the FNLMA – which repeats much but not all of the Framework Agreement
- A new First Nations Lands Governance Recognition Act has been suggested – the shortest possible federal legislation to ratify the Framework Agreement
- We have suggested that Parliament ratify the Framework Agreement as amended by agreement over time.....eliminating the current requirement for Parliament to amend the FNLMA whenever Framework Agreement amendments are completed



# Next Steps

- The next phase of Framework Agreement amendments needs further development and will only proceed if approved by land code First Nations
- Federal officials advise that they have a mandate for further Framework Agreement amendments – after the fall 2019 federal election
- The quantity and quality of First Nation laws will increase – as more and more operational First Nations develop their laws
- We have requested that Canada provide financial assistance to support upcoming prosecutions of First Nation laws through the courts – to establish valuable precedents
- Many land code First Nations are seeking to establish land code specific policing provisions in their agreements with the OPP, RCMP, and First Nation police services
- Engaging policing leadership to ensure their statutory and policy authority includes authority regarding land codes (e.g. changes to Ontario Police Services Act)
- Some land code First Nations are examining the potential to appoint justices of the peace to enforce land codes and First Nation laws enacted under the Framework Agreement.....and the potential to also have those justices of the peace appointed under provincial law
- Engagement with federal and provincial authorities regarding appointment of prosecutors and the potential for provincial court directives regarding enforcement of land code laws

