

MOVING TOWARDS ENFORCEABLE FIRST NATION LAWS:

PRE-TREATY JURISDICTION



Jurisdiction, Enforcement & Prosecution

- ▶ *Framework Agreement on Land Management*: ss.18, 19 (enforcement and prosecution provisions); *FNLMA* ss. 20-24 (mirror).
- ▶ Both the *Provincial Police Act* and the *RCMP Act* require officers to enforce laws which are in force in British Columbia.
- ▶ The *Criminal Code / Interpretation Act* provides that B.C. prosecutors have the default jurisdiction to prosecute unless PPSC takes a prosecution over.



What Happens When They Don't Leave?

- ▶ Thordarson case study.



Private Prosecution??

- ▶ What is a Private Prosecution?
- ▶ Novel approach; very rarely used; usually taken over by a public prosecutor.
- ▶ Why would we have to do one here?
- ▶ Systemic Breakdown.



Scope of *FNLMA* Jurisdiction

- ▶ The *First Nations Land Management Act* was passed in 1999. When this Bill was before the House of Commons, vigorous debate surrounded the expanding jurisdiction of First Nations to allow for enforcement and prosecution of First Nation Laws (i.e. this jurisdiction isn't new, nor is this a mis-interpretation of the jurisdiction or the gravity of the legislation). This is EXACTLY what our parliament intended.



Laws & Enactments

- ▶ Nation Laws are Laws: *K'omoks First Nation v. Thordarson and Sorbie*, 2018 BCPC 114.
- ▶ “K'omoks is entitled to a remedy; the Band has established a case that should go forward in Provincial Court”

- ▶ Nation Laws are Enactments: *Waterslide Campground v. Goulet*, 2008 BCSC 532.
- ▶ “The WFN has been authorized by an enactment of Canada to make subordinate law [which are enactments] consistent with the *WFN Act* and the Agreement”



Law Enforcement and Prosecution as a Self-Government Right

- ▶ Rights recognition / Self-government Rights / *UNDRIPA* / Bill C-15
- ▶ Co-operative Federalism
- ▶ Common Law / Legislative & Policy Change
- ▶ Don't step backwards, step forwards- insist on establishing enforceable law (use the Framework Agreement, *K'omoks*, and *Waterslide* as guides)

