

Enforcement under Treaty: Reconciliation in (in)Action

Presented by:

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For:

K'ómoks First Nation & BC Treaty Commission

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Agenda

- ▶ Enforcement as Reconciliation
- ▶ Treaty Context
- ▶ Practical Challenges

Enforcement as Reconciliation

Returning to self-government...

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Enforcement as Reconciliation

- ▶ To govern means to rule, to have laws
- ▶ Laws, rules we obey for a civilized society
 - ▶ Public order, peace and safety
- ▶ Democracy (Greek “demos”) of the people
 - ▶ “Rule of law”, all are equal under the law
- ▶ Self-determination, to determine our own laws, how we want our society to be
- ▶ Colonization, imposing the laws of one society on another society (disempower)

Enforcement as Reconciliation

- ▶ “Reconciliation” (Oxford English Dictionary)
 - ▶ (1) The restoration of friendly relations;
(2) The action of making one view or belief compatible with another.
 - ▶ Requires action, meeting, coming together, restoring, combining
- ▶ “Cornerstone” (Oxford)
 - ▶ An important quality or feature on which a particular thing depends or is based
 - ▶ Foundational, joining
- ▶ “Treaty” means returning to self-government in a modern way, blending traditions with current needs, respected by other governments

Enforcement as Reconciliation



Treaty Context

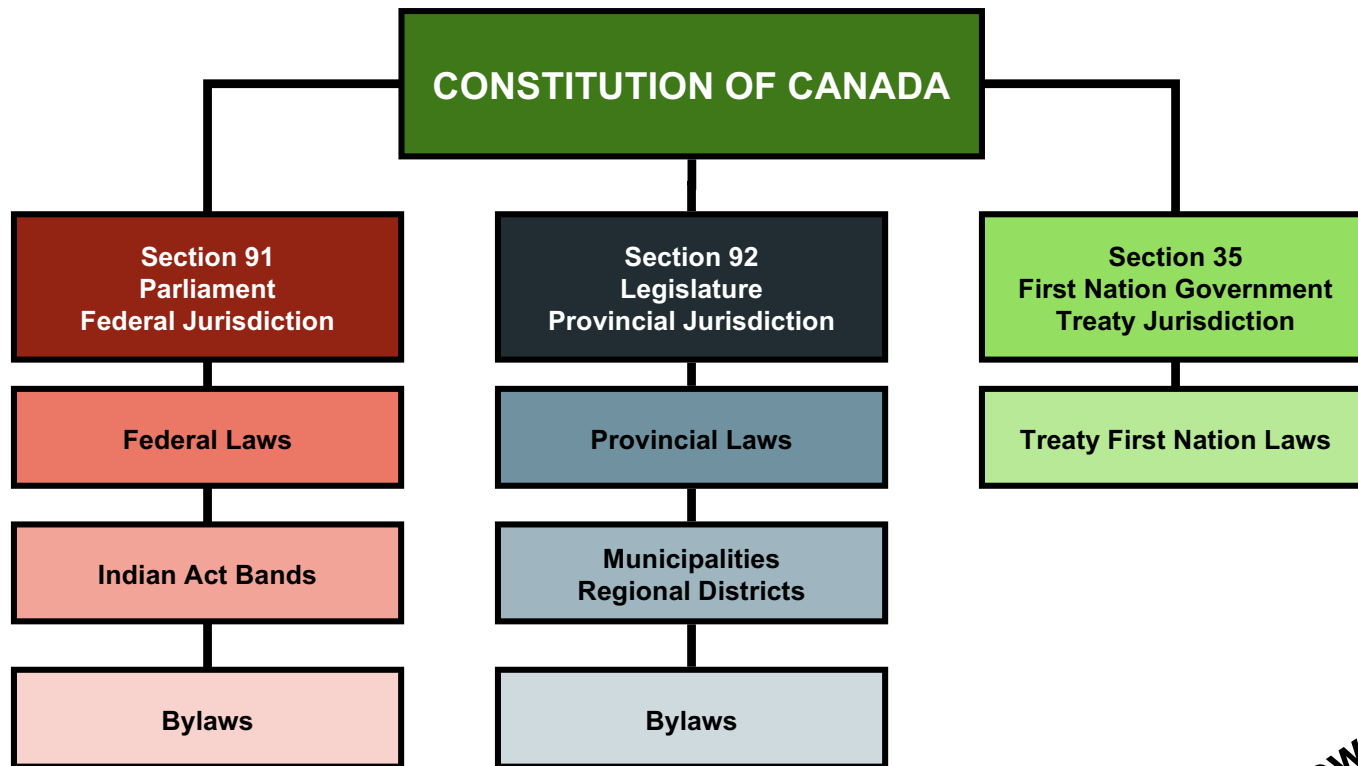
What self-government looks like...

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Treaty Context

- ▶ Modern Treaty
 - ▶ Protected by Canadian Constitution
 - ▶ Recognizes Indigenous community's Constitution
 - ▶ Recognizes Indigenous community's government
 - ▶ Recognizes Indigenous community's lawmaking
- ▶ Becoming part of the Constitutional fabric of Canada
 - ▶ Treaty is paramount over all Federal and Provincial law
 - ▶ Treaty cannot be changed without Indigenous community's consent

Treaty Context



Treaty Context

- ▶ Three questions of enforcement
 - ▶ Is there a law that creates an offence?
 - ▶ Did someone commit that offence?
 - ▶ How will the penalty for that offence be enforced?
- ▶ Bands under the Indian Act
 - ▶ Face major obstacles on the first question
 - ▶ Rarely get past this threshold question
 - ▶ No process for third question
- ▶ Treaty removes those obstacles (in theory)
 - ▶ Indigenous community's lawmaking recognized and protected

Treaty Context

- ▶ Treaty provides powers to
 - ▶ Enact enforcement laws
 - ▶ Appoint enforcement officers and give them powers
 - ▶ Appoint prosecutors
 - ▶ Have offences prosecuted in Court
 - ▶ Determine penalties for offences
- ▶ Enforcement under Treaty (in theory) is a more clearly defined legal foundation from which Indigenous community can govern from

Treaty Context

- ▶ Maa-nulth First Nations Final Agreement
- ▶ 1.1.1 Treaty protection
 - ▶ This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- ▶ 1.5.1 Concurrent law model
 - ▶ Federal Law and Provincial Law apply to the Maa-nulth First Nations... [and] Maa-nulth First Nation Lands...

Treaty Context

- ▶ 1.8.1 Treaty paramountcy
 - ▶ This Agreement prevails to the extent of an inconsistency or a Conflict with Federal Law or Provincial Law.
- ▶ 13.32.2 Enforcement responsibility
 - ▶ “Each Maa-nulth First Nation Government is responsible for the enforcement of its Maa-nulth First Nation Laws...”

Treaty Context

- ▶ 13.32.1 Power of enforcement
 - ▶ “Each Maa-nulth First Nation Government may make laws to provide for:
 - ▶ a. the appointment of enforcement officers to enforce its Maa-nulth First Nation Law; and
 - ▶ b. powers of enforcement, provided such powers will not exceed those provided by Federal Law or Provincial Law for enforcing similar laws.”

Treaty Context

- ▶ 13.32.25 Enforcement standards
 - ▶ ...[a] Maa-nulth First Nation Government will:
 - ▶ a. ensure that [its] enforcement officials ...are adequately trained to carry out their duties having regard to ... other enforcement officers carrying out similar duties in British Columbia; and
 - ▶ b. establish and implement procedures for responding to complaints against its enforcement officials.

Treaty Context

- ▶ 13.33.1 BC Provincial Court
 - ▶ The Provincial Court of British Columbia has the jurisdiction to hear prosecutions of offences under Maa-nulth First Nation Laws.
- ▶ 13.33.3 Offence Act (BC)
 - ▶ The summary conviction proceedings of the *Offence Act* apply to prosecutions of offences under Maa-nulth First Nation Laws.

Treaty Context

- ▶ 13.33.6 Prosecution of offences
 - ▶ Each Maa-nulth First Nation is responsible for the prosecution of all matters arising from a Maa-nulth First Nation Law...and may carry out this responsibility by:
 - ▶ a. appointing... individuals to conduct prosecutions... in a manner consistent with the principle of prosecutorial independence...
 - ▶ b. entering into agreements with Canada or British Columbia in respect of ...prosecutions...

Treaty Context

- ▶ 13.32.7 BC Supreme Court
 - ▶ Each Maa-nulth First Nation may, by a proceeding brought in the Supreme Court of British Columbia, enforce, prevent or restrain the contravention of a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.

The slide features abstract green geometric shapes. On the left, a solid green triangle points downwards. On the right, a complex arrangement of overlapping translucent green triangles and polygons creates a dynamic, layered effect. The main title 'Practical Challenges' is centered in a large, green, sans-serif font.

Practical Challenges

Practical solutions...

Practical Challenges

- ▶ Two sides of lawmaking
 - ▶ Breadth of lawmaking
 - ▶ 78 provisions recognize lawmaking authority
 - ▶ Like Federal, Provincial and Local Governments
 - ▶ Laws are only as good as they are enforced
 - ▶ Respect and authority only through enforcement
 - ▶ No enforcement means lawlessness
 - ▶ Lawlessness means no self-determination, no reconciliation
 - ▶ Solutions
 - ▶ Move slowly forward

Practical Challenges

- ▶ Enforcement capacity
 - ▶ Training and salary for officers
 - ▶ Treaty First Nation
 - ▶ Historical disadvantages to overcome
 - ▶ Limited experience and resources
 - ▶ Solutions
 - ▶ Enforcement Agreements
 - ▶ New fiscal relationships with other governments
 - ▶ Invest in enforcement, reconciliation cornerstone

Practical Challenges

- ▶ Relationship with local police
 - ▶ RCMP provincial police (regular policing)
 - ▶ Federal and provincial laws
 - ▶ First Nations Policing Program (FNPP, enhanced policing)
 - ▶ Community Tripartite Agreements (CTA) and Letters of Expectation (LOE)
 - ▶ “Day shift”, “relationship building”
 - ▶ Indian Act, Indian Reserve model
 - ▶ Significantly underfunded (85-95/108)

Practical Challenges

- ▶ Relationship with local police (*cont.*)
 - ▶ Detachment inconsistencies
 - ▶ No service, limited service, delayed service
 - ▶ FNPP won't do regular policing and regular policing won't do enhanced policing
 - ▶ FNPP low priority, officers reassigned to regular policing or positions vacant for years
 - ▶ Solutions
 - ▶ Proactive involvement in CTA/LOE development
 - ▶ Detachment Local Services Agreement

Practical Challenges

- ▶ Violation ticket framework
 - ▶ Tickets are “short form” prosecutions
 - ▶ BC Provincial Court authority
 - ▶ Provincial tickets administered by ICBC
 - ▶ \$80k set up, \$20k annual fee
 - ▶ *Offence Act* (BC) not compatible with Treaty
 - ▶ Solutions
 - ▶ Treaty table working to amend *Offence Act* (BC) to accommodate Treaty tickets in BC Provincial Court

Practical Challenges

- ▶ Court debt collection
 - ▶ Local governments skip “proving debt” step and go straight to judgment by filing certificate
 - ▶ *Local Government Bylaw Notice Enforcement Act* (BC)
 - ▶ Under Treaty, all enforcement (other than prosecutions) heard in BC Supreme Court, but no process for filing debt certificate
 - ▶ Solution
 - ▶ Working with BC and Court to develop process

Conclusion

- ▶ Enforcement requires attention, cornerstone of reconciliation
- ▶ Enforcement challenges are complex, but few (4) and have practical solutions
- ▶ Easier for Treaty First Nations
 - ▶ Legal standing, Constitutionally protected lawmaking authority and paramountcy
- ▶ Self-determination in action



***THANKS FOR YOUR
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