



Enforcement Roundtable: Nation to Nation Engagement
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Co-hosted: British Columbia Treaty Commission & K'ómoks First Nation

***Empowering and Reclaiming
First Nation-Centered Enforcement***

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Summary of Recommendations

- Require order from Chief Justice to confirm court enforcement
- Confirm Treaty Nation changes to B.C. Offence Act or write into Treaty
- Retain JP authority from land code (both to appoint JPs and have them consider cultural laws)
- Try to include wording to access municipal ticketing
- Consider most-favoured-Nation clause to access anything any other FN can access in terms of enforcement
- Confirm Treaty Nation can issue fines and orders
- Confirm Treaty Nation can access small claims/ civil resolutions tribunal
- Confirm authority to restrict or evict drug dealers, even if not convicted
- Confirm authority or requirement for govts to enter into enforcement agreements for non-Member hunting and fishing and heritage and culture (Off-TSL)



Traditional Law Enforcement

- Before Europeans arrived and imposed laws and enforcement based on protection of individual private property, First Nations had sophisticated and often more holistic laws and justice systems.
- Teachings of harmony, respecting nature, stories of what happens if individuals fail to respect; ceremonies such as *Digita*.
- Teaching, witnesses, shaming, stripping away names and rights, banishment.
- <https://vancouver.sun.com/news/local-news/haida-strip-two-hereditary-chiefs-of-titles-for-supporting-enbridge>
- Punishment or execution if necessary.



Canada was originally a pluralistic legal system

People are likely familiar with the dualism of the civil and common law systems in Quebec.

- In early days of colonialism, there was a mixed system of aboriginal law and imported British/ French law:
- *Connolly v. Woolrich et al.* (1867), 17 R.J.R.Q. 75 → indigenous laws on equal footing with HBC/ British law.
- Early HBC law acknowledged and incorporated FN restitution system



First Nation-Centered Enforcement

- It is sad to hear some government, prosecutors, and RCMP say that ‘First Nations don’t have the authority to....’ or ‘RCMP won’t enforce...’
- My main point today is for us all to work together to reclaim and re-empower First Nation law enforcement
- I will set out some of the barriers and solutions to empowering FN enforcement, especially in Treaty



Land Code: “A new “quiet revolution”

- It’s happening incrementally, in small First Nation community and committee meetings across Canada.
- It’s subtle: not a lot of fanfare or media or government attention.
- First Nations are making, passing and enforcing their own laws, their own ways.
- We need to support this work and continue into Treaty; not lose it to the imposition of provincial law

Yes, these are real laws

- First Nation Treaty and Land Code Laws are real Laws.
- They are not ‘mere municipal bylaws’.
- These are equivalent to federal laws and should be respected and enforced.

- **Federal *First Nations Land Management Act* :**

15 (1) *Subject to subsection (1.1), a land code comes into force and has the force of law on the day that is specified in the land code, and judicial notice shall be taken of the land code in any proceedings from the date of the coming into force of that land code.*

20(1) *Land Code “may provide for enforcement measures, consistent with federal laws, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.”*

--> CONSIDER ADDING THE UNDERLINED WORDING TO TREATIES

Yes, these are real laws (cont.)

- Two years after E.D. Tla'amin finally got a Notice to the Profession from the Provincial Court Chief Justice:

“On April 5, 2016 the Tla'amin Final Agreement Act, S.C. 2014, c. 11, and the Tla'amin Final Agreement Act, S.B.C. 2013, c. 2 (together, the “Tla'amin Act”), largely came into force. ..

Any prosecutions of offences under Tla'amin Nation Laws which are to be heard in the Provincial Court of British Columbia shall be heard at the Courthouse in Powell River, British Columbia. “

→ THIS TYPE OF CHIEF JUSTICE ORDER/ N.P. SHOULD BE REQUIRED TREATY WORDING



Let's not forget the 'small' stuff

- A large % of law enforcement is not going to court: education, warnings, orders, tickets
- I am working with Treaty FNs and B.C. to amend the provincial *Offense Act* to enable First Nation ticketing to be enforced under that Act if necessary.

→ ADD TREATY WORDING TO ISSUE AND ENFORCE TIX UNDER *OFFENSE ACT* IF NECESSARY (although this may already be covered by the amendments)

The 'small' stuff #2

- ICBC issues remain unresolved. Ideally, FNs should be able to add some fines to drivers' licenses which is how speeding tix work.
- Not clear whether Treaty FNs can add land, building and services fines to property taxes.

→ TRY TO GET TREATY WORDING TO TAP INTO ICBC FINES AND TO ADD FINES TO PROPERTY TAXES

The 'small' stuff #3

- CONSIDER BUILDING INTO TREATY AND FN LAWS THAT THE FN CAN GARNISHEE WAGES OF EMPLOYEES AND DEDUCT BENEFIT PAYMENTS.
- CONSIDER EXPLICIT TREATY WORDING TO ISSUE ADMINISTRATIVE ORDERS (Stop-Work, Remediation, etc.)

Some Examples


- General issues with COVID-19. Canada has taken the unfortunate position that it will help FNs prosecute *Indian Act* bylaws but not Land Code or Treaty Laws.
- It is not clear to me that Treaty FNs have the same authority as under s.81 of the *Indian Act* “to provide for the health of residents on reserve...prevent the spread of contagious and infectious diseases”
- This may be covered under laws to protect against ‘a danger to public health’ in para. 139 but could be made more explicit.

Some Examples #2

- Eviction of drug dealers. RCMP wouldn't enforce. Private bailiffs in Powell River wouldn't enforce without a court order.
- B.C. Residential Tenancy Branch said they had no jurisdiction (even though they did)
- We developed a Tla'amin *Residential Tenancy Law* and retained a private security company from the Mainland.
- Was successful and low cost.

Examples #3

- Traffic safety. Drivers racing through the community on the Lund Hwy. at more than twice posted speed.
- B.C. insisted on having most roads excluded from T.S.L. so Tla'amin can't enforce on own.
- Tla'amin enforcement officer stood on hwy. in uniform (may have even held up a hair dryer)
- Exploring options with B.C." current B.C. position is that Tla'amin doesn't qualify for photo radar.
- Looking at 'designated policing official'.




Treaty Wording (and lacking) #1

- “The Tla’amin Nation may propose to the Judicial Council of British Columbia, individuals to be recommended by the Judicial Council of British Columbia for appointment and designation as judicial justices of the peace.” (Governance, para. 162)

→ THIS IS LESS THAN *FNLMA* AUTHORITY FOR F.N.s TO APPOINT THEIR OWN J.P.s

- “Agents, employees, contractors and other representatives of the Tla’amin Nation may have access off Tla’amin Lands, at no cost, in order to: (a) enforce laws...” (Access, para. 40)

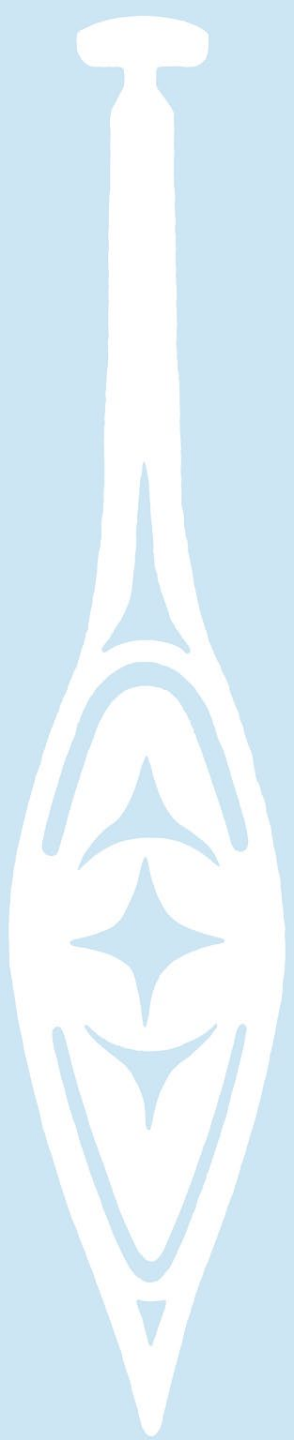
→ WE ARE TRYING TO USE THIS TO LEVERAGE PROTECTION OF HERITAGE AND CULTURE SITES BUT THE WORDING IS NOT AS CLEAR AS IT COULD BE.



Treaty Wording (and lacking) #2

- Tla'amin may enforce fishing and hunting laws in relation to the exercise of the Tla'amin Fishing Right.
- “The Parties may negotiate agreements concerning enforcement of Federal or Provincial Laws, or Tla'amin Laws in respect of fisheries.” (Fisheries, para. 140).

→ THE PROBLEM IS ONLY HAVING TREATY AUTHORITY OVER FN MEMBERS. Most of the problems are over-harvesting by non-Members (shellfish harvest tourist buses....)



THANK YOU

QUESTIONS?