



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 1st 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?

