

FIRST NATION JURISDICTION IN ALBERTA

Law Society of Alberta Special Presentation

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OVERVIEW

- Governance (By-law creation)
- Child Welfare
- Education
- Natural Resources (water)



GOVERNANCE

By-law Creation

INDIAN ACT

Section 81 and Section 83

- Section 81 – “By-laws” (general)
 - *23 enumerated items*
 - *Mild to Wild*
 - *Also serious*
- Section 83 – “Money By-laws”
 - *9 enumerated items*
 - *Subject to:*
 - Appeals (81(3))
 - Ministerial approval (81(4))
 - regulations made by Governor in Council (81(5))

SECTION 81 BY-LAWS

Mild

- Provide for health of on-reserve residents (a)
- Regulation of traffic (b)
- Observance of law and order (c)
- Zoning type of by-laws (g)

SECTION 81 BY-LAWS

Wild

- Trespass by cattle (e)
- Destruction and control of noxious weeds (j)
- Regulating bee-keeping and poultry raising (k)
- Regulating hawkers, peddlers or “others” (n)



SECTION 81 BY-LAWS

Serious

- Certificates of Possession (i)
- Trespass (p)
- Residence of band members (p.1)
- Rights of spouses/common-law partners and children (p.2)
- Summary conviction of fines or imprisonment (r)



CHILD WELFARE

CURRENT SYSTEM

- First Nations Child and Family Services program (Canada)
- Indigenous Services Canada (ISC) funded
- Province delegates authorities
 - *i.e., Kasohkowew Child & Wellness Society*
Akamkisipatinaw Ohpikihawasowin Association (AKO)
 - Subject to *Child, Youth and Family Enhancement Act*
- 6 Canadian Human Rights Tribunal orders
- Jordan's Principle



UPCOMING LEGISLATION

Bill C-92, An Act Respecting First Nations, Inuit and Métis children, youth and families

“... affirms the rights and jurisdiction of Indigenous peoples in relation to child and family services and sets out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children, such as the best interests of the child, cultural continuity and substantive equality.”

(Bill passed by the Senate with Amendments (June 14, 2019))



EDUCATION

Alberta Specific

CURRENT SYSTEM

- Indigenous Services Canada (ISC) funds
- First Nations (or their designated organizations) responsible for managing and delivering education programs and services
 - *For students aged 4 to 21 who ordinarily live on reserve*
 - *Examples:*
- Tripartite Education Agreements
 - *MOU for First Nations Education in Alberta → Indigenous Knowledge and Wisdom Centre & Alberta First Nations Education Circle*

FIRST NATIONS EDUCATION AUTHORITIES

- Alexander First Nation
 - *Treaty Education Law*
- Maskwacis Education Schools Commission



Photo above: Alexander First Nation Council and Working Group

Photo Left: Chiefs and ISC Minister MESC Agreement Signing (courtesy of Red Deer Advocate)



NATURAL RESOURCES

Water

CURRENT SYSTEM

- Drinking Water
 - Quality management shared by First Nations and the Government of Canada
 - ISC funds and provides advice (when requested)
 - Chief and Council manage day-to-day water and wastewater systems on reserve
 - i.e., Ermineskin Cree Nation
First Nations Technical Services Advisory Group (TSAG)
- Natural Resource Management
 - *Natural Resources Transfer Agreement*, 1930
 - *Water Resources Act*, 1931-1999
 - *Water Act*, 1999

FIRST NATIONS WATER RIGHTS

- Water Management Case Law
 - *Tsuu T'ina Nation v Alberta (Environment)*, 2010 ABCA 137
 - Duty to consult existed RE watershed management
 - LOW END DUTY
 - Duty Satisfied
- Ermineskin Cree Nation agreement



Q & A

THANK YOU

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