



BEST PRACTICES

First Nation Law and By-Law Making

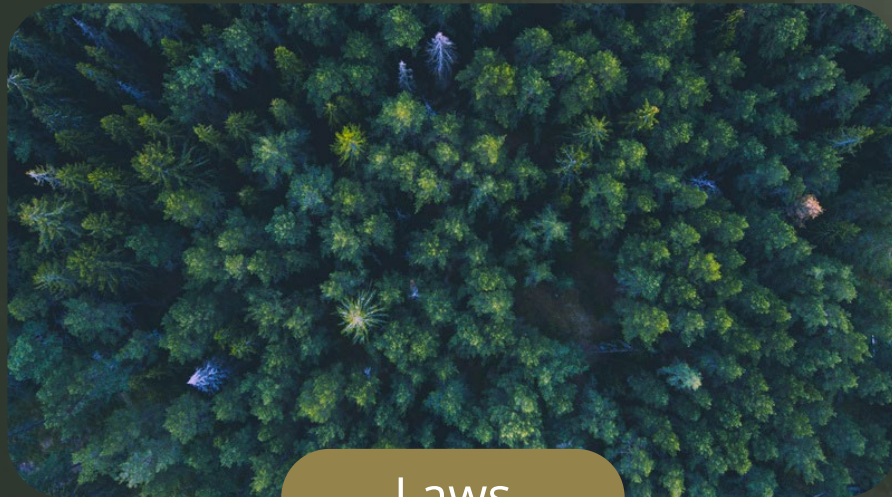
Building Strong Governance through Law-Making

Why Law Making Matters

- Create predictability, fairness, and **transparency** in decision-making.
- **Protects rights** through clear and consistent rules and accountability.
- Strengthen administration and reduce future **disputes**, reducing dependence on external governments and consultants.
- Creates certainty for **investment** and long-term planning.
- Expression of a Nation's values and **sovereignty**.



What is a law? By-law?



Laws

Laws are broad rules that set out rights, responsibilities, and powers - not details. Laws confer powers and responsibilities rather than specify details.



By-laws

By-laws are made under the authority of another law. They are more limited in scope and are more practical in details rather than broad governance.



Regulations

Regulations are detailed rules made under a law and specify procedures, forms, fees, enforcement details, etc. They can be more easily amended to address community needs.

Legal Foundations

Indian Act

Under the Indian Act First Nations can make by-laws on limited topics like land use, health, traffic, and animal control. These by-laws must be approved by ISC which limits self-government. However, they can be an important tool, especially for minor issues like fences or animal control.

Non-Indian Act

- Land Code Laws
- Other “Transfer of Jurisdiction” Frameworks
- Self-Government Agreements
- Custom Codes
- Inherent Rights (e.g. Section 35)
- Laws may cite multiple authorities but usually have one main authority.

The Law Making Process

1. Identify Issue or Gap

2. Gather Council and Staff Input

3. Research

4. Early Community Input

5. Begin Drafting

6. Legal Review

7. Community Draft

8. Final Draft & Review

9. Proper Enactment

10. Training and Implementation

11. Regular Review



Best Practices

- Document your law-making journey.
- Consider having a **policy on law-making**.
- Keep drafting and **language consistent** across laws.
- Reach out for **advice** and examples.
- Use precedents wisely—**don't copy**, adapt.
- Drafting **plain language** copies can help the community and you.
- Maintain a **Law Registry** (e.g. First Nations Gazette)
- Include **review** clauses and/or policy.
- Maintain **procedural fairness** in application and enforcement.
- Don't be afraid to **make mistakes**.

Elements of Review

Community Review

- Tests if the law **reflects real** community priorities and values.
- Identifies **unintended** impacts or confusion.
- Builds buy-in and **legitimacy** through transparency and inclusion.
- Gathers input from other **departments** affected by the law.
- Includes Council and **leadership** to ensure support and coordination.
- Builds trust and facilitates **implementation**.

Legal Review

- Ensures the law is **Charter - compliant** and does not discriminate.
- Confirms it aligns with **existing Nation laws** and federal frameworks.
- Checks for **clear authority**, correct legal terms, and enforceable penalties.
- Verifies procedures respect **natural justice** (fair notice, right to respond).
- Presents contradictions, gaps, or **unenforceable** provisions.

Common Pitfalls



- **Copy-pasted laws** that don't fit your Nation's governance structure or aspirations.
- **Over-reliance** on consultants.
- Not considering **other authorities** and stakeholders.
- No **enforcement** plan or capacity.
- Poor **record -keeping** or untracked **amendments** .
- Community **not informed** after passage.
- The only real mistake is **not starting** .

Community Example

Background

Madawaska Maliseet First Nation had an issue with transient people camping and lighting fires in the forest. They wanted to enact a trespassing law.

Process

- Research
- Indian Act vs Land Code
- Preliminary Draft
- Community Consultation
- Enactment Procedure
- Enforcement

Challenges

- Lack of Review
- Enforcement
- Liaison with the RCMP
- Communications with Broader Community





Key Takeaways

- Law-making is **governance in action** .
- Strong laws = **fewer disputes** , stronger administration.
- Consultation, **clarity** , and accessibility are non-negotiable.
- Start where you have **authority** . Build outward.
- Have the **courage** to grow in your law-making capacity and development.
- Every law you make is an act of **sovereignty** .

Thank You

Karen McGill

Lands Director

Madawaska Maliseet First Nation

karenmcgill@madawaskamaliseet.com

**When we work together,
we grow together!**