



DECISION-MAKING PROCESSES WITHIN FIRST NATIONS COMMUNITIES

Presented to: Law Society of Saskatchewan
Thursday, December 4, 2014
By: Paul Favel, Q.C.



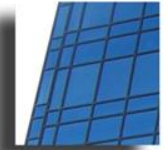
SASKATOON
374 Third Avenue South
Saskatoon, SK S7K 1M5
(306) 653-2000 F (306) 653-2669

REGINA
800 - 1801 Hamilton Street
Regina, SK S4P 4B4
(306) 565-6500 F (306) 565-6565

mckercher.ca

INTRODUCTION

- Some decisions require Council approval only while some require a Band decision;
- Key legislation is the *Indian Act* and the Indian Band Council Procedure Regulations; and
- Note that some communities (those governed by custom) have developed internal processes/policies that govern how decisions are to be made.

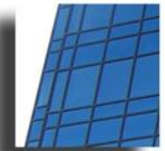


BAND COUNCIL DECISIONS - GENERALLY

- Section 2(3)(b) of the *Indian Act* provides that:
“A power conferred on a council of the Band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a **majority of the councillors** of the Band present at a meeting of the council **duly convened.**”
- Councils governed by the *Indian Act* can also use the Indian Band Council Procedure Regulations for decision-making processes; and
- Band Councils elected according to custom (not the *Indian Act*) are not bound to follow the Indian Band Council Procedure Regulations.

BAND COUNCIL DECISIONS - SUBJECT AREAS

- **Possession of Lands in Reserves (s.20)**
 - Here speaking of certificates of possession (“CP”); and
 - Need consent of the Band Council before the Minister will grant a CP.
- **Use of Reserve Lands by Non-Members (s.28(2))**
 - Minister can grant a permit with the consent of the Band Council;
 - Usually one year in duration but can be longer; and
 - This would be akin to a licence.

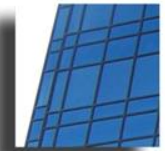


BAND COUNCIL DECISIONS - SUBJECT AREAS

- **Granting Authority to the Minister (s.57(a))**
 - Used for cutting timber on reserve lands;
 - For unused/uncultivated reserve lands (s.58);
 - Disposal of non-metallic substances (s.58(4));
 - Reduce the amount owing to the Crown regarding designated/surrendered lands (s.58); and
 - Direct capital monies or directing revenue monies (s.64 and s.66(1)) respectively.
- **Electing the Chief of the Band (s.74)**
 - Band Council selects the Chief (not used in Saskatchewan)

BAND COUNCIL DECISIONS - SUBJECT AREAS

- **Creation of bylaws (s.81 & s.83)**
 - s.81 bylaws can be enacted but they require Ministerial approval within 40 days (unless it is disallowed within that time frame); and
 - s.83 are “money” bylaws or typically tax bylaws. The Minister must approve these types of bylaws before they are effective.

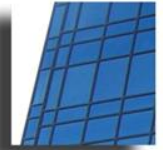


BAND COUNCIL DECISIONS - FORMALITIES

- **Section 2(3)(b) requires “duly convened” meetings with “majority approval” by the Council:**
 - No ability to have a resolution in writing;
 - Chief alone cannot make decisions;
 - Councillors can call it;
 - Notice must be given; and
 - A quorum of the Band Council must attend the meeting.
- **Indian Band Council Procedure Regulations also provide guidance.**

BAND DECISIONS - GENERAL

- Section 2(3)(a) provides that:
“a power conferred on a Band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a **majority of the electors** of the Band.”
- Other relevant legislation is the Indian Referendum Regulations.

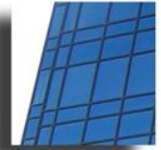


BAND DECISIONS – SUBJECT AREAS

- **Band List and Membership Codes (s.10)**
 - Must be approved by the majority of the electors of the Band; and
 - Once the rules are established and approved the Band Council cannot amend it. The electorate of the Band as a whole must approve amendments.
- **Amalgamation with Other Bands (s.17)**
 - Majority of electors must approve (rarely used).
- **Allege Trespass (s.31)**
 - The AG can bring proceedings on behalf of the Band (rarely used)

BAND DECISIONS – SUBJECT AREAS

- **Land Surrenders and Designations**
 - (s.38(1)) allows reserve lands to be surrendered absolutely to the Crown for sale. Not used now, except for land exchanges;
 - An absolute majority must approve an absolute surrender;
 - (s.38(2)) allows reserve lands to be designated for leasing purposes; and
 - A simple majority must approve a designation for leasing (s.39(1)).



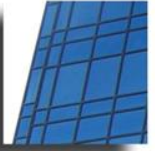
BAND DECISIONS – SUBJECT AREAS

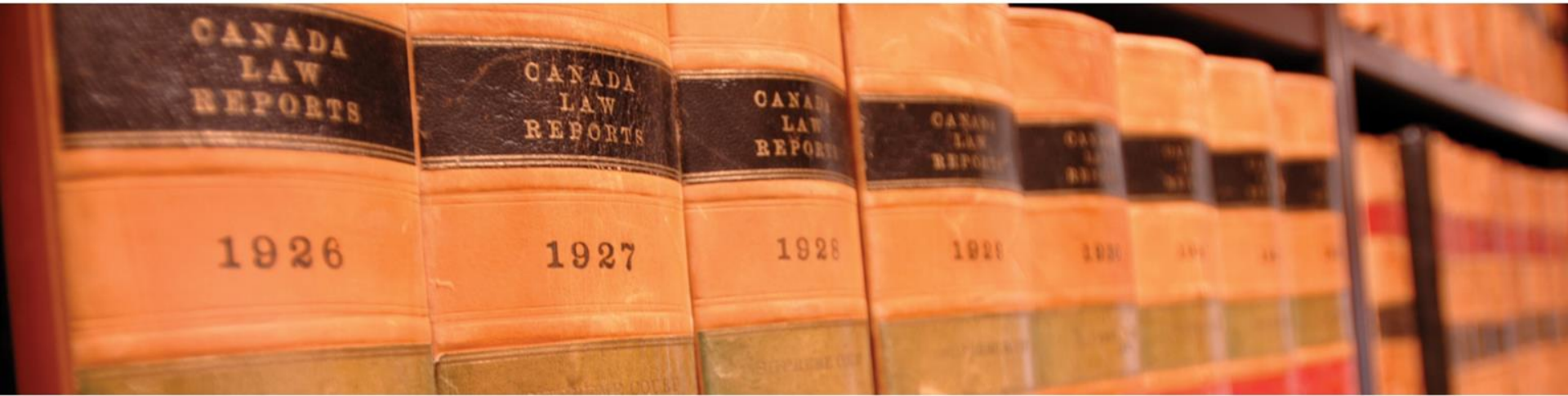
- **Control of reserve lands (s.60)**
 - Allows the Band to assume some control over lands from the Minister.
- **Electing Band Council (s.74(3))**
 - All electors age 18 plus can elect their Band Council. This is how most, if not all, Band Councils are elected.
- **Intoxicant Bylaw (s.85(1))**
 - Council does not have authority to enact such a bylaw. The electors must assent to the bylaw.

BAND DECISIONS – SUBJECT AREAS

- **First Nations Land Management Act**
 - Requires more than 25% of all electors to approve the adoption of a Land Code and individual agreement.
- **Settling a Land Claim**
 - Indian Referendum Regulations governs approval of settlements by the electorate of the Band.
- **Approving Self-Government Arrangements**
 - The terms of the self-government agreement set out the threshold required to approve an agreement.

QUESTIONS ???





THANK YOU!



SASKATOON
374 Third Avenue South
Saskatoon, SK S7K 1M5
(306) 653-2000 F (306) 653-2669

REGINA
800 - 1801 Hamilton Street
Regina, SK S4P 4B4
(306) 565-6500 F (306) 565-6565

mckercher.ca