



May 12, 2021

House of Commons Standing Committee on Indigenous and Northern Affairs
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON
K1A 0A6

Via email: INAN@parl.gc.ca

Re: Written Submission Regarding Enforcement on Tla'amin Nation Territory

Dear House of Commons Standing Committee on Indigenous and Northern Affairs,

On behalf of Tla'amin Nation, we submit this written brief outlining our responses to the question posed by the Committee on 'enforcement on First Nation reserves'.

The Tla'amin people are one of many Coast Salish nations inhabiting the Pacific Northwest Coast, with a rich heritage and history that stretches back well over 4000 years into the past¹. Before Treaty, Tla'amin Nation had six reserves 130km north of Vancouver on British Columbia's Sunshine Coast. The total combined land area of 1,907 hectares was less than 1% of our traditional territory. Tla'amin Nation also has an additional 800 acres owned in partnership with the City of Powell River. Post-treaty, Tla'amin Nation owns over 8,322 hectares of fee simple land from Powell River to Lund, and along Okeover and Theodosia Inlets, and Harwood Island. Key parcels include land within the City of Powell River, land adjacent to the city in the gathet Regional District.

1. Traditional Law Enforcement and Safety

Before European contact and imposition of colonial laws, law enforcement, concepts of public safety, and enforcement of individual private property, Indigenous peoples had sophisticated and often holistic laws and justice systems. Emphasis was placed on harmony and respect of nature, the community, and each other, and lessons of customary law were carried out orally in the form of stories. Ceremonies were a way to restore harmony to both nature and the community itself. This is not to say that there were no severe consequences for failures to abide by a community's expectations or laws. Shaming, stripping away of traditional names², stripping away of rights, banishment, or even executions were practiced.

¹ Tla'amin Nation. (n.d.). *Community*. Retrieved from <https://www.tlaaminnation.com/community/>

² Lee, J. (August 17, 2016). Haida strip two hereditary chiefs of titles for supporting Enbridge. *Vancouver Sun*. <https://vancouversun.com/news/local-news/haida-strip-two-hereditary-chiefs-of-titles-for-supporting-enbridge>

2. Canada Was Originally a Pluralistic Society

In the early days of colonialism, there was a mixed system of Indigenous law and imported British and French law. *Connolly v. Woolrich et al.* (1867), 17 R.J.R.Q. 75³ held that Indigenous laws had equal footing with the Hudson's Bay Company (HBC)/British law. The early HBC laws also acknowledged and incorporated the Indigenous restitution system into company laws of the time.

3. First Nation Centered Enforcement

Self-determination is meaningless without the capacity and authority to pass and enforce laws. This underpins issues experienced by Tla'amin Nation when it comes to the exercise of authorities under treaty. It is often frustrating to hear different levels of governments and their ministries, prosecutors, or policing services opine that 'First Nations don't have the authority to...' or 'police won't enforce...'. Our position is that there needs to be a collective effort by all levels of government to support Indigenous nations in reclaiming and re-empowering their own law enforcement.

When we speak of law enforcement, we do not strictly mean policing. Often when Indigenous communities speak of law enforcement, there seems to be an automatic draw to policing and this is not so for Tla'amin Nation. We understand that in addition to criminal law enforcement, there also needs to be regulatory law enforcement so that issues that fall outside of the role of the police can still be addressed. There is also a need for different approaches to law enforcement that fit the unique needs of Tla'amin Nation, which are different than other Indigenous communities across Canada. While Tla'amin Nation appreciates the federal government's commitment to a new budget related to Indigenous policing, we recommend that the vision be pushed out further to look beyond simply policing, but all Indigenous law enforcement initiatives.

The first step to addressing law enforcement on Tla'amin Nation territory came in the form of the *Tla'amin Enforcement and Ticketing Law* on Treaty Effective Date. Tla'amin Nation also has several Enforcement Officers on strength, with one being a former senior non-commissioned officer with a municipal police force in British Columbia. However, due to various administrative and governmental roadblocks, which will be discussed below, Tla'amin Nation has not been able to do much with the law.

³ *Connolly v. Woolrich et al.* (1867), 17 R.J.R.Q. 75: was an important 1867 case rooted in whether marriage between a man employed by HBC and an Indigenous woman was legally valid, as the wedding was not performed by a priest, but in accordance with Indigenous traditions. Man remarried after first marriage with Indigenous woman, and had an official ceremony conducted by a priest. Upon his death, the man's widow argued that the son from the first marriage should receive nothing as the marriage was invalid. *Monk J.* disagreed. Reasoning was that indigenous traditions should not be set aside for favour of their own laws without good reasons. Considerations should be given to Indigenous traditions alongside their own legal traditions. Indigenous rights and customs mattered, to some degree, as much as European ones. <https://exhibits.library.utoronto.ca/items/show/2422>

3.1 Road Blocks to Tla'amin Nation Enforcement Success

Numerous factors have impeded the growth and implementation of Tla'amin Nation's ability to enforce laws within its territory:

- a) No dedicated funding under Treaty implementation for law enforcement activities;
- b) Canada repeatedly turning down applications for funding related to Fisheries Guardian programs;
- c) Department of Fisheries and Oceans refuses to support Tla'amin Nation enforcement and actively resists Tla'amin Nation Fisheries Guardians from monitoring and enforcement (e.g. clam and oyster harvesting tourism in Okeover Inlet, leaving nothing for Tla'amin Nation's citizens' traditional and sustenance use. Fisheries Officers telling tourists and operators that Tla'amin Nation Fisheries Guardians have no enforcement powers);
- d) Tla'amin Nation formally requesting enforcement agreement under our Treaty over a year ago, and all levels of governments and ministries have yet to fully engage;
- e) Having difficulties protecting natural resources such as timber, and the ability to demand identification and disable or seize vehicles caught illegally harvesting wood;
- f) No enforcement powers to prevent hundreds of tourists from speeding through Tla'amin Nation residential community, past bus stops, cemetery, recreational infrastructure. Engaging with British Columbia on delegation of authorities and designations under provincial legislation;
- g) British Columbia removed Tla'amin Nation's ability to enforce and collect property taxes, which removes the nation's ability to append violation fines to taxation schemes;
- h) Tla'amin Nation has no authority to connect to provincial vehicle insurance mechanisms, similar to what British Columbia has done with COVID fines to vehicle licensing;
- i) Prosecutions Canada announced that it would only assist in enforcing COVID bylaws under the *Indian Act*, but not laws created under Land Code or Treaty. There were indications that Tsawwassen First Nation retained a private prosecutor and it was cost-prohibitive to replicate.
- j) Unclear if Treaty Indigenous governments retained the power under s.81 of the *Indian Act* to "provide for the health of residents on reserve... prevent the spread of contagious and infectious diseases."
- k) The Royal Canadian Mounted Police (RCMP) often decline to enforce Treaty or Land Code Indigenous government's laws because they are of the opinion that these are akin to 'municipal bylaws'. This interpretation is incorrect as these are laws;

- l) RCMP have been unwilling to write enforcement of Treaty and Land Code laws into Tripartite Policing Agreements;
- m) British Columbia considers Indigenous policing to be a ‘federal problem’ and treats Indigenous communities worse than local governments. Municipalities with a population of under 5,000 receive mostly free policing from British Columbia.
- n) Tla’amin Enforcement Officers are not recognized as peace officers despite having a former police officer, and meeting the definition of a peace officer under the Criminal Code (also see *R v. Turko*)⁴;
- o) It is unclear whether self-governing Indigenous nations can evict drug dealers or violent sexual offenders without a conviction. This is part of traditional banishment and is something that nations operating under *First Nations Land Management Act* (FNLMA) have been doing;
- p) It is uncertain whether or not Indigenous governments can register certificates in court to enforce debts;
- q) British Columbia has so far refused to enter into an enforcement agreement with Tla’amin to protect heritage sites off-reserves. Tla’amin ancestral burial sites and sacred sites are regularly desecrated. Provincial laws protect non-Indigenous cemeteries but give permits to destroy Indigenous burial sites;
- r) It is unclear whether Tla’amin Nation has authority to issue and enforce tickets or remediation orders for contaminated sites;
- s) Indigenous Services Canada (I.S.C) has refused to support Tla’amin in providing funding to clean up past environmental contaminations. Currently, there is an agreement in place for British Columbia or Canada to assist Tla’amin Nation in enforcing environmental laws; and
- t) Two years after Treaty Effective Date Tla’amin finally received 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.”

⁴ *R v. Turko* issue around whether bylaw enforcement officer were peace officers pursuant to their statutory authorities to demand identification, and if subsequent refusal of offender to provide identification, the authority to detain on grounds of obstruction. Court found that bylaw enforcement officers were peace officers in the execution of their duties, as defined under s.2 of the Criminal Code. <http://civiclegal.ca/wp-content/uploads/2020/07/CircuLAWr-Jul-2020-Requesting-Id.pdf>

3.1.1 Examples of Lacking Treaty Provisions

The following are excerpts from the *Tla'amin Final Agreement*, which are hindrances to enforcement in Tla'amin territory:

- a) *“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 paragraph gives less authority to a self-governing nation in comparison to a nation operating under the FNLMA, which permits the nation to appoint its own justices of the peace without the involvement of British Columbia.

- b) *“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)*

Tla'amin Nation is attempting to apply this paragraph in relations to enforcement of heritage sites out of Tla'amin Nation territory. However, the wording is unclear.

- c) *“Tla'amin may enforce fishing and hunting laws in relation to the exercise of the Tla'amin Fishing Right.”*

and

“The Parties may negotiate agreements concerning enforcement of Federal or Provincial Laws, or Tla'amin Laws in respect of fisheries.” (Fisheries, para. 140).

The main issue here is only having authorities over Tla'amin Nation members, but not the general public which is causing problems like over-harvesting.

4. Proposed Recommendations and Solutions

The issues stated above are not insurmountable problems. If there is a collective will by both Canada and British Columbia, there are viable solutions to address these issues so that Tla'amin Nation may exercise its authorities successfully:

- a) Provide ongoing stable funding for law enforcement activities, including Indigenous enforcement and Policing;
- b) Treaties should require orders from Chief Justice to confirm court enforcement;
- c) Treaties should confirm that, upon request by the Treaty Nation, arrangements will be made with Prosecutions Canada or British Columbia to prosecute if necessary;
- d) Confirm Treaty Nation changes to British Columbia *Offence Act*, Criminal Code, or write into Treaty;

- e) Confirm that Treaty Nation enforcement officers are Peace Officers (provided they have the training);
- f) Treaty FNs should retain all authorities under the *Indian Act* including s.81 prevention of the spread of contagious diseases (like COVID);
- g) Treaty First Nations should retain all authorities and enforcement under *FNLMA* including to appoint Justice of the Peace from land code (to appoint JPs and have them consider cultural laws);
- h) Confirm authority to restrict or evict drug dealers, even if not convicted (This continues traditional banishment laws, and Land Code First Nations are currently doing this);
- i) Treaties should include the most-favoured-Nation clause to access anything any other FN can access in terms of enforcement;
- j) Confirm authority and requirement for all levels of governments to enter into enforcement agreements for non-Member hunting and fishing, and protection of heritage and culture (including off of Treaty lands);
- k) Support Treaty FNs in entering into enforcement agreements with the provincial government for protection of culture and heritage sites;
- l) Confirm Treaty Nations can issue fines, orders, and tickets, and have the same status as provincial or federal fines, orders, and tickets;
- m) Confirm Treaty Nation can access small claims/ civil resolutions tribunal (specific to British Columbia); and
- n) Amend the *Tla'amin Final Agreement* to include wording similar to those found in the FNLMA:

*“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.”*

and

“20(1) A FN 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.”

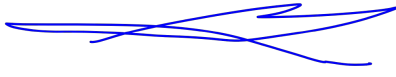
and

“24 (1) A First Nation ...may appoint justices of the peace to ensure the enforcement of First Nation laws including the adjudication of offences for contraventions of First Nation laws.”

5. Conclusion

We thank the Committee for the opportunity to share our concerns and recommendations related to enforcement on Tla’amin Nation’s territory. We wish to fully exercise the authorities and abilities to make and enforce laws that will bring increased safety, security, and wellness to our community. We hope that there will be positive changes not only for Tla’amin Nation but for all Indigenous nations across Canada as a result of the Committee’s study into the issue of enforcement in Indigenous communities. Should you wish to discuss these comments further, please contact Derek Yang, Director of Community Services, at derek.yang@tn-bc.ca.

Respectfully,



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