

EMERGING TRENDS IN MUNICIPAL LAW 2018



Reconciliation is Calling:
Don't Miss the Opportunities



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- Encourage Awareness
- What is Reconciliation about?
- TRC Inspired Approach to Reconciliation
- MGA Changes Related to Reconciliation
- Select Municipal Examples of Reconciliation-Related Steps, Experiences
- Select Examples of New Visions, Opportunities and Challenges
- Starting Point – Process 'Checklist'




Overview




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Did you know?

- Alberta has the largest Metis population in Canada (over 96,865), or at least 21.4% of all Métis in Canada
- Alberta either has, or is expected to soon have, the second-largest urban Indigenous population in Canada.



per Statistics Canada



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Did you know?

The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982

- The *Charter of Rights and Freedoms* applies to Indigenous governments
- The scope of self-governance and law making power varies
- Important to understand while building a relationship, drafting planning documents, entering agreements

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The TRC on Canadian Policy

Before 1982, Canadian policy sought to eliminate Aboriginal (Indigenous) people as distinct peoples

Goals included:

- Absorption or assimilation to eliminate reserves, treaties, and Aboriginal rights
- Divest Canada of its legal and financial obligations to Aboriginal people and gain control over their land and resource

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The TRC on Canadian Policy

Tools included:

- Residential schools
- Misleading or fraudulent practices in treaty negotiation
- The *Indian Act* and Agents
 - Seize land, control land use, restrict movement, ban language, forbid spiritual practices...



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What is Reconciliation?

Reconciliation is an ONGOING process of establishing and maintaining respectful relationships

Concrete actions that demonstrate real societal change

- Consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* and the laws of Alberta and Canada



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What is Reconciliation?

Reconciliation is an ONGOING process of establishing and maintaining respectful relationships

Reciprocity and mutual respect – Consistent with the above, with Indigenous law and legal traditions

- E.g. oral acknowledgement, truth telling, witnessing
- E.g. using words, stories, songs, sacred objects to establish relationships, repair conflicts


2015 Reports of the Truth and Reconciliation Commission of Canada


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What is Reconciliation?

Demonstrating Change – Acknowledgment

“We acknowledge that we are all treaty people and that we are meeting on Treaty territory, on land that is part of an historic agreement involving mutuality and respect. We also acknowledge that [Municipality] is a traditional meeting ground and home to many Indigenous Peoples including Metis.”





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What is Reconciliation?

Building Respectful Relationships

- Awareness, Acknowledgment
- Managing Cultural Shifts and Perception
- Formalizing Intention
- Developing a Vision of Mutual Value
- Maintaining Consistency
- Managing Uncertainty



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What is Reconciliation?

Opportunity for a New Vision

- Away from the *Indian Act* as an assimilation tool
- **Meaningful** self government - Indigenous control of lands, bylaws, policies, utilities, etc.
- An **authentic** relationship - valued neighbours, partners, competitors



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*The Government of Alberta is forging a new relationship with Indigenous peoples in Alberta. The government's approach to developing a new relationship includes a **commitment to implementing the principles and objectives of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)** in a way that is consistent with the Canadian Constitution and Alberta law. **The UN Declaration seeks to ensure that the rights of Indigenous peoples and their cultural identities are recognized, respected and promoted.***

Province of Alberta Business Plan 2016-19,
Indigenous Relations


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MGA Changes

Help Open Doors to Reconciliation and a New Vision

Section 636(1) - Notice of Municipal Development Plan or Area Structure Plan preparation...and opportunities

- Does not require approval
- **Not** intended to satisfy or erode the Crown's 'duty to consult'
- May lead to municipal-style form of 'protocol agreements'





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MGA Changes

Servicing Agreements and Regional Services

- Section 54(1)– Servicing Agreements
- Section 708* - **ICF: an** Indian Band or Metis settlement may participate in the delivery and funding of services (not as a 'party')



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MGA Changes

NOT the Only Steps You Can Take! No Need to Wait!

Select Examples of Municipal Steps Already Being Taken

- Incorporating First Nations into annexation or plan development process
- Cooperative economic development
- Acknowledgment - witnessing ceremonies, signage in Cree
- Changing administrative protocols, training
- Indigenous advisory circles, liaisons

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MGA Changes In Context

Only a Small Part of a Big Picture and New Future


First Nations Commercial and Industrial Development Act (FNCIDA)

- e.g. enabling First Nations' oil sands projects

First Nations Certainty of Land Title Act

- enabling establishment and operation of a system for registration of interests and rights in reserve lands

Metis Nation of Alberta – Government of Alberta Framework Agreement (February 1, 2017)

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MGA Changes In Context


First Nations Land Management Regime

- enables nation's Land Codes to replace *Indian Act* land management

Recent MGA section 690 case – “affected party” status

- “TAZA”: \$4.5B development; 4 levels of gov't; 2 muni's, multiple community associations




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MGA Changes In Context

Some challenges in putting these tools to work?

- **First Nations and Reserves are federally regulated:**
 - How much can municipal plans be directed to adjacent First Nations' lands or to coordinated land use or planning issues?
- **Servicing Agreements:**
 - Unique issues? E.g. different codes or construction standards, securing access to work sites and materials, registering interests, etc.
 - Can roads, pathway, landscaping, etc. be included?
- **ICF, MDP, IDP, etc.:**
 - What scope of inclusion? How could this impact s.690 disputes in the future? What about cost sharing on hard infrastructure like roads?

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Call to Action – Process Checklist

Where are you in the Process of Reconciliation and Relationship Building?

Awareness – e.g. training, events, witnessing

Acknowledgment – e.g. expressions of reconciliation, identify current decision-making structures and authority



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Call to Action – Process Checklist

Formalizing Intention and Developing a Vision of Mutual Value – get professional assistance (e.g. legal, engineering, accounting)

- Plans – ICF, MDP, ASP, ARP, etc.
- Agreements – servicing, cost sharing, etc.
- Policies – affordable housing, resource management, etc.

Maintaining Consistency and Managing Uncertainty

- Financing, registries, changing Councils and protocols, etc.

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Presented by:



Kelley L. Fiske-Nielsen
Calgary Office
kfiskenielsen@brownleelaw.com
Direct: 403-260-1464

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