



FEDERAL COURT

Checklist of Matters to Consider When Preparing an Indigenous Law Case

This checklist provides a broad overview of relevant matters that parties and counsel should be considering when preparing for litigation involving Indigenous parties and/or Indigenous laws and legal orders.

It is therefore a user-friendly tool, which serves as a starting point when it comes to dealing with such matters. Although some points are specific to certain steps of the judicial process, this checklist can be referred to throughout the dispute resolution process as a whole, and is not limited to trials.

As is the case with the Federal Court’s Practice Guidelines for Aboriginal Law Proceedings, this checklist is not prescriptive and is not meant to be read in a limiting manner, but should rather find flexible and broad application.

Checklist of Matters to Consider When Preparing an Indigenous Law Case		REMARK
1	Review and research the relevant community	
	- Obtain cultural information	
	- What language is preferred / understood by your client?	
	o Is there a need for an interpreter?	
	- Are there existing Indigenous legal traditions? If so have they been studied or documented? Are there any sources you can consult?	
	- Are there any relevant treaties?	
	- Are there any self-government agreements?	
	- Are there any land claim agreements?	
	- Are there any existing or ongoing legal claims?	

	<p>**Lawyers who are unfamiliar with working with Indigenous Peoples and wish to obtain further information can consult:</p> <ul style="list-style-type: none"> • <i>Guide for Lawyers Working with Indigenous Peoples</i>, by The Advocates' Society, The Indigenous Bar Association and The Law Society of Ontario • <i>Truth and Reconciliation Toolkit</i>, by the Canadian Bar Association 	
2	Identify the existing governance structures	
	- Does the Indigenous group have its own Constitution?	
	- Has the Indigenous group adopted an election code (or similar legislation)?	
	- Is the Indigenous group scheduled to the <i>First Nations Elections Act</i> , S.C. 2014, c 5?	
	- Has the Indigenous group enacted a membership code?	
	- Has the Indigenous group established laws and procedures respecting land management pursuant to: <ul style="list-style-type: none"> o a treaty, self-government agreement, or land claims agreement o RLEMP (Reserve Lands and Environmental Management Program) o RLAP (Regional Land Administration Program) o a Land Code under the <i>First Nations Land Management Act</i>, S.C. 1999, c. 24 (and if so, whether it has enacted laws and procedures under the Land Code) 	
	- Has the Indigenous group enacted a law respecting matrimonial real property, or whether it is subject to the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> , S.C. 2013, c. 20?	
	- Has the Indigenous group enacted a law pursuant to <i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> , S.C. 2019, c. 24?	
	- Has the Indigenous group enacted a governance code?	
	- Has the Indigenous group established rules respecting conflicts of interest?	
	- Is the Indigenous group scheduled to the <i>First Nations Fiscal Management Act</i> , S.C. 2005, c. 9, and if so has it enacted <ul style="list-style-type: none"> o a Financial Administration Law o property taxation and assessment laws o a property transfer tax law o other related laws (e.g. local service tax law, business activity tax law, development cost charges law) 	

	- Has the Indigenous group enacted financial administration or property tax bylaws under s. 83 of the <i>Indian Act</i> ?	
	- Has the Indigenous group enacted bylaws under s. 81 of the <i>Indian Act</i> ?	
	**The First Nations Gazette can be a good starting point to search for law, by-laws and codes	
	- Has the Indigenous group established practices respecting custom adoption?	
	- Does the Indigenous group have its own dispute resolution practices?	
	- Does the indigenous group have unwritten customs/ indigenous legal principles?	
	o Who can testify to these customs/principles?	
	o Is there evidence of the “broad consensus” of the community (see, e.g., <i>Bertrand v Acho Dene Koe First Nation</i> , 2021 FC 287)?	
3	Identify the relevant evidence	
	- Is there any relevant oral evidence?	
	o Is there demonstrative evidence regarding legal traditions (songs, stories, maps, wampum belts, other cultural artifacts)	
	o Is there elder evidence?	
	o Stories that convey legal principles? Have these stories been reduced to writing? Who can testify about them?	
	- Have the legal traditions of this indigenous group been studied or documented?	
	- Is there a land use plan?	
4	Logistics of the evidence	
	- Who are the witnesses	
	o Are there any specific measures that need to be taken for the swearing of the witnesses (smudging, feather, cultural objects, etc.)?	
	o Are there any elders?	
	o Is there a language barrier?	
	o Is there a need for a translator?	
	- What are the affidavits needed	
	- Is there a need for an examination?	

	<ul style="list-style-type: none"> ○ Where should this examination take place? <ul style="list-style-type: none"> ▪ Lawyer’s office? ▪ In the community ▪ Any other meaningful place for the individual/community? 	
	- Are there any restrictions on the evidence regarding legal traditions?	
	<ul style="list-style-type: none"> ○ Is a confidentiality order needed? 	
5	Logistics of the hearing	
	- Where will hearing taking place?	
	<ul style="list-style-type: none"> ○ Should the hearing take place in the community 	
	- Is there a need for witnesses, parties or the Court to travel?	
	- If the hearing is taking place virtually, is there a need make the hearing accessible in the community (live broadcast in a community center, live broadcast on the community’s website)	