

Saik'uz First Nation Governance Training

Council Chambers & Online via Zoom

February 3, 2025

Governance Training: Background

- Result of recent Election Code Amendment process (June 2024 – December 2024)
 - Amendment s7.8 changed Candidate eligibility requirements to include completion of Governance Training
 - Amendment s9.43 Successful candidates will also be required to attend 1 or more training sessions to increase Role / Governance
- Governance Training is required for all Saik'uz Chief and Council candidates, and if successful in elections training continues post election
- Open to all community members

Agenda

- Overview of Laws
 - Election Law
 - Administrative Law
- Overview of Band Council System
- Council Decision Making
- Fiduciary Responsibility
- Saik'uz Council Responsibilities
 - The Council Code of Conduct
- Council Decision Example

A large red speech bubble is centered on the page. Inside the bubble, the text 'Overview of Laws' is written in a large, bold, white sans-serif font. Below it, the text 'Election Law' is written in a smaller, white sans-serif font. The background of the slide is white with several thin, light gray curved lines and dashed lines that create a sense of motion or a stylized globe.

Overview of Laws

Election Law

Election Law

- Election law is a branch of law that relates to the democratic processes for:
 - election of representatives,
 - office holders,
 - referendums,
- Election Law focuses on the regulation of the electoral system and ensures that it is aligned with voting rights.

Election Law

This includes election topics / aspects such as:

- ballot access, election management bodies, the creation or division of electoral zones or to reflect specific topics,
- the procedures for the registration of voters and candidates,
- election campaigning rules,
- voting, counting of votes, scrutiny,
- electoral disputes, electoral observation and all “contentious matters” derived from them.

First Nation Election Law

- Enabling Act for First Nation Elections is the Indian Act.
- Sections 74 through 79 inclusive, and the associated regulations, set out processes for elections.
- Saik'uz has a **Custom Election Code** which replaces Section 74-79 of the Indian Act.

A community that does not have a self-government agreement may use a Custom Election Code. The courts have defined custom as having to **“include practices generally acceptable to members of the band and upon which there is a broad consensus.”**

To adopt a custom election code, a community must seek to be exempted from the election provisions of the Indian Act.

“...removal from the Indian Act election provisions requires the issuing of a ministerial order in accordance with subsection 74(1) of the Act which must then be registered in accordance with the Statutory Instruments Act.”

Election Law

Saik'uz Custom Election Code

The image features a large, vibrant red speech bubble with a white outline, positioned centrally. Inside the bubble, the text 'Overview of Laws' is written in a bold, white, sans-serif font. Below it, the words 'Administrative Law' are written in a smaller, white, sans-serif font. The background is white and decorated with several thin, light gray curved lines that sweep across the frame, creating a sense of motion and depth. A dark gray shadow is cast by the bottom-left edge of the red bubble, giving it a three-dimensional appearance.

Overview of Laws

Administrative Law

Administrative Law

- Is concerned with the procedures / polices and processes of:
- How government operates,
- The scope of their mandates,
- And the enforcement structures that exist to ensure that decision-makers of various kinds act in accordance with the Law.

Administrative Law

- Administrative law is important because it helps protect Member rights and ensures that government and its administrative organizations act in a fair and just way.
- A strong administrative law system helps maintain public confidence in government authority.
- Examples of this include being Certified by the First Nations Financial Management Board
 - *This means the Nation has strong Financial Management Law = **Strong Administrative Law***

Administrative Law

- Examples of Saik'uz Administrative Law in action:
 - Cheque Requisitions
 - HR Policy
- Next Steps include:
 - Council Code of Conduct



Saik'uz First Nation
 135 Joseph Street
 Vanderhoof, BC V0J 3A1
 Phone: (250) 567-9293
 Fax: (250) 567-2998

Cheque Requisition

Payable to: _____

Date Required: _____

Requested By: _____

Date	Account	YTD Actual	Amount
Total			\$0.00

- All requisitions must be checked by Finance Department for clarification of accounts and budgets
- Budget and YTD Actuals must be confirmed by Finance department before authorization of requisition

Checked By Finance _____

General Manager _____

Chief _____

Council _____

Council _____

Council _____

Council _____

Council _____

Program Co-ord. _____

Note: _____



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Date	Account			YTD Actual	Amount
					\$0.00

x

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Checked By Finance _____

General Manager _____

Chief _____

Council _____

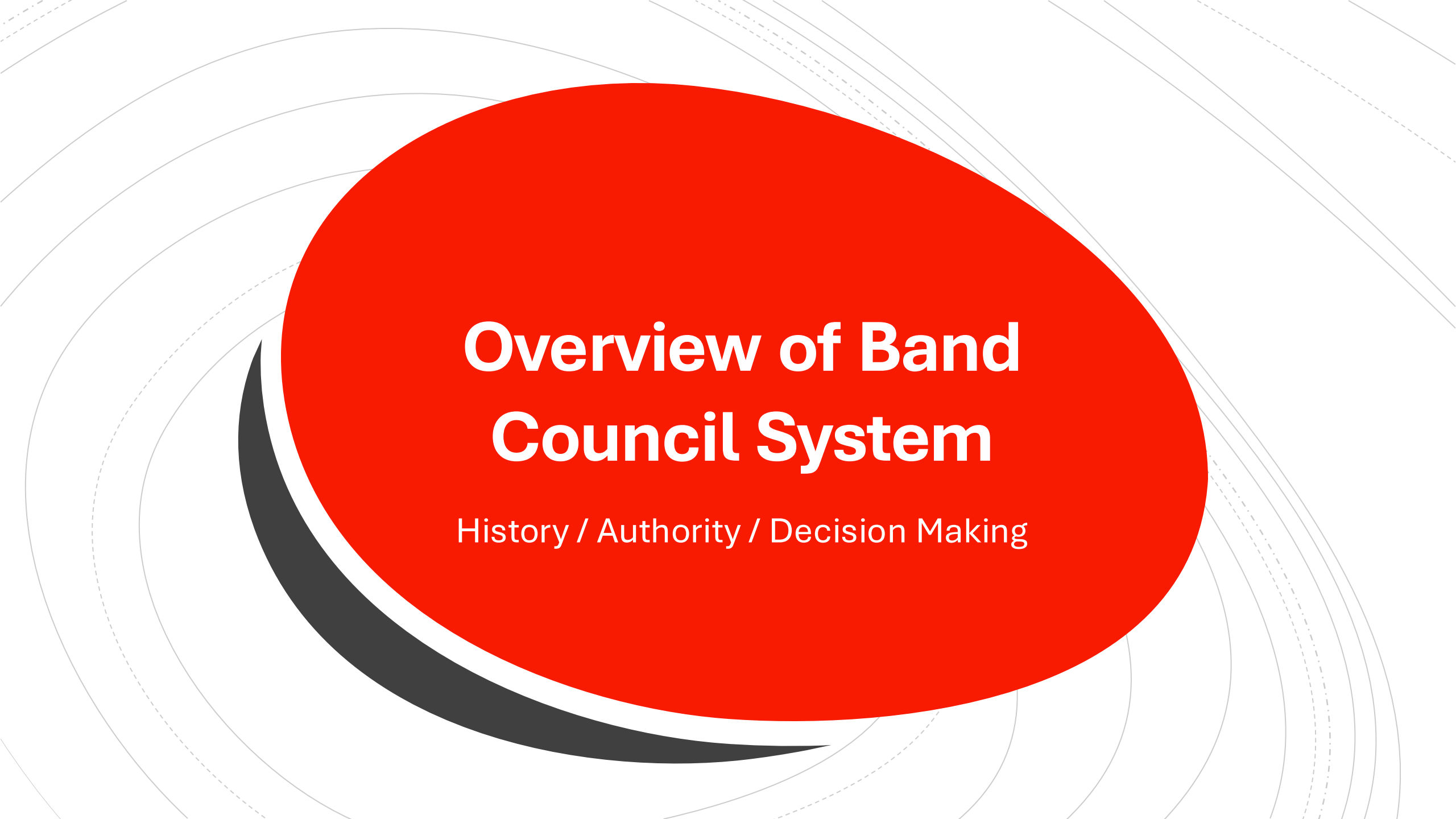
Council _____

Council _____

Council _____

Program Co-ord. _____

Note: _____



Overview of Band Council System

History / Authority / Decision Making

History of Band Council System: The Indian Act

The 1876 *Indian Act* imposed the Band Council System.

It is the legislative foundation for the powers of the **Band Council** and the **Band**.

Band Councils are created under the Indian Act and derive their authority exclusively from that Act.

Intended to resemble municipal governments, **Band Councils** share similar mandates and obligations.

Much like municipalities are subordinate to the Province, **Band Councils** are subordinate entities of the Canadian government.

The **Band Council** and the **Band** are authorized to act only by virtue of majority vote.

The Indian Act: Sections of Note

SECTIONS 5-16

Definition and Registration
of Indians

SECTION 20

Possession of Reserve
Lands

SECTIONS 53-60

Management of Reserves
and Surrendered and
Designated Lands

SECTIONS 61-69

Management of Indian
Monies, including governing
of Trusts, revenue
accounts, etc.

SECTION 81

Powers of Council

SECTION 88-90

Legal Rights



Council Decision Making

Formal / Informal

Types of Council Decision-Making

INFORMAL

- Strategic Planning
- Departmental Direction
- Human Resources or Organizational Decisions

Types of Council Decision-Making

FORMAL

- Budget approvals / Fiscal Expenditures over \$10k
- Support for Funding Applications
- Rights and Title
- Agreements with Government or Industry
- Creation of Laws or Bylaws

Mechanisms for Band Council Decision-Making

INFORMAL

- Conversation / Consensus
- Briefing note or other mechanism to capture background / link to approved budget or department
- Decisions reflected in the meeting notes

Mechanisms for Band Council Decision-Making

FORMAL

- **Band Council Resolution or BCR**
- Numbered and registered with Indigenous Services Canada (ISC)
- Reviewed by the Financial auditor
- Requires a minimum number of Councillors to pass a BCR = **QUORUM**
 - For Saik'uz, quorum is 3 Council members

Band Council Resolution (BCR)

Dated the _____ day of _____

BCR No: _____

Province: _____

Band Council Resolution of _____ (*Band's name*)

Whereas the _____ First Nation maintains that, since time immemorial, has been and is a sovereign nation and affirms its inherent right to self-government by designating the *Chief and Council* to act on its behalf; and

Whereas under the terms of the *Framework Agreement* signed by the Province of Saskatchewan and the *FSIN* through the Chiefs in Assembly, each First Nation must pass a *Band Council Resolution* as a jurisdictional and legal requirement to designate a gaming licensing authority if the First Nation is involved in gaming activities within its reserve; and

Whereas *Chief and Council* of the _____ First Nation has designated *Indigenous Gaming Regulators, Inc. (IGR)* as a lawful and credible licensing authority that has the capacity to license and regulate lottery schemes on-reserve; and

Whereas *IGR*, on behalf of the First Nations of Saskatchewan, has entered with the *Saskatchewan Liquor and Gaming Authority (SLGA)* into a *Licensing Agreement* that provides *IGR* with the authority to conduct on-reserve charitable gaming licensing; and

Whereas the *Chief and Council* recognize that _____ is an *unincorporated non-profit organization* operating within its jurisdiction, and that its current Executive is comprised of individuals with good character

Now therefore be it resolved that:

The *Chief and Council* of the _____ First Nation recognize the importance of *licensing* on-reserve charitable gaming activities pursued by a charitable or religious organization for charitable purposes in order to fulfil the federal and provincial requirements; and

Through this *Band Council Resolution* the _____ is acknowledged as a charitable organization in the community;

This *Resolution* shall take effect immediately after approval and shall suffice for the purpose of providing acceptable forms of incorporation as specified by *IGR*.

This *Band Council Resolution* may be terminated or revoked if it is evident that the charitable organization has not fulfilled the obligation or intent of the *IGR* issued licence; or if it is evident that the organization has conducted activities that are unacceptable to *Chief and Council*, Elders, and the community.

Upon execution, a copy of this *Band Council Resolution* is provided to *IGR* for its records.

The *Band Council*, who has reviewed the terms of this *Resolution* at a *Band Council* meeting duly convened and with a quorum of the present *Council*, approves its terms and resolves that it shall be executed and issued on those terms.

Quorum _____
(Chief)

Councillor Councillor Councillor

Councillor Councillor Councillor

Councillor Councillor Councillor

Councillor Councillor Councillor

Example of Band Council Resolution

Requirements for a Band Council Resolution (BCR)

1. Majority of Counsellors in attendance (**quorum**)
2. Passed a valid motion
3. A duly convened meeting

Now an **enforceable** resolution has come into existence. The BCR codifies the details of the agreement, down to the date and time.

Just like resolutions passed by Directors in a corporation, once a Band Council agrees to exercise a power under **Section 2(3)(b) of the Indian Act**, the Band Council Resolution (BCR) represents the council's authority to act.

Importance of a Band Council Resolution

The Indian Act enables a Band Council to enact bylaws that have the power of Canadian federal laws. This means that **courts can recognize and enforce band-made laws**, and that provincial government laws regarding the same subjects may become unenforceable.

Importance of a Band Council Resolution



Fiduciary Responsibility

Required Checks and Balances

Fiduciary Responsibility

A relationship in which one party (the **fiduciary** i.e., Band Council) is **responsible for looking after the best interests of another party** (the **beneficiary** i.e., Membership)

Fiduciary Responsibility

Many levels of governance have fiduciary responsibilities (e.g., Band Councils, Executive or Economic Boards).

These levels of responsibility are defined within the 3 branches of government:

- Executive
- Legislative
- Judiciary

Fiduciary Responsibility: EXECUTIVE

- Most common form of Fiduciary Responsibility, especially for Council
- Executive obligations can be described as “**due process or diligence**” required to make corporate or executive decisions
- Executive obligations are enforceable by the Supreme Court

Fiduciary Responsibility: LEGISLATIVE

- Less frequent form of fiduciary responsibility
- Largely deals with the protection of Section 35 Rights through the enforcement of the Crown's **Legislative** Duty to uphold those rights

Fiduciary Responsibility: JUDICIARY

- Less frequent form of fiduciary responsibility
- Most often, this context refers to the fiduciary responsibility of a Corporate entity to uphold the Crown's or First Nations' regulatory decision-making processes used in resource extraction or resource development

Saik'uz Council Fiduciary Responsibilities

SFN - CROWN RELATIONSHIP

- Fiduciary responsibility for management of all resources
- ISC Comprehensive Funding Agreement
- Financial management practices
- Clear record of decisions (Band Council Resolutions)

Saik'uz Council Fiduciary Responsibilities

Saik'uz **COMMUNITY EXPECTATIONS**

- Governance Manual / Saik'uz First Nation's Financial Administration Law
- Protecting Rights, Title, and Interests
- Programs and services for members
- Protecting Saik'uz heritage and culture
- Economic development
- Environmental stewardship of Saik'uz Traditional Territory



Saik'uz Council Responsibilities

Governance Policies

**As mentioned, Council has fiduciary /
legal obligations that are expressed
through Administrative and Financial
Law**

**Saik'uz Council
Responsibilities**

Council is also responsible to uphold expectations from agreements with Government and Industry.

- **Funding / Accommodation**

**Saik'uz Council
Responsibilities**

Council is intended to be Strategic and Not to be involved in the day-to-day Operations.

Council has 1 staff member:

- **The General Manager**

**Saik'uz Council
Responsibilities**

**Remember the Saik'uz Election Code is
a Custom Election Code**

- Replaces sect 74-79 of the Indian Act for First Nations election codes, AND
- Allows the Nation to determine expectations for elected Chief and Council

**Saik'uz Council
Responsibilities**



Saik'uz Council Responsibilities

Saik'uz Election Code (Section 9.48):

All newly elected members of Chief and Council shall sign the following :

- The **OATH OF OFFICE**

OATH OF OFFICE

- uphold and comply with this Code, the Band Council Code of Conduct and all laws and policies of Saik'uz First Nation;
- fulfill the duties and responsibilities of his or her office under this Code, the Band Council Code of Conduct and all laws and policies of Saik'uz First Nation;
- carry out his or her duties faithfully, honestly, impartially and to the best of his or her abilities;
- keep confidential, both during and after his or her term of office, any matter or information which is considered confidential under this Code or the laws and policies of Saik'uz First Nation; and
- always act in the best interests of Saik'uz First Nation in carrying out his or her duties.

Saik'uz Council OATH OF OFFICE

Other Saik'uz Governance Considerations

In addition to **administration and social services**, Band Councils are responsible for **governance functions** such as:

Leadership & Law-Making

Membership & External Relations

Planning & Risk Management

Community Involvement

Financial Management

Human Resource Management & Basic Administration

Information Management & Information Technology

Council Code of Conduct

- Next Steps for Administrative Law
- Defines Roles and Responsibilities of Council.

Overview

- **Election Law** – relates to the democratic processes, election of representatives and/or office holders, and referendums, through the regulation of the electoral system aligned with voting rights.
- **Administrative Law** - concerned with the procedures / various instruments of how government operate, the scope of their mandates, and the remedial structures (enforcement of rules) that exist to ensure that decision-makers of various kinds act in accordance with the Rule of Law.

Overview

- **Band Councils** are created under the 1876 *Indian Act* and derive their authority to operate exclusively from that Act.
- Saik'uz First Nation has a **custom Election Code** that identifies Council's many levels of responsibilities.
- Council is required to follow **Fiduciary Responsibilities** with respect to executive process, Financial Administration Law, and the Governance Manual.

Council Decision Example

- It is September.
- A council member would like to develop an on-reserve mortgage policy.
- That council member puts a motion on the floor to allocate \$250,000 to develop a new on-reserve mortgage policy.

Council Decision Example



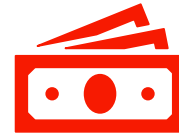
POLICY

If greater than \$10k, the decision requires quorum (3 councillors).



RISK TO SAIK'UZ

What due diligence has been done? Is there a demonstrated need? Has risk been evaluated? How does this program sustain itself going forward?



FINANCE

What is the process for establishing new programs and services?
Financial guidance?



DECISION RECORD

If supported, a BCR with the decision is produced.



**Questions &
Feedback**