
House of Commons Standing Committee on Indigenous and Northern Affairs Study on Barriers to Indigenous Economic Development – March 2022

It is well known and generally accepted that the *Indian Act* was never put in place to advance the economic interests of First Nations. Since its inception more than 150 years ago the *Indian Act* appropriated the decision making authority of First Nations, the results of this legacy is evident across Canada and perhaps unsurprisingly the majority of First Nations remain economically depressed.

Post Self Government Challenges

Despite the advances of the Framework Agreement and other agreements that recognize self governing authority for a segment of Canada's First Nations. A number of ongoing issues stemming from the legacy of the *Indian Act* remain.

Enforcement

While the Federal government has recognized the authority of First Nations to enact their own laws through various agreements such as the Framework Agreement on First Nation Land Management, Modern Treaties, Self Government Agreement and certain Land Claims, there remains insufficient cooperation from federal and/or provincial enforcement and adjudication authorities .

Increasing numbers of First Nations are becoming “stranded” as they are refused help from courts and law enforcement for offences. Lawlessness does not project stability or certainty to attract the right kind of business and investment.

Legacy Issues

Govt failure to invest in assisting self governing First Nations to break from the past hinders future success

- Actions or inactions of Indian Act origin is gridlocking viable lands – ie: Environment/contaminated sites, unresolved, inaccurate or missing internal and external surveys, lack of land use planning, etc.

Additions to Reserves

Process is mired in complicated, decades long and expensive policy – this needs to change in a major way for FNs to regain control of their lands and build a better economic future.

From Budget 2021 backgrounder <https://www.budget.gc.ca/2021/report-rapport/p3-en.html>

Lands are central to First Nations traditions, identity, and prosperity. They are a crucial asset for advancing self-determination, economic development, and well-being.

Budget 2021 proposes to provide \$43 million over three years, starting in 2021-22, to work with Indigenous partners and other stakeholders to redesign the federal Additions to Reserve policy and to accelerate work on existing requests from First Nations across the country.

High Level Recommendations

1. Removing the Barriers Created by the Indian Act – Government should make it easier for First Nations to regain control of their lands and land governance and shed the *Indian Act*.

The Lands Advisory Board is working with Canada to significantly reduce confusion and discord between the Framework Agreement on First Nation Land Management and the federal legislation ratifying the FNLMA. INAN support would be appreciated.

2. Expanded Support for Indigenous Organizations Driving Tangible Change – Indigenous Fiscal institutions and the Lands Advisory Board contribute to ec dev by improving financial governance, access to capital and tax revenues and strong financial governance. This can drive revolutionary positive change when connected to strong land and environmental governance.
3. Significant Government Investment in Indian Act Legacy Issues – Resolving the backlog of outstanding cadastral data and survey uncertainty on reserve will pave the way for better capital and borrowing capacity of FNs and “Unlock” the capacity of reserve lands for economic development.

Significant reduction in the remediation of contaminated sites on reserve will pave the way for better capital and borrowing capacity of FNs and “Unlock” the capacity of reserve lands for economic development.

Significant reduction in the lands currently entangled in unresolved Wills and Estates matters will pave the way for better capital and borrowing capacity of FNs and “Unlock” the capacity of limited reserve lands for economic development.

4. First Nation Controlled Land Registry – First Nations should be governing and managing their own land interests. The *Indian Act’s* Indian Land Registry System was not created for First Nation use.

The LAB, in partnership with the BC Land Title and Survey Authority, has been working for more than a year on a proposal to establish an independent, First Nation operated land registry system for those First Nations with a land code made under the Framework Agreement. This proposal, , has been submitted to both the Minister of ISC and CIR. The LAB and RC will be working with those Departments and other stakeholders to begin the collaborative work required to build and operate a new First Nation Land Registry.

5. Law Enforcement – Canada should commit to work with self-governing First Nations to develop practical and immediate solutions to reasonable enforcement and adjudication of duly created First Nation Law. Economic development will not adequately initiate or flourish without law and order.

The removal of many of the restrictions of the *Indian Act* will bring First Nations closer to the “speed of business” standard enjoyed by the rest of Canada, however a significant effort needs to be made by the government to address its lingering legacy. Without this effort, the success of First Nation self government efforts will continue to be hampered and locked from any use.

Indian Act Barriers

Specifically, the *Indian Act* stacks the deck against economic activity and inhibits First Nation efforts through:

- Complicated policy and protracted wait times for decision making drastically increasing the overall cost of doing business. I.e. Land designation policy – requires years of preparation and costs millions of dollars simply to lease lands.
- Poor land certainty through Lack of consistent document standards and cadastral data backing land tenure. This in turn limits capital and borrowing options and prevents title insurance options.
- Substandard Land Registry system. The Indian Lands Registry System (ILRS) is deeds based and not backed by formal regulation. Plainly put, deeds based registries do not guarantee ownership.
 - This creates poor land certainty
 - Lack of formal regulation creates inconsistent document, mapping and survey standards
 - Uncertainty in ownership limits access to capital, borrowing and insurance options
 - Uncertainty lowers the value of reserve lands and tax assessments
- Insufficient environmental and land protection on reserve often referred to as a “regulatory gap” compared to much better laws protecting non reserve lands.
 - Trespass and dumping laws are rarely enforced which has created a languishing and longstanding lists of contaminated sites on reserves across Canada. This binds up and excludes limited and valuable lands at over 800 inhabited reserves in Canada. Outstanding liabilities to Canada for these sites were estimated to be 2.6 billion in 2014. Remediation and risk management remain ongoing challenges.
 - Bylaws made by First Nations are often not enforced by police or courts. This further inhibits the certainty required by the majority of investment and business interests for law and order.

- Lack of [critical infrastructure investments](#) on reserve to support economic development. Clean water, sewage treatment, clean reliable power and internet still not up to standard or at all on many First Nation reserves.

The Framework Agreement on First Nation Land Management (Framework Agreement)

The Framework Agreement signed in 1996 has provided a viable solution to many of these longstanding problems by recognizing the inherent land governance authority of participating First Nations. By supporting the creation and community approval of “land codes” a First Nation can resume its law making and land management authority and opt out of 44 sections of the *Indian Act*.

Over the past 26 years since the Framework Agreement was signed, 103 First Nations have enacted land codes and report that under no circumstance would they consider returning to the *Indian Act*.

In [2010 and 2014 KPMG](#) conducted evaluations of the Framework Agreement showed that when *Indian Act* lands provisions are removed in favor of land codes, efficiencies gained from removing bureaucratic red tape increase significantly, such as:

- Decisions by First Nations are made in days to weeks as opposed to months to years or indefinite periods of time;
- Removal of the federal government as an intervening decision-making authority leaving more room for expedient, varied and unhindered direct First Nation / 3rd party relationships;
- The Framework Agreement established regulations for a separate land registry called the First Nation Land Register (FNLRS). The FNLRS establishes improvements such as a paperless, instant, priority based and regulation backed which expands borrowing, eliminates excessive transaction costs and creates room for innovation (A to A leasing) and makes title insurance possible;
- Documented multimillion dollar increases in internal and external investments;
- Significant reduction of complicated red tape, less business development cost for individual First Nation member entrepreneurial activity;
- Expansion of business development and industry standard land regulation.