

# Will urban reserves spur Indigenous prosperity?

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## Abstract

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*But is this positive reception warranted? Will urban reserves be an economic boon for First Nations communities? What impediments and challenges lie ahead, both for the First Nations owners and the surrounding city? What essential steps appear to increase the chances that this form of economic reconciliation will succeed?*

*This paper explores the unique policy challenges facing urban reserves in the context of the economic theory of property rights, evolving Aboriginal land law, and municipal governance*

## Introduction

Between 1969 and 2017, the federal government approved 1689 [additions to reserves](#) and of these, 119 were urban reserves, mostly in smaller communities, the periphery of a larger city, or less commonly inside a major metropolis. Since urban reserves have emerged as an economic strategy for First Nations in the last decade or so, reception has been generally positive. Popular accounts (Fontaine, 2015; Quesnel, 2016) and more technical studies (Deloitte, 2016), argue for their potential to boost the economic opportunities for both First Nations and surrounding city residents alike.

But is this positive reception warranted? Will urban reserves be an economic boon for First Nations communities? What impediments and challenges lie ahead, both for the First Nations owners and the surrounding city? What essential steps appear to increase the chances that this form of economic reconciliation will succeed?

This paper explores the unique policy challenges facing urban reserves in the context of the economic theory of property rights, evolving Aboriginal land law, and municipal governance. I begin with a general discussion of the legal basis for creating new urban reserves set in the evolving nature of Aboriginal land law. Then two case studies illustrate alternative pathways to the creation of an urban reserve. Tsawwassen First Nation (TFN) is an Indigenous community that has become enveloped by the growth of the Greater Vancouver Regional District. Kapyong Barracks (KB) is the former site of the Princess Patricia Light Infantry in Winnipeg, has become an urban reserve under the auspices of a consortium of seven First Nation signatories to Treaty 1. This latter source of urban reserves may become more common as First Nations recognize economic potential of land within cities. Both cases demonstrate some of the challenges and opportunities of urban reserves as engines of prosperity for First Nations.

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As a way to set the stage for the two case studies, the paper uses census information to contrast economic and demographic attributes of the “top-eight” First Nations, most of which are urban reserves, with situation of the consortium of seven First Nations that will manage the Kapyong Barracks.

Finally, the paper identifies a range of issues that shape and condition the economic prospects of urban reserves, concluding with some policy options. These include the changing demographics of First Nations communities that will develop urban reserves, the nature of agreements needed to support mutual benefits of the managers of urban reserves and the adjacent landowners, the purchase of services from the municipalities, and the land-use planning frameworks that still need to evolve.

In this paper I refer to Indigenous prosperity as the growth in individual or personal income for registered Indians living on a reserve, with special attention to those First Nations communities that have either evolved to become an urban reserve or that have acquired additional reserve lands within or adjacent to an urban area. Other measures such as wealth, employment, and investment/business incomes are important indicators of prosperity, but since personal income data from the census is readily available for most Indigenous communities, it is convenient to use personal income as defined by the census.

This paper does not examine changes in personal income and wealth for Indigenous persons off-reserve, and since reserves pertain only to registered Indians, the evolving economic situation of Metis and Inuit is currently outside its scope. Two caveats exist. First, some of the most successful urban reserves have a majority of residents who are not registered Indians.

### ***Aboriginal land law evolves.***

In Canada, businesses and individuals, Canadian and foreign often land in fee simple or freehold. In general [fee simple](#) title allows the owner to use the land freely, constrained only by zoning regulation and possibly when government or a crown corporation exercises [eminent domain](#) and expropriates for public purposes such as for roads or energy transmission lines. Indigenous business and individuals, as a Canadian citizen, may own land in fee simple, financed by savings, retained earnings, and mortgages. The owner of land in fee simple can also sell the land, and retain any capital gain, subject to applicable taxes.

A common view of Aboriginal land law is that it presents a fundamentally different vision of the “ownership” of land than European law. Very generally it remains correct to say “Aboriginal people's rights to land as defined by the Indian Act are communal in nature, belonging to the group rather than the individual member, and cannot be bargained away except by the group to the crown in right of Canada”(Henderson, 2016). Under the Indian Act, no individual Indigenous person can own land. A reserve is communal for the benefit of all community members. This aligns with core

philosophy of Indigenous peoples. The Liidlii Kue First Nation offers a clear enunciation of this concept from the Dene perspective. (Liidlii Kue First Nation, 2013).<sup>1</sup>

It is important to understand that Indigenous peoples do not accept that Canadian governments had the original authority, moral or legal to create the system of reserves, since Turtle Island, as some tribes refer to North America was never the Europeans' to allocate. This paper does not explore this important idea or its implications.

About 89% of Canada is split approximately evenly between federal and provincial governments (Neimanis, 2013). Of the remaining 11%, most is fee simple ownership by private individuals and businesses. Crown lands are typically set aside as national and provincial parks, wilderness, and First Nations reserves. First Nations leaders reject the categorizing reserves as crown lands and the last two decades have seen a resurgence in court challenges attempting to reconcile the conception of land title in English common law and Aboriginal law.

Many if not all Indigenous persons believe that European settlement never extinguished Aboriginal title. Even where treaties and other agreements created accommodations between Aboriginal and European concepts of land title, these never abrogated Aboriginal land rights. In this view, traditional Indigenous title supersedes both the concept of fee simple and crown land. Reconciling the diametrically opposed view of land titles is the flux upon which urban reserves stand and which shapes the economic opportunity they offer First Nations and challenges the Settler conception of private land ownership.

However, the idea that prior to European settlement Indigenous lands were communal with no private property is too general. As Flanagan et al. (2010) argue, Indigenous peoples developed complex and varied systems of individual and collective property rights that aligned with the specific economic base of the community. This idea reflects the economic theory of property rights as explained by Demsetz (1967), Alchian and Demsetz (1973), and Bailey (1992). In brief these authors contend that as an expression of institutional economics, all societies adjust their property rights to maximize their chances of survival and refine these legal systems to enhance economic well-being balancing collective and individual ownership.

Societies that survived through agriculture, aquaculture, and hunting within defined areas tended to remain in fixed communities, where individuals and families often had claims to specific properties and locations that the community both recognized and were heritable. Overall economic well-being of the community increased when ownership remained stable and individual households reaped the benefits from caring for the land, traplines, or fishing sites.

In contrast, for communities that optimized well-being by following herds, especially after the advent of the horse, such as on the Plains, land-based property ownership vested in individuals, households or smaller groups than the community offered no economic advantage and were generally nuisance. Communal ownership in nomadic societies reflects the reality that owning plots

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<sup>1</sup> This paper adopts the following conventions. The term *Indigenous Peoples* applies to First Nations, Inuit, and Métis persons. The term *First Nations* applies to Indigenous Peoples who do not identify as Inuit or Métis. The term *status Indians* and *registered Indians* refers to those First Nations persons recognized by the Indian Act. The term *First Nations Community* refers to “collectivities” recognized under the Indian Act and the term reserve is an area defined solely within the Indian Act. The term “settler” refers to any non-Indigenous resident of Canada.

of land conferred little economic benefit. Improving the land upon which vast bison herds grazed offered no advantage to the individual or the tribe, unlike improving a fishing weir.

To understand urban reserves in Canada, a brief review of the treaty process offers some insights.

Treaties with Indigenous peoples date back to 1701 when the British government signed land military, and trade agreements to support economic and military relations (Canada, 2013). For example, the Maritime Peace and Friendship Treaties (1725 – 1779) applied to present day New Brunswick, Prince Edward Island, and Nova Scotia, while the Upper Canada Land Surrenders covered southern Ontario. In British Columbia, the Douglas Treaties (1850-1853) covered a few small parts of Vancouver. After Confederation, the so-called numbered treaties (1971 – 1921) defined land rights for the Prairies, parts of British Columbia, the Northwest Territories, and northwestern Ontario. Finally, the Williams Treaties (1923) added small pockets in Vancouver and Vancouver Island. In principle, these treaties defined “reserve” land for the exclusive use of the signatory First Nations and created “space” for settler expansion based on European conception of land law.

However, the entirety of Quebec, Newfoundland/Labrador, Nunavut and until recently, most of BC, have no treaty arrangements. These are the “unceded territories” of Canada where Indigenous communities have no reserves. Even where treaties provided for reserves, Aboriginal communities have experienced [sustained violations](#) of both the letter and spirit of the terms of these agreements.

The twentieth century witnessed many Indigenous communities engaging in legal battles to enforce treaty provisions and to defend traditional territories. The [BC Treaty](#) process initiated thirty years ago, has supported increasing numbers of First Nations communities in that province to negotiate treaties and bring lands within the reserve system. Most significant was a landmark decision the Supreme Court of Canada (2014) that recognized Aboriginal title of the Tsilhqot’ in nation to 1,750 sq. km of central British Columbia. This is not fee simple ownership, but a conditional right to use and manage a large are of interior BC, to obtain economic benefits, but not to sell for a capital gain.

The point of this very cursory background is not to argue the issues of Aboriginal title, but just to note that land law in Canada, especially as it pertains to Aboriginal peoples continues to evolve. Most important is that an urban reserve can exist only in context of legal agreements between a specific First Nation and federal/provincial governments that have stabilized the matter of rights to manage a defined area.

### ***The origins of urban reserves***

Urban reserves originate from two sources. First, a community that was remote from a city a hundred year ago, may have become engulfed by urban development. That community may be covered by a treaty or it may be on unceded land. Second, certain urban areas may be added to an existing First Nations reserve through the additions to reserve ([ATR](#)) process.

To augment its reserve through the ATR process, a band may use property it has purchased conventionally or land acquired as part of [Treaty Land Entitlement Agreements](#) (TLA). The

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TLAS recognize historical injustices that have occurred over the last century as governments failed up uphold provisions of the eleven Treaties signed between Canada and First Nations. For example, in [Saskatchewan](#) and [Manitoba](#), the federal and provincial governments have accepted the arguments advanced by First Nations that at the time of Treaty 1 and 2, both the population and traditional area reflected a substantial underestimation. In both provinces governments have committed land and financial resources to support the ATR process.

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So, what makes these small number of urban reserves so strategic? Quite simply, despite the continuing importance of resources to Canada's economy, cities are the locus of present and future economic activity. The mantra for fortune seekers of the 19<sup>th</sup> century – “go west” – has now become “go urban.” The global rural-urban migration towards prosperity applies equally to Indigenous Canadians. Many First Nations are located remote lands with little economic potential and the compelling rational behind the creation of urban reserves is the toehold they offer on the urban and global economy.

***Two case studies illustrate the nature of economic development on urban reserves.***

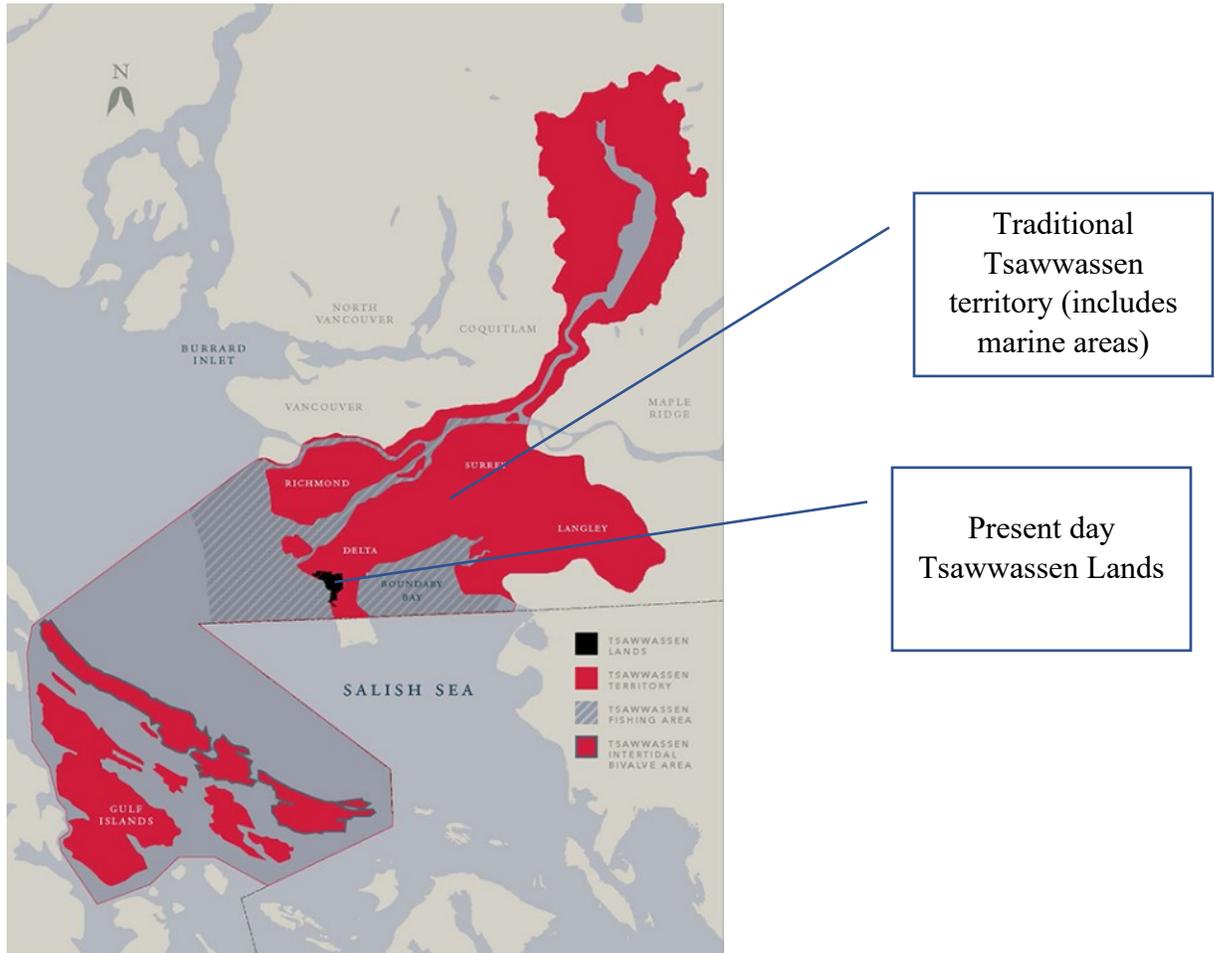
To understand the range of economic opportunity of urban reserves in Canada, and it is useful to contrast two cases – Tsawwassen First Nation just south of Vancouver and Kapyong Barracks in the heart of Winnipeg likely to attain reserve status within the next 12 months.

1. *Tsawwassen First Nation(TFN)*: The traditional territory of the Tsawwassen First Nation (TFN) stretches north from beyond the USA border south of Vancouver, to all of current day Vancouver, across the Strait of Juan de Fuca to Victoria and [some Gulf Islands](#). Importantly, it also includes the waterways, which formed an integral part of the community for coastal Indigenous populations. The TFN has 750 members, half living in the community near Vancouver and the others in the interior of BC and northern [Washington state](#).

With European settlement the Indigenous population became confined to a relatively small area just north of the US border. As with other Indigenous communities in Canada, governments and the expanding non-Indigenous population treated Tsawwassen First Nation members with at best indifference and at worst systematic hostility and obstruction.

In 1871 with the entry of British Columbia into Confederation, the Tsawwassen community did not exist within a Treaty. The province had no system of treaties addressing Indigenous rights until 1992 with the creation of the BC Treaty Commission. For many years it existed as a small coastal fishing village remote from Vancouver and with no close urban development. The first important change for this community was the

construction of the ferry terminal linking Vancouver to Victoria in 1958. Next came the Roberts Bank Superport in 1968 that eventually created a 113-hectare island with 24-7 activity shipping coal overseas primarily to China. The construction of these facilities involved no community consultation, created environmental harms, and destroyed key cultural and religious infrastructure. However, they also served as harbingers for a much brighter economic future the TFN.



**Figure 1: Tsawwassen Lands – traditional and present day**

In 1995 the community embarked on its first self generated development project the creation of Tsatsu Shores, a condominium development that faced opposition from the federal and local [governments](#). Much of the opposition stems from the uncertainty over land transfers from surrounding municipalities and where the costs of municipal services would fall.

Negotiated in 2009, the Tsawwassen Final Agreement represents a tripartite agreement between the government of Canada, British Columbia and Tsawwassen First Nation. It is

a complex document that specifies a range of rights over approximately 1790 acres drawn from a blend of Crown lands and former reserve lands

As of 2016, TFN had a total population of 750, of which 205 were registered Indians. Over the next decade, the numbers of non-Indigenous residents in the TFN reserve could grow to far exceed the numbers of band members, reflecting success in creating commercial and residential leaseholds. It is worth noting that TFN has 483 members, with the majority (278) living in Bellingham, Washington and North Okanagan B.C.

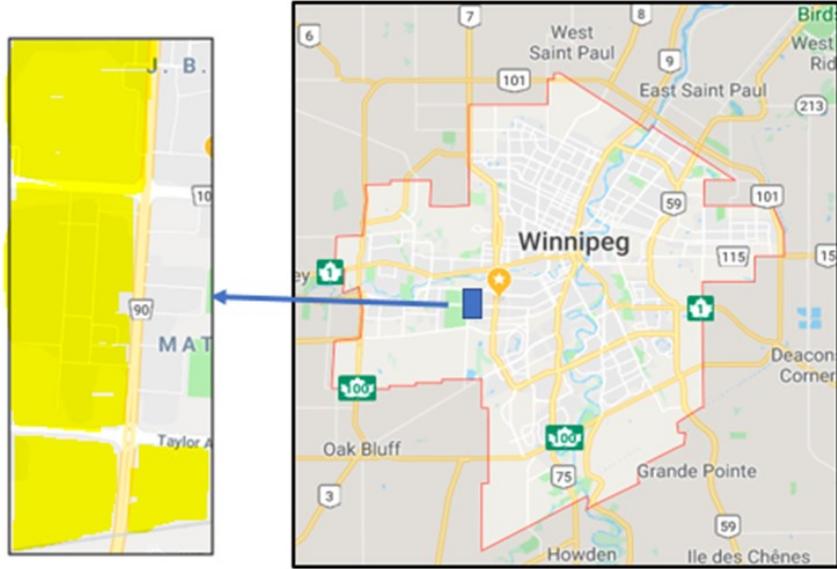
Tsawwassen First Nation is within 95<sup>th</sup>. percentile of income and wealth among First Nations. According to the 2016 Census, Tsawwassen has an average individual after-tax income of \$64,670 compared to \$45,616 for the entire [province](#). On the economic dimensions measured by the census, Tsawwassen First Nation residents outpace their provincial counterparts – indigenous and non-indigenous. One key question is the extent to which registered Indians enjoy similar incomes as the non-registered persons resident on the reserve. This is a question for future research.

In recent years, key developments that have occurred or are planned include:

- Development plan for 110 hectares of commercial and residential development
- Creation of residential subdivisions
- 25-year agricultural leaseholds with local farms
- Warehouse, cardlock truck fueling, warehouse, etc.
- Major sewage treatment plant
- Opening of Tsawwassen Mills a 1.2 million sq. ft shopping mall
- Logistics facilities and container inspection
- A new Amazon warehouse facility.

It is possible to view the TFN as a unique hybrid of real-estate development corporation and municipal government. TFN has created a modern planning and land use regulation system as well as invested in standard infrastructure – water, sewer, animal control, etc., deriving significant rental/lease revenues from governments, industry and individual households.

2. *Kapyong Barracks*: The land formerly the Department of Defence Kapyong Barracks, in Winnipeg is not yet an urban reserve with final approval expected in 2020. This 110-acre area in the heart of an affluent area of Winnipeg was the base for the fabled Princess Patricia's Canadian Light Infantry. Unused since the Department of Defence moved the to Brandon in 2004, the Kapyong lands will become an urban reserve within the heart of an affluent area of Winnipeg (Figure 1) . Currently, it comprises large open space with derelict buildings and so is a “blank slate” ripe for development.

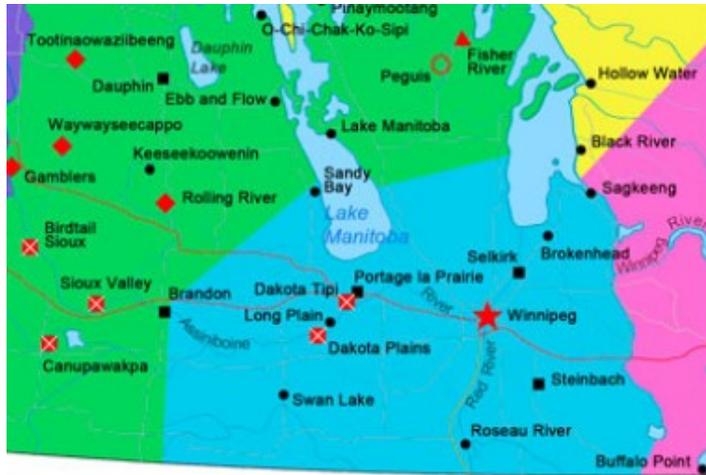


**Figure 2: Kapyong Barracks**

The consortium comprising the seven signatories the agreement to create this urban reserve include Long Plain First Nation, Brokenhead Ojibway Nation, Peguis First Nation, Roseau River Anishinabe First Nation, Fort Alexander (Sagkeeng) First Nation, Sandy Bay First Nation, and Swan Lake First Nation. Figure 3 shows that these First Nations will acquire an urban reserve that is up to a two-hour drive from some of the communities.

Another important feature for this urban reserve is that the participating First Nations all have incomes much lower than the Manitoba [average](#). For example, the 2016 Census reports annual average incomes for Long Plain, Peguis and Roseau River First Nations were \$15,351, \$22,355, and \$11,135 respectively compared to the Manitoba average of \$43,767. On every economic dimension, Treaty 1 First Nations residents are very much poorer than the typical Manitoban.

Again in contrast to the 750 members of TFN, these seven First Nations also have a total population close to [10,000](#). Peguis, Long Plain, and Sandy Bay with a combined 2016 population of 7148 forms the centre of economic gravity for these First Nations.



**Figure 3: Treaty 1 and Member First Nations**  
 (note that Dakota Tipi and Dakota Plains First Nations did not sign Treaty 1)

*First Nations reserves show a wide spectrum of prosperity*

These two cases illustrate the range in the economic fortunes of Canada’s First Nations’ communities. However, by looking at census information, it is possible to discern important factors that influence economic performance, which support some insights into the economic development of urban reserves

Using 2016 census information, and acknowledging that not all First Nations participated in the census, it becomes apparent that Tsawwassen is part of about a “top eight” of comparatively well off First Nations communities shown in Table 1. Residents in these communities show higher incomes than the average incomes of all residents of the corresponding provinces. The divergence of median and average income reflects the presence of a fewer number of high earners, most markedly Fort McMurray First Nation

<b>Table 1: Canada’s top eight reserves (2016)</b> Each of the place names links to band websites							
Name	Pop	% reg Indian	Average Income*	Median Income**	Sources of Income (%)		
					Market Income	Gov’t transfers	Other
<a href="#">Fort McKay First Nation</a> Fort McKay, AB	742	86%	\$78,916	\$34,048	84	10	5
<a href="#">Tsleil-Waututh Nation</a> North Vancouver, BC	1855	18%	\$73,220	\$41,264	86	6	8
<a href="#">Tsawwassen First Nation</a> Delta (Vancouver), BC	750	27%	\$64,670	\$38,647	39	10	51
<a href="#">Liidlii Kue First Nation</a> Fort Simpson, NWT	1180	67%	\$59,659	\$47,552	86	8	6
<a href="#">Tsuut’ina Nation</a> Calgary, AB	1645	33%	\$56,185	\$36,621	77	6	17

<a href="#">Tk'emlups te Secwepemc</a> Kamloops, BC	3025	10%	\$55,676	\$40,288	62	10	28
<a href="#">Fort McMurray First Nation</a> Fort McMurray, AB	320	89%	\$54,675	\$19,584	84	10	5
<a href="#">Musqueam</a> Vancouver, BC	1660	47%	\$47,492	\$31,560	60	10	30
* Persons 15 and older. PT reference average income = \$62,778; B.C. = \$45,616; NWT = \$64,586							
Source: <a href="https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1">https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1</a>							

Among the top eight, the percentage of income derived from market sources (employment) is generally high and dependency on government transfers is low, 10% or less. Other income usually means revenues from commercial/residential leasing a feature of Tsawwassen, Tsuut'ina, Tk'emlups te Secwepemc, and Musqueam.

One interesting feature of many of these urban reserves is that the “not-a-registered Indian” population exceeds that of the registered Indian population, sometimes by a factor as high as [2 to 1](#). This reflects the effect of residential leasing that has attracted many non-Indigenous persons as residents. The category “not a registered Indian” includes those persons on the census survey who report having Aboriginal identify or non-Aboriginal identity. Aboriginal identify includes registered Indians and those who report an Aboriginal identity but who are not registered Indians. Most of the residents in the top-eight classified as “not a registered Indian” are probably non-Indigenous.

It is tempting to think that the higher the number of “not a registered Indian” resident on the reserve, the higher the income, but the story is much more complex. Certainly, Tsawwassen and Musqueam have a majority of not a registered person residing on the reserve. But most (81%) of the residents Fort McKay, the community with highest individual incomes, are registered Indians. The same holds for Fort McMurray

Another way to look at this table is how economic development and therefore incomes benefit from proximity to large urban area. Consider Musqueam First Nation that lies entirely within the City of Vancouver and has always been an urban community becoming an urban reserve recently with the B.C Treaty Process. Further Musqueam is situated on prime Vancouver real estate. Similarly, Tsawwassen also enjoys favourable location, partly in terms of upscale residential opportunity, plus strategic location with respect to logistics opportunities as demonstrated by the recently announced Amazon warehouse. Finally, Tk'emlups te Secwepemc near Kamloops B.C. has forestry business, a large industrial park, and significant residential leasing in the heart of one of Canada’s fastest growing retirement areas.

Communities such as Liidlii Kue, Fort McKay, and Fort McMurray First Nations draw their incomes from business supporting oil sands development, construction, and transportation with less residential leasing. They are not within the economic footprint of rapidly growing urban areas.

In contrast, as Table 2 shows, the First Nations involved in the Kapyong Barracks have very much lower incomes than the top eight. The most affluent of the seven, Peguis First Nation still only has an income that is less than average of First Nations residents in Canada. Market (employment) incomes are lower for this group than that of the top eight, with higher dependency on government, and negligible income from other sources. This result in a much smaller divergence of average and median incomes.

Table 2: Kapyong Barracks reserves (2016) Each of the place names links to band websites							
Name	Pop	% reg Indian	Average Income*	Median Income*	Sources of income (%)		
					Market Income	Gov't transfers	Other
<a href="#">Peguis</a>	2685	97%	\$22,355	\$15,616	68	29	3
<a href="#">Brokenhead Ojibway Nation</a>	515	92%	\$19,106	\$15,424	68	28	4
<a href="#">Swan Lake First Nation</a>	345	100%	\$18,147	\$11,584	68	29	3
<a href="#">Fort Alexander (Sagkeeng) First Nation</a>	1905	97%	\$17,408	\$12,624	60	36	4
<a href="#">Long Plain First Nation</a>	1235	98%	\$15,351	\$9,632	58	39	3
<a href="#">Sandy Bay First Nation</a>	2515	99%	\$14,123	\$5,972	55	43	2
Roseau River Anishinabe First Nation	670	100%	9,700	\$5,188	51	45	4
* Persons 15 and older. Provincial average income = \$43,767							
Source: <a href="https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1">https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1</a>							

***Urban reserves present unique challenges to First Nations and cities.***

Based on the “top eight” First Nations communities, it appears their economic success depends on proximity to resources and/or, lying either within or immediately adjacent to dynamic urban centres. Further examination of the web sites of the top eight suggest three conditions that contribute to the economic prosperity of reserves in general and urban reserves in particular: 1) formal recognition as a reserve which stabilizes territorial boundaries and creates the basis for government-to-government relationships; 2) developments in land law legislation that monetizes the value of land without yielding control; and, 3) development of the “institutional infrastructure” to support economic development.

1. *Formal recognition as a reserve is an essential step.* Treaty agreements stabilizes and clarifies the boundaries for the First Nation and creates the basis for legal relationships with surrounding municipalities and agencies. For example, the period of 1992 to 2007 mark the “[treaty negotiation period](#)” for the TFN, starting with the creation of the [B.C. Treaty Commission](#). In 2004 the TFN signed an agreement in principle and by 2009 it

becomes self-governing. Even though economic development projects had started well before final agreement with the construction of the Tsatsu Shores condominium development in 1994, surrounding municipalities and governments were initially reluctant to enter into agreements with unincorporated entities. Uncertainty about what lands were to be transferred to TFN and fiscal consequences created [hesitancy](#) by Delta municipality.

The progress of treaty negotiations progress and clarification of land and fiscal arrangements between First Nations and non-indigenous governments, businesses and individuals become more receptive to entering into service, economic development, and leasing agreements with these new entities. Transparency in the negotiation of a new urban reserve minimizes uncertainty about land use plans and fiscal arrangements. As treaties become more common momentum and inevitability encourage accommodation and acceptance. This is a critical lesson for the economic development on unceded territories without treaty agreements.

2. *Monetising the value of “unsalable” land releases the value of “unsaleable” land.* All First Nations see self-government as a core goal, and this requires own revenue generation to support services. For some First Nations in the top eight, it is business operations that anchor incomes. Fort McKay, for example has many construction and resource extraction businesses. Others such as Musqueam, Tsawwassen and Tsuut'ina Nation draw major revenues from commercial and residential leasing. Business often lease office and other facilities often on a five-year cycle, and most individuals start their residential lives in an apartment, with an annual lease. So, with appropriate legislation a First Nation can replicate these forms of revenue generation from land.

Provincial [strata titles](#) legislation is the legal framework for supporting residential condominium development. It is not possible for a First Nation to develop its reserve lands using conventional condominiums based on freehold or fee simple or single detached homes for sale since ownership in reserve lands cannot be transferred outside the band. A most important change in the legal basis for strata titles was allowing leasehold as the basis for creating a condominium. Several provinces have adjusted their strata titles [legislation](#) to accommodate the sale of condominiums using leaseholds.

To explore this a little more, rather than owning the freehold condominium in perpetuity, the purchaser of a leasehold condominium “owns” the unit for a defined time period, usually between 40 and 99 years. After the leasehold term the property reverts to the land owner, in this case the First Nation. This allows non-band members to acquire a time-limited interest in reserve land and explains why many of these communities have a high proportion of non-Indigenous residents.

Residential leasing arrangement may appear unattractive for those focused on the need to own in perpetuity, but it is a form of homeownership that increasingly appeals to those

with short-term housing needs. Since the average tenure for a home owned freehold is under a decade, purchasing a 40-year leasehold seems reasonable. Another advantage is that the owner of the land (in this case the First Nation) can place covenants or restrictions on the leasehold such as restricting the sale to specified persons, specifying who is responsible for upkeep, or how purchased may use the property. It is harder to enforce these conditions within a system of freehold or fee simple ownership. However, the downside of leaseholds is that they may have a lower price if covenants become too restrictive and as the term for the lease approaches. This can attenuate the revenue stream to the owner.

The need to monetize the value of the reserve will encourage further experimentation with land law. For example, Tsawwassen First Nation acquired fee simple title to its reserve lands and then replaced the Certificates of Possession normally used to allocate property to band membership, with [fee simple title](#) that holders of these lands may “sell” their properties, but only under a covenant that restricts sales to band members.

3. *Development of the institutional infrastructure:* Institutional infrastructure refers to the regulations governing land use, building codes, environment, taxation etc. that frame and condition economic activity within a jurisdiction. Again, using the web sites of the top eight First Nations communities, it is apparent they are all “open for business.” In many ways, their institutional infrastructure resembles that of progressive municipal governments.
  - Tsawwassen First Nation offers detailed [planning and development guidance](#) for business. The resource documents include regulation on environmental rules, waterway access, building codes, subdivision rules, rainwater management, etc. The effect of this web of regulatory infrastructure is to reduce uncertainty for anyone, Indigenous or not, to develop reserve lands. The [tax regulations](#) are as detailed as one would find with any provincial/municipal government in Canada.
  - Tk'emlups te Secwépemc manages a very large industrial park, and the focus of its institutional infrastructure is to ensure efficient and effective leasing [agreements and taxation](#)

Some of the top eight appear focussed on focussing instead on band owned and member owned businesses. Their institutional infrastructure resembles that of a corporation intent on developing profitability among several lines of business.

- Fort McKay First Nation operates much like a diversified corporation, seeking alliances with energy corporation (Suncor) and operating much as a real estate developer for its industrial park. Its [annual reports](#) are as sophisticated as any corporation.

- Liidlii Kue First Nation in Fort Simpson orients its economic activity around [Nogha Enterprises Inc.](#) The Chief holds 100% of shares “in trust on behalf of its members.” These shares automatically transfer to the next Chief upon election and so it is the “office of the Chief” that owns the shares. This corporation has a diverse set of business ranging from aviation refuelling to residential development.

These examples underscore the importance of creating the right context for First Nations wishing to develop reserves lands. Of course, each of these communities have important economic assets in terms of proximity to resource development and/or proximity dynamic urban areas. Also, it is important that each of these top eight communities has created strategies that reflect their unique circumstances, reflecting both the opportunities offered by location and traditional practices.

### **institutional evolution frames Indigenous economic development on reserve**

Three issues deserve more examination, namely taxation and the role of Casinos in First Nations economic development.

- *Taxation on reserves is the key to self-government:* Taxation of Aboriginal persons is the source of some misunderstanding. In general, registered Indians are subject to the [same taxes as all Canadians](#) except in specific circumstances. For example, First Nations owned business located on a reserve and their employees who are registered Indians are not subject to income tax. Purchases by registered Indians from Aboriginal businesses on reserve are also not subject to GST or PST. However registered Indian who purchase goods and services from any business not First Nations owned remain liable for [GST/PST](#) unless the goods are delivered to a reserve.

Non-indigenous business owners may perceive that these tax provisions offer reserve based First Nations business an unfair competitive advantage. However, as long as the First Nations focus on using the urban reserves lands to maximize revenue, the practices among the top eight First Nations show that taxation (which also includes other fees for water, sewer, animal control, etc.) on the reserve will closely align to practices in adjacent municipalities. If the First Nations attempts to attract clients by reducing taxes, it risks reducing revenues to support community services, and if it raises taxes to boost revenues, it risks losing clients for its commercial and residential properties. Strong incentives exist to maintain uniformity in municipal tax rates for proximate communities First Nations and otherwise.

Tsleil-Waututh Nation (TWN) has a very clear plain language explanation of its [property tax system](#). It contracts with British Columbia Assessment Authority to complete property assessment, and as the Q&A states this FN government TWN has

“historically adopted the tax rates set annually by the District of North Vancouver.” An urban reserve must compete with other municipalities to attract business, and it may elect to reduce taxes and other fees to encourage a business to locate on the reserve, but ratepayers on that reserve must make-up the revenue shortfall.

- *Can Casinos be a source of economic development for First Nations.* Casinos and gaming are by definition urban activities requiring population density or at the least easy access by a sufficient population to make this form of gaming worthwhile. First Nations across Canada are advocating for increased participation in gaming revenues, which recent information suggests exceed [\\$17 million](#).

[www.qp.gov.sk.ca/documents/english/Statutes/Statutes/C26-1.pdf](http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/C26-1.pdf)

<https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php>

control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”

However, zoning and other land use regulations circumscribe land use for all owners. Government and utilities have the right to expropriate land for public purposes such as roads and electric transmission lines under the principle of [eminent domain](#). Whether reserves are immune from expropriation is unclear, but more likely is disagreement over what land use would have occurred in the absence of conversion to an urban reserve.

A probable point of contention will be the siting of a casino on the Kapyong lands, a form of revenue generation is common to urban reserves in Saskatchewan. Setting aside whether the provincial government would be prepared to share gaming revenues, local residents may raise concerns over increased traffic in an already heavily congested area. Navigating any casino proposal for Kapyong will be an early test of First Nations and municipal leadership.

The dynamic nature of urban development in the immediate vicinity of Kapyong is another constraint on development. Immediately to the south of Kapyong lands lies a very large fashion mall with an IKEA, adjacent to the east is a busy shopping mall with large grocery store and to the west upscale residences. Creating competitive businesses to the existing commercial activity on the new urban reserve may benefit consumers, but could weaken profits for all businesses, on and off the new reserve. Aside from limiting revenues to the First Nations “owner”, duplicate development could engender resentment from pre-existing land owners, especially if these Indigenous businesses are seen as having lower costs than others in the area.

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Yet another challenge for a new urban reserve is governance. Saskatoon has developed a clear “[manual](#)” for urban reserves, that stresses the importance of separating politics from business. What this means is that band councils need to create economic development corporations charged with optimising revenues from operations on the reserve.

These indigenous economic development corporations should meet two criteria. First, while the majority of board members must be Indigenous and from the communities, transparency and accountability suggest that it would be politically wise to appoint some non-Indigenous business leaders and severely limit membership of those who are active in band political governance. Second, Kapyong may face a particular challenge in that seven First Nations are involved in the ATR process. The same rivalries as exist in non-Indigenous alliances may appear, and if they do, they must be resolved early to create unified governance to generate economic benefits sooner than later. Successful negotiations with municipal government require that a single entity represent the interests of all the parties involved in the urban reserve. If litigation replaces negotiation, then energy will be diverted and profits flow to lawyers.

Financing the urban reserve may also be challenging. To generate revenues First Nations must charge all entities using urban reserve lands, including indigenous persons and businesses. Common forms of charge will be taxes embedded in leases for residential and commercial use. But First Nations “taxing” their own businesses on the reserve may also challenge the management of urban reserves. The freedom from on reserve income taxation as well as GST/PST, coupled with a history of dependency can create a culture that is inimical to paying any form of tax. Yet, if activity on an urban reserve does not generate revenues for the participating bands, what is the point? Both Indigenous and non-Indigenous business, clients, and tenants will need to pay fees of some form to generate revenues to pay for services delivered by the city and to produce revenue for the band. Fortunately, excellent [resources](#) have emerged that offer counsel to First Nations on the management of Indigenous economies. [Exemplars](#) also exist of self government that involves taxing Aboriginal owned businesses.

## **Conclusion**

The final challenge is the most important. Urban reserve development corporations must provide benefits back to the band members or the entire rationale for their creation becomes tenuous. How net revenues are distributed within the band membership is a solely a matter of internal policy to each participating First Nation. However, if the benefits of an urban reserve are narrowly distributed, ambitious and talented band members may decide that their future lies in pursuing professions and amassing wealth off reserve. This will undermine the purpose of the urban reserve and weaken its contribution to Indigenous self reliance.

This raises a question that lies at the heart of the entire strategy of economic reconciliation. Will the future of the next generation of First Nations persons remain attached to the land through the reserve system? Or is a young Indigenous person better off doing what other young Canadians do... get educated and participate in the main stream economy off reserve? As long as the true spirit of reconciliation prevails, maybe the urban reserve system offers the opportunity for Indigenous persons to straddle both worlds. The next few years will be crucial.

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