Will urban reserves spur Indigenous prosperity?[i]

Gregory Mason, University of Manitoba

July 22, 2020

Abstract

The "ownership" of urban land by Indigenous communities in the form of urban reserves has prompted both optimism that they could prove an important element of promoting First Nations' economic well-being and that such ownership offers concrete reconciliation.

But is this positive reception warranted? Will ownership of urban land be a boon for First Nations? ? What essential steps appear to increase the chances this form of economic reconciliation will succeed in raising incomes and wealth for Indigenous Canadians? What impediments and challenges lie ahead, both for the First Nations governing urban reserves and the surrounding cities?

This paper explores the policy challenges facing evolution of urban reserves in the context of the economic theory of property rights, evolving land law, the generation of income from urban land, and municipal governance. This paper explores two policy themes to advanced Indigenous prosperity. First, what internal or institutional changes create the foundation for urban reserves to raise the material well-being.? Second, how do external factors zoning, land use planning, and cost allocation influence the economic prospects of urban reserves. The paper uses two cases studies to illustrate two approaches to Indigenous prosperity based on urban land, but concentrates on the creation of urban reserves as having special importance for concrete reconciliation.

Key words: Indigenous Community, reserves, Treaties, Property Rights, Land Law

1. Introduction

Indigenous urban land ownership falls into three general classes. First, individual Indigenous persons, households, and businesses may own non-reserve land in freehold, just as any Canadian. Second, First Nations urban communities, some defined as reserves under the Indian Act and others as signatories to comprehensive land and self-government agreements, have benefited by being situated within or very close to rapidly growing large urban areas or close to natural resource endowments. Third, First Nations may have added urban areas to their reserves as defined under the Indian Act. This paper considers these two latter instances of Indigenous urban land ownership, with emphasis on the potential for urban land incorporated by the additions to reserve process.[ii]

This paper asked whether the purposeful creation of urban reserves can materially raise the economic well-being of First Nations. Specifically, can urban reserves located in medium growth

centres generate revenues and economic well-being for First Nations whose primary locations are in rural and remote northern communities?

The response to the creation of urban reserves 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 (NAEDB, 2015, 2017). An assessment of these emerging urban communities appears to identify five success factors – "infrastructure and services, governance, land management, own source revenues, and community support" (NAEDB, 2014). But does "owning" urban land necessarily imply a consequent economic boon for First Nations in general and individual members in particular? What impediments and challenges lie ahead, both for the First Nations and the surrounding city? What steps appear to increase the chances that this form of economic reconciliation will succeed? Finally, can a urban reserve offers the same economic benefits compared to traditional fee simple title?

The paper begins with a general discussion of the legal basis for creating new urban reserves set within the evolving nature of land law in Canada. Then, I present two case studies that illustrate two extreme cases of First Nations urban communities.[iii]

- Tsawwassen First Nation (TFN) is an Indigenous community that has become enveloped by the growth of the Greater Vancouver area. TFN represents an example of an urban First Nation that has entered into a Comprehensive Land and Self Government Agreement, a process that started with the James Bay Agreement of 1975. In the case of TFN, their agreement dates from 2009 (Canada, 2008b)
- Kapyong Lands (KL) is the former site of the Princess Patricia Light Infantry in Winnipeg, and will become an urban reserve under the auspices of a consortium of seven First Nations. However, since the final agreement remains pending, development remains a work in progress. This new urban reserve is one of many emerging under the additions to reserve (ATR) process (Canada, 2012a).

Next, the paper identifies a range of issues that shape and condition the evolution of First Nations urban communities including the need for transparency in the treaty making process within urban areas, the development of land law legislation to support the extraction of maximum value from

urban reserves, the creation of the institutional infrastructure to support economic development and the transfer of wealth to community members, and establishing processes that enhance the mutual benefit of Indigenous and settler communities alike.

In this paper, Indigenous prosperity refers to the growth in individual or personal income for registered Indians living within an urban community[iv] covered by a comprehensive agreement or under the Indian Act. (see Section 2.2) Other measures such as wealth, employment, and investment/business incomes are important indicators of prosperity, but since the census offers personal income data for all Canadians and for most Indigenous communities, it is convenient to use this metric as the indicator of economic well-being.

Although the paper focuses on material measures of economic well-being, it is important to acknowledge Indigenous perspectives that do not separate increases in income and wealth from the concept of leading a good life. Using the four quadrant medicine wheel concept, "leading a good life" comprises spiritual, emotional, mental, and physical dimensions that some argue are at the core of Indigenous concepts of well-being. (Denis et al., 2017). Those operating within this perspective argue that material well-being has little value without the other three quadrants. In the absence of commonly understood measures for other the other dimensions of well-being, this paper uses the available conventional measure of personal income that support comparisons among communities and individuals.

Finally, the paper focuses on First Nations, but not to discount any class claims Metis and Inuit may have on urban lands. However, the nature of Metis rights to the creation of urban communities remains before the courts and the comprehensive agreement that created Nunavut does represent significant support for Innuit persons in Canada.

2. Land law evolves.

Treaties and agreements dating to the mid 18th century initially shaped land law that until recently constrained how First Nations could exercise ownership of their lands. Very roughly one can identify four phases of treaty agreements between successive settler governments and First Nations: 1) commercial and military agreements from 1701 to 1812; 2) land and services treaties between

1812 and 1921); 3) 1922-75 a hiatus in treaty making; and 4) post 1975 comprehensive agreement and modern treaties. (Miller, 2009).

2.1. Indigenous property rights reflected the economic base of the community

In Canada, any business and individual may hold land in freehold. Since 1950, with the amendments to the Indian Act that allowed First Nations persons to live off reserve, Indigenous entities (persons, households, and businesses) have been able to own land in fee simple anywhere in Canada except on Crown land and reserves defined under the Indian Act..

About 89% of Canada is split approximately evenly between federal and provincial governments as crown lands (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.

Many, if not all First Nations, hold the view that European settlement never extinguished Aboriginal title. Even where treaties and other agreements created accommodations between Aboriginal and European concepts of land title, a common view among First Nations is that these agreements never abrogated Indigenous land rights. In this view, traditional Indigenous title supersedes both the concept of fee simple and crown land.

A common view is that Indigenous perspective on land 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 property on the reserve where land is communal for the benefit of all members. The concept that all lands are inherently communal aligns with core philosophy of many First Nations. (Liidlii Kue First Nation, 2013).

However, it is incorrect to believe that prior to European settlement Indigenous lands were entirely communal with no private property. As Flanagan et al. (2010) and (Manuel & Derrickson, 2015) 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 (Demsetz (1967), Alchian and Demsetz(1973), and Bailey(1992)) that contends all societies align property between individual and community to maximize their chances of survival and then refine the legal systems to enhance economic well-being, balancing collective and individual ownership. This notion contends that all societies implement institutional land laws to meet a long-term benefit-cost test for the group in a specific environmental and society setting.

This perspective suggests that societies that survived through agriculture, aquaculture, and hunting within defined areas tended to remain in fixed settlements, where individuals and families often had claims to specific properties and locations recognized by the community and that were heritable. In these contexts, the economic theory of property rights indicates that the material well-being of the community increases when ownership remains stable and individual households reap the benefits from caring for the land and associated infrastructure such as traplines or fishing weirs. The recognition of individual or family property rights created a basis for land improvement that benefitted the community in the long-term.

In contrast, First Nations that optimised well-being by following herds, land-based property ownership vested in individuals, households, or smaller groups than the community offered no economic advantage and were generally a nuisance. Improving the land upon which vast bison herds grazed and where humans followed the herds, had little to the individual or the community.

While elements of individual property rights did exist within all First Nations, the written formalization of property rights in European law and the many commercial and land exchange treaties represented a fundamentally different way of "doing business" for Indigenous communities.

2.2. Treaty history offers context for Indigenous urban communities in Canada.

Treaties with Indigenous peoples date back to 1701 when France and England signed land military, and trade agreements to support economic and military relations(Canada, 2013b; Promislow, 2014; Todd, 2008). 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 covering southern Ontario accommodated the loyalists that fled north after the

American Revolution. In British Columbia, the Douglas Treaties signed between 1850 and 1853 covered a few small parts of Vancouver.

After Confederation, the so-called numbered treaties(Canada, 2013a) signed between 1971 and 1921 defined land and chattel 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 land "reserved" for the exclusive use of the signatory First Nations and simultaneously created "space" for settler expansion based on European conception of land law. The term *historic treaty* applies to agreements between the Crown and First Nations, negotiated to 1921, with the numbered treaties between 1871 and 1921 being particularly relevant for this paper.

Two points are important. First, 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 groups had, until recently no land defined by any agreement or in Canadian law. Second, treaties have not guaranteed the rights of First Nation signatories which have experienced sustained violations in both the letter and spirit of the terms of these agreements (Carlson, 1997).

The late twentieth century witnessed Indigenous peoples engaging in legal battles to enforce treaty provisions and to defend traditional territories. Most significant was the 1973 Calder Supreme Court decision(Cruikshank, 2017) that resulted in the James Bay and Northern Quebec Agreement in 1975. Since then Canada and First Nations have concluded 24 comprehensive land claims agreements that cover 40% of Canada's area. Many of the comprehensive land claim agreements pertain to large areas of British Columbia, and resulted in the creation of Nunavut.

Most comprehensive land claims also contain self-government provisions that encompass land codes, ownership of land, water and natural resources, and a wide range of cultural, economic, and fiscal activities that are tantamount to self-government.(Land Claims Agreement Coalition, 2019).

The point of this cursory background is not to settle any of the complex issues of Indigenous land rights , but just to note that land law in Canada, especially as it pertains to Aboriginal peoples continues to evolve. Most important is that First Nations reserves exist in context of legal agreements between a specific First Nation and the federal government.

2.3. The origins of Canada's First Nations urban communities

Indigenous urban communities (comprising both urban reserves within the Indian Act and land under a comprehensive agreement) in Canada have two origins.

- A community that was remote from a city a hundred years ago, may have become engulfed by urban development. That community may have an existing historic treaty, a comprehensive land claim and self government agreement, or neither a treaty nor comprehensive agreement.
- Second, certain urban areas may be added to an existing First Nations reserve through the additions to reserve (ATR) process (Canada, 2012b). These First Nations may elect to retain the framework of an historic treaty or negotiate elements of a modern treaty through the First Nations Land Management Act (Canada, 2011b)thereby gaining some control over land use and economic development.

First Nations have mostly used the ATR process stemming from Treaty Land Entitlement Agreements (TLEA) (AMM, 2017; Canada, 2017; Canada, 2016; Iwama, 2018) to add rural lands for resource extraction and agricultural purposes. The TLEAs recognize that historical injustices have occurred over the last century as governments failed to honour provisions of the eleven numbered Treaties signed between Canada and First Nations. For example, in Saskatchewan and Manitoba (Canada, 2009, 2011a), 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 substantial land and financial resources to support the ATR process to fulfil the TLEAs.

- In Manitoba, the federal and provincial governments committed to allocate 1.1 million acres (about .6% of Manitoba's land area) to additional to reserves and $76 million to support acquisition of land and other rights (mineral), tax loss compensation for municipalities etc.(Implementation Monitoring Committee, 2020)

- In Saskatchewan, the federal and provincial governments committed almost $600 million to acquire rights to 2.28 million acres of land or about 1.4% of Saskatchewan's land area. (Public Legal Education Association of Saskatchewan, 2011)

The ATR process applies throughout Canada, and as a right of first refusal First Nations may apply to have surplus Crown Lands transferred to their reserves. Recently, First Nations have used this process to add urban reserves to their land base. (See Appendix A). First Nation may also apply to have land acquired by purchase through the willing-buyer/willing seller provinces of TLEAs. Section 4.3 discusses why a First Nation might elect to transfer freehold properties to their reserve lands.

The actual additions to reserve process started in 2010 and has recently accelerated with process improvements as the federal .government recently changed the policy for creating additions to reserves in 2016. Three rationales exist for adding to the reserve land of a first nation:

- *Legal obligation:* Where a legal obligation exists by virtue of prior agreements.
- *Community (expansion) addition:* This includes transferring land to support residential or economic expansion
- *Tribunal (Compensation) decisions:* This would include land transfers arising from rulings by the Specific Claims Tribunal, typically due to an unfulfilled Treaty obligation,

Overlap exists among these reasons for additions to reserve, and the distinction is uncertain, evolving, and not pertinent to the analysis here.

First Nations apply to have eligible lands transferred to a reserve a process that can take several years. Since 2011, the federal government has transferred almost 400,000 acres (about ¼ the area of Prince Edward Island) under the ATR process, in 500 agreements of which urban reserves comprise 17% of the agreements and 12% of the area. Most the ATR lands are in Manitoba and Saskatchewan. (Appendix A).

Table 1: The legal bases for First Nations land ownership
Historic treaties(Canada, 2008b) created most of the reserves in Canada at least until 1921. Historic treaty lands governed under the Indian Act have restrictive features in that title resides with the Crown, only members of the First Nations have the "exclusive and inalienable and communal interest" (Canada, 2008a), non-members cannot acquire an interest in the land, and the Minister approves most land use and disposition.

Modern treaties (Canada, 2008b) are historic treaties modified by provisions under the First Nations Land Management Act (FNMLA). Some 153 (January 2019) First Nations have signed such agreements, which remove some 40 sections of the Indian Act. While provisions vary these agreements include land codes, comprehensive planning processes, and revenue generating mechanisms in the form of taxation and fees. Both historic and modern treaty are reserve lands as defined by the Indian Act and if relinquished by a band, revert to the Crown.

Comprehensive land/self government agreements (herein after referred to as "comprehensive agreements") became a reality after the Calder decision by the Supreme Court in 1973. Used on unceded areas, these agreements provide control over land use, mineral and surface rights, and other activities that are the features of modern government. These are not reserves as defined under the Indian Act.

Land transfers to reserve status only involve Crown lands only (Federal or Provincial) or lands purchased by the First Nation, to which its holds freehold title and which it wishes to add to its reserves. Government cannot expropriate land held in fee simple for the purpose of adding to reserves. Additions to reserves also always occur in the context of the Indian Act, and apply both to bands with both historic and modern treaties.

What makes these growing number of First Nations urban reserves so important? 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 19th century – "go west" – has now become "go urban." The global rural-urban migration towards prosperity applies equally to Indigenous peoples of Canada. Many First Nations are located on remote lands with little economic potential; the compelling rationale behind the creation of urban reserves is the toehold they offer ro Indigenous persons to participate in the urban and global economy.

2.4. First Nations urban communities show a wide spectrum of prosperity

Census information offers context on the economic well-being of the two case study communities, but two qualifications are important. First, not all First Nations participated in the census and second, and more importantly, census information may include the incomes of non-Indigenous residents. This is particularly so for First Nations that offer residential leases as a component of their economic development plan. This means that the Census data could overstate the incomes of First Nations persons.

Table 2 shows that that Tsawwassen is part of the "top eight" of First Nations in Canada. These include five that lie within or immediately adjacent to a rapidly growing city (shown with an *). The divergence of median and average income reflects the presence of a fewer number of high earners, most markedly Fort McMurray First Nation

Table 2: Canada's top eight 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
Fort McKay First Nation Fort McKay, AB	742	86%	$78,916	$34,048	84	10	5
Tsleil-Waututh Nation* North Vancouver, BC	1855	18%	$73,220	$41,264	86	6	8
Tsawwassen First Nation* Delta (Vancouver), BC	750	27%	$64,670	$38,647	39	10	51
Liidlii Kue First Nation Fort Simpson, NWT	1180	67%	$59,659	$47,552	86	8	6
Tsuut'ina Nation* Calgary, AB	1645	33%	$56,185	$36,621	77	6	17
Tk'emlups te Secwepemc* Kamloops, BC	3025	10%	$55,676	$40,288	62	10	28
Fort McMurray First Nation Fort McMurray, AB	320	89%	$54,675	$19,584	84	10	5
Musqueam * 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: https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX_ID=1&AGE_ID=1&RESGEO_ID=1							

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

One feature of some these First Nations, especially those located close to or within urban area, is that the "not-a-registered Indian" population exceeds that of the registered Indian population, sometimes by a factor of 5:1. This reflects the effect of residential leasing that has attracted many non-Indigenous individuals and businesses either to purchase long-term residential leaseholds or become sorter-term tenants. The category "not a registered Indian" includes those persons on the census survey who report either an Aboriginal identity or non-Aboriginal identity. Aboriginal

identify includes registered Indians, but many who report an Aboriginal identity are not registered Indians. Most of the residents in the top-eight classified as "not a registered Indian" are probably non-Indigenous. This distortion the census data does not affect the analysis and conclusions of this paper, and in fact reinforces the argument in Section 4.1 on the process urban reserves will sue in extracting value from the land.

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 more complex. Tsawwassen and Musqueam have a majority of "not a registered Indian" residing on the reserve. But most (81%) Fort McKay's residents, the community with highest individual incomes, are registered Indians as is the case for Fort McMurray. Proximity to natural resources is the dominant feature of the economy of these two communities. Of course, the waning fortunes of the oil and gas economy will affect this economic status.

Table 2 reveals how economic development and incomes benefit from proximity to large dynamic urban areas. Consider the Musqueam Band, which lies entirely within the City of Vancouver and has always been an urban community becoming an urban reserve recently within the B.C Treaty Process. Consequently, Musqueam is situated on prime Vancouver real estate. Similarly, as shown below, 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 businesses, a large industrial park, and significant residential leasing in the heart of one of Canada's fastest growing retirement areas.

In contrast, as **Table 3** shows, the First Nations involved in the Kapyong Lands have much lower incomes than the top eight in Canada. The most affluent of the seven, Peguis First Nation has an income that is less than average of First Nations 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 results in a much smaller divergence of average and median incomes. Note also that the residents of all these First Nations are predominantly registered Indians.

Table 3: Kapyong Lands reserves (2016) Each of the place names links to band websites					
Name	**Pop**				**Sources of income (%)**

		% reg Indian	Average Income*	Median Income*	Market Income	Gov't transfers	Other
Peguis First Nation	2685	97%	$22,355	$15,616	68	29	3
Brokenhead Ojibway Nation	515	92%	$19,106	$15,424	68	28	4
Swan Lake First Nation	345	100%	$18,147	$11,584	68	29	3
Fort Alexander (Sagkeeng) First Nation	1905	97%	$17,408	$12,624	60	36	4
Long Plain First Nation	1235	98%	$15,351	$9,632	58	39	3
Sandy Bay First Nation	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: https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX_ID=1&AGE_ID=1&RESGEO_ID=1							

With this context, the paper considers the two case studies that anchor the analysis.

3. Two case studies illustrate the scope of economic development of urban First Nations.

Two cases offer insights into the range and nature of economic opportunity offered by First Nations urban lands in Canada – Tsawwassen First Nation just south of Vancouver and the former land occupied by Kapyong Barracks (now referred to as the Kapyong Lands) in the heart of Winnipeg. It is important to note that Tsawwassen First Nation operations within the auspices of a comprehensive land and self-government agreement, outside the Indian Act, while the still developing Kapyong Lands is an urban reserve within the Indian Act and an example of a modern treaty.

3.1. Tsawwassen First Nation (TFN):

The traditional territory of the Tsawwassen First Nation (TFN) stretches north from beyond the USA border south of Vancouver, to include Vancouver, across the Straight of Juan de Fuca to Victoria and some Gulf Islands. Importantly, it also includes the waterways, which formed an integral part of the entity for coastal Indigenous populations(Tsawwassen First Nation, 2019c) . Currently TFN has 493 members, with 215 living in the community near Vancouver and the remaining split between the interior of BC and northern Washington state.

In 1871 with the entry of British Columbia into Confederation, the Tsawwassen community did not exist within a formal treaty. For many years after the establishment of Vancouver TFN existed as an isolated small coastal fishing village with no proximate urban development. The province had no system of treaties addressing Indigenous rights until 1992 with the creation of the BC Treaty Commission.

Error! Reference source not found. shows the traditional territories (land and fishing) and the current community boundaries for TFN. The Comprehensive Land Claims and Self Government Agreement signed in 2009, pertains only to the present-day Tsawwassen Lands.

Figure 1:Here

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 shipping coal overseas primarily to China. As was typical of the time, neither the federal nor provincial consulted TFN, despite the potential for environmental harms and destruction of cultural and religious infrastructure. However, these developments were harbingers for a brighter economic future for the TFN.(Tsawwassen First Nation, 2019b).

Since the signing of Tsawwassen First Nation Final Agreement in 2009, key developments for TFN have included:

- Creation of 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 facilities.
- A new Amazon warehouse facility.(Tsawwassen First Nation, 2019c).

From one perspective one may see 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 substantial municipal upgrades – water, sewer, animal control, etc., deriving significant rental/lease revenues from governments, industry, and individual households. However, it is also accurate to view the economic development of TFN as reflecting the inherent potential when a First Nation gains rights through a comprehensive land claims and self-government approach.

3.2. Kapyong Lands:

In contrast to TFN, which is a single community with a common tradition and governance style, seven First Nations most within Treaty 1 have received approval to add Kapyong Lands as an urban reserve. None of these First Nations have a specific historical claim to

the Kapyong Lands and gained access to these federal lands under the ATR process. Currently, the area within the heart of an affluent area of Winnipeg (**Figure 2**) comprises a large open space and so is a "blank slate" ripe for development with favourable locational advantages within a modern metropolis.

Figure 2 here Kapyong Lands - Winnipeg

Figure 3 shows Kapyong Lands the consortium of First Nations (Peguis, Sandy Bay, Long Plan, Swan Lake, Roseau River, Broken Head, and Sagkeeng) that has entered into the agreement with the federal government to create this new urban reserve. The decision by the Department of Defence to close Kapyong Barracks and move the Princess Patricia Light Infantry to Shilo, Manitoba in 2004, triggered the creation of the Kapyong Lands as an urban reserve.

Figure 3 here Treaty 1 First Nations[v]

As a first step, these seven First Nations have created the Treaty One Development Corporation with a mission to advance the economic and social well-being of the Citizens of Treaty One. The corporation has staffed with professionals, initiated an on-line presence, and developed an initial master plan, shared with the surrounding community in a virtual town hall. The previous military infrastructure been remover, environmental remediation has started, and development of the lands will begin in three or four years (2025-26) pending finalization of all relevant agreements.

4. Optimising the economic potential of First Nations' urban lands

The review of the First Nations within the "top eight" above, suggests that economic success, measured as incomes, correlates with proximity to resources and/or lying either within or immediately adjacent to dynamic urban centres. But what institutional arrangements allow First Nations in remote areas to benefit from acquiring reserves in Canada's more central cities and municipalities, with modest growth and not reliant on natural resources? This is particularly important for the many scattered First Nations on Canada's Prairies and in northern Canada.

Aside from good governance, transparency and accountability to members, internal and external factors affect the economic viability of urban reserves.

4.1. Internal factors that support the economic viability of urban reserves

Examination of the web sites of the top eight First Nations listed in **Table 2** suggests three institutional factors, internal to the reserve, contribute to the economic prosperity of these urban communities: 1) formal recognition within a modern treaty or comprehensive agreement that creates a land code and concomitant control; 2) developments in land law legislation that monetizes the value of land by offering non-community members limited interest in land; and, 3) development of the "legal and planning infrastructure" that manages risk, political and financial.

1. *Modern treaties and comprehensive agreements stabilize land rights*. Modern treaty and comprehensive agreements stabilize and clarify the boundaries for the First Nation lands and create 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(Tsawwassen First Nation, 2019b) , starting with the creation of the B.C. Treaty Commission(*BC Treaty Commission*, 2019).

   In 2004 the TFN signed an agreement in principle and by 2009 it became 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, if any, municipal lands were to be transferred to TFN, worry about the fiscal consequences associated with the transfer of prime (and taxable farmland) from the municipality to TFN, and concern about the impact of TFN development on municipal services, created hesitancy by Delta municipality (Delta Municipality, 2004).

   However, while a modern treaty with land management rights or comprehensive agreements are necessary, they are not sufficient conditions for urban land development by First Nations. Also critical are the appropriate governance structure and creating effective agreements with the municipality as discussed in Section 4.2.

2. *Evolution and innovation in land management law creates value for "unsaleable" land.* Leaseholds, rental income, and Indigenous owned business anchor the incomes "top eight" for First Nations situated within or close to large urban centres. Musqueam, Tsawwassen, and Tsuut'ina Nation in particular, draw major revenues from commercial and residential leasing to Indigenous and non-Indigenous individuals and businesses. How much business development and entrepreneurship contributes to the revenues a First Nation may generate in its urban reserve will vary among First Nation. For many, monetizing the value of the urban reserve through leasing, without yielding ownership becomes the central challenge for an urban reserve.

   To review, the three forms of land title are freehold, strata (condominium), and leasehold. Freehold owners, have rights to the land and all improvements, and allows the owner to use/dispose of their land capturing all capital gains, and constrained only by zoning regulation, legal judgements (liens) building codes, taxation, and when government or a crown corporation exercises eminent domain, expropriating property for public purposes such roads or energy transmission lines. Single detached homes are the common physical form of this form of land ownership.

   Strata titles represent an innovation where the owners purchase a right to occupy a dwelling, without purchasing the land directly. Structures that use strata titles are typically apartments or townhouses, but sometimes may include single detached homes. The purchasers own from the "paint in", and have joint ownership of common areas (halls, elevators) and the land. To preserve the value of the property for all owners, condos typically feature restrictions on changes external to the dwelling unit. High density apartment dwellings have become an increasingly common "first home" for adult children leaving their parental dwelling. Their main attraction is their considerably lower purchase price and the fact that owners can recover the capital gain on sale.

   Both freehold and strata titles have indefinite lengths of ownership, allowing the owners to resell immediately (flip the property), hold it for a prolonged period, or bequeath it. Leaseholds represent a different form of land ownership, where the purchase just buys the dwelling and leases the land from a second entity – corporation, non-profit, or First Nation

– which owns and manages the land. The owner will also manage the common property area on leaseholds applied to multi-unit structures. Leasehold are usually the least expensive way to acquire an ownership stake in land, but it is time limited. From the owner's view, leaseholds have two important disadvantages. First, since the ownership is finite, they do not appreciate, removing the possibility of a capital gain. A second, the purchase of a leasehold is hard to finance because the property cannot be offered as security, and because the sale value declines through the life of the lease. Commercial leasing is common, presenting an obvious revenue opportunity for urban reserves – residential leasing trickier.

Recent enabling policies have supported residential leasing. It is not possible for a First Nation to develop its reserve lands using conventional condominiums based on fee simple, since ownership in reserve lands can not transfer outside the band membership. An important change in the legal basis for strata titles was revision in provincial legislation that allows a condominium type title where "owners" can use mortgages to finance the purchase of a longer-term leasehold (Condominium Authority of Ontario, 2019).

Purchasing a home is a dominant saving method for lower and middle income households (Boehm & Schlottmann, 2008; Wainer & Zabel, 2019).Residential leasing arrangement may appear unattractive for those focused on the need to own in perpetuity and acquire the capital gain of fee simple ownership. Long-term leasing a home, reverses this strategy, and the leaseholder pays into an asset with a declining value, much like leasing a car. (Caesar et al., 2019a).. Any restriction on the disposition of a lease prior to term, attenuates the market value and sometimes quite sharply (Riley, 2012; Rogers et al., 2018), making the design of leaseholds an important issue for First Nations urban lands.

From the perspective of the owner (in this case a First Nation), finetuning the covenants on the leasehold, such as restricting the sale to specified persons, altering terms such as upkeep responsibilities and how purchasers may use the property may increase control over land use, but this can come at the expense of reduced revenues.

3. *Development of the institutional (planning, regulatory and fiscal) 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 closely resembles that of progressive municipal governments seeking to attract businesses and residents.

- Tsawwassen First Nation offers detailed planning and development guidance for business(Millette, 2014; Tsawwassen First Nation, 2019a) . The resource documents include regulation on environmental rules, waterway access, building codes, subdivision rules, rainwater management, and even animal control. The tax and user fee regulations are like those of any provincial/municipal government in Canada. The effect of this web of regulatory infrastructure is to reduce uncertainty for anyone, Indigenous or not, to acquire an interest in reserve lands.
- Tk'emlups te Secwépemc First Nation manages a very large industrial park, and the focus of its institutional infrastructure is to ensure efficient and effective leasing agreements and taxation (Tk'emlups te Secwépemc, 2019)

Some of the top eight appear focussed 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 as diversified corporation, seeking alliances with energy corporation (Suncor) and operating much as a real estate developer for its industrial park. Its annual reports closely resemble standard corporate reports. (First McKay First Nation, 2019)
- Liidlii Kue First Nation in Fort Simpson orients its economic activity around Nogha Enterprises Inc(Nogha Enterprises Ltd, 2019). 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. However, it is uncertain whether such a concentrated "ownership" structure will attract investment, the confidence of banks, or joint ventures with other entities.

4.2. External factors affecting the success of urban reserves

Four external issues affect the success of an urban reserve: 1) tax and services agreements between First Nation and municipal government; 2) land use harmonization between the First Nation and the municipality; 3) location and competitive environment for the reserve; and 4) municipal leadership on the creation of First Nations urban reserves.

1. *Tax and services agreements* Municipal governments have three revenue sources – property taxes, fees from services (parking, transit, traffic enforcement, water, etc.) and grants from provincial governments. Property owners can expect to pay taxes on the assessed value of their land/buildings and fees for services such as water and refuse collection.

   Urban reserves will always have small fraction of the area and population in their associated municipality. This means they typically will purchase services from the municipality such as water/sewer, transit, protection (police/fire) within municipal development service agreements(City of Winnipeg, 2010, 2018) . These and other agreements detail the services supplied by municipality in exchange for specified payments. Each MDSA represents the unique circumstances and negotiation, and with the first urban reserves in Saskatchewan, common elements now appear in all agreements, including the fees paid for municipal services, agreement life, and dispute resolution processes.

   The municipality and its taxpayers obviously have a stake in the level of payment by the First Nation for municipal services received. For example, depending on the intensity of land use (single family detached homes versus multiunit residential and commercial units) extending water services may have low marginal costs, or not. Services extended at marginal cost do not include contributions to fixed costs and municipal residents could implicitly subsidize to the urban reserve, which given the widespread acknowledgement of an infrastructure deficit, could be large.

   Much of the language surrounding the compensation for services is general reflecting the desirability of negotiation, inclusion of the broadest possible range of services, and ensuring compatibility of the services needed with the municipality's capacity to provide services (Winnipeg, 2016). Under the Payment in Lieu of Taxes Act (L. S. Canada, 2019), the federal

governments pays municipalities for land it uses for penitentiaries, museums, labs, military bases, etc. Currently, Winnipeg receives about $650,000 annually as payment in lieu of taxes for the Kapyong Lands. Under this legislation, the payment must not exceed

- "the effective rate in the taxation year applicable to the federal property in respect of which the payment may be made, and
- the property value in the taxation year of that federal property."(L. S. Canada, 2019)

The challenge is that land used for public purpose (airports, prisons, defence, etc.) are challenging to assess and value; usually no comparable sales values can calibrate the assessment. Once set, the assessed value of these lands tends to remain static for extended periods.

The other perspective on fees payable is probably more important, in that should they replicate what the city would have received in tax revenues had the property been developed to its highest and best use.. In the absence of urban reserve status, using the typical assessments on developed land in the area for single family homes in the area, ($2.9 million per acre) and assuming that 100 acres of the Kapyong Lands would support taxable residential and commercial on land held by private owners in fee simple, a very conservative estimate for the assessed value of the land is $290 million. At the current mill rate of $12 per thousand dollars of assessment, this represents foregone annual revenues of $3.5 million. This does not include the school tax of an equal amount that flows to school divisions and not the city. This also does not include fees for services. Clearly the payment in lieu of taxes falls far short of the property and school taxes or services.

Important consequences flow from this analysis. The foregone property taxes on an urban reserve that comprises a city block or even a building would be modest, compared to the opportunity cost in lost property tax revenue to the city of a 100+ acre parcel of land in a prime area of Winnipeg. Property taxes also support much more than service provision; they fund investments in a range of physical, cultural, and social infrastructure contributing to the quality of urban life in all its dimensions. Winnipeg taxpayers may see charging just for direct services without a contribution to the wider infrastructure as a subsidy, which may be warranted under the spirit of reconciliation for a period, but possibly not in perpetuity. As the size of the urban reserve increases, and as it locates on highly valuable property,

negotiating and managing a municipal services agreement becomes complex and must balance two objectives:

- the need to support the urban reserve in the early development years to fulfill both the spirit and reality of reconciliation.
- ensuring a reasonable level of foregone revenue replacement to the municipality.

It is not hard to see why fiscal negotiations around urban reserves are so prolonged.

2. *Land use harmonization between the First Nation and the municipality.* Municipal zoning regulation does not extend to the urban reserve, but as part of the Municipal Development Services Agreement (MDSA), the First Nation typically agrees to ensure land use compatibility, with a commitment to "future collaboration and the coordination of planning efforts, ensuring land use and development compatibility with adjacent City of Winnipeg lands".(Winnipeg, 2018). The agreement also calls for a "collaborative and joint planning approach to future land development on a government to government basis."

   These agreements typically contain language that sets expectations for all parties to act "reasonably", however, whether a modest zoning variance or application for a large-scale development, a common feature of municipal land use development is mediation of disputes among land owners and between land owners and government. Disputes between land owners and municipalities are common as citizens and businesses seek to ensure land use regulations do not impair returns on investment to render development unprofitable. At the same time, municipalities seek compatible land use to manage externalities and ensure overall highest and best use. See Preston & Lo (2000a, 2000b) and Lavasseur (2018) for descriptions of recent land use conflicts in urban areas. Meetings and engaging facilitators are the usual approach to resolving certain disputes relating to the adequacy, standard and frequency of services offered by the municipality, permitted use, setting assessed values and user fees. Dispute resolutions will be a test for any MDSA, especially for a large tract such as the Kapyong Lands, which could support a diverse range of land uses.

3. *Location and competitive environment for the reserve.* Urban reserves face complex issues especially in centres with modest growth opportunities. Most importantly, uncertainty plays an

important role in the valuation of urban land, especially for leaseholds and land markets discount new information very quickly into price and leases(Caesar et al., 2019b; Monfared & Pavlov, 2019; Yao & Pretorius, 2014). Agreements creating the urban reserve must incorporate as many elements of a modern treaty as possible to offer the First Nation maximum flexibility to develop. However, an urban reserve also operates within an established urban area with many active land developers. Creating revenue generation on the urban reserve occurs within as competitive environment where the First Nation is just another developer seeking to attract the consumer and business dollar.

For example, Kapyong Lands lies adjacent to residential development with the highest incomes and wealth in Winnipeg. To the east, is a strip mall and large grocery store, but more importantly immediately to the south is a major outlet mall, Ikea, and rapidly expanding retail and residential development. The initial plan by the Treaty One Development Corp. proposes low and medium density housing, with social and cultural facilities. The reserve's location offers fast access to Red River College, South Winnipeg Technical College, and the University of Manitoba, making it attractive for student housing. The well-developed local amenities reinforce the viability for rental accommodation. An early proposal called for a Casino, a development that surrounding residents and the provincial government are likely to oppose quote vigorously.

Unlike urban communities such as TFN and others with a stake in the Greater Vancouver real estate market or proximate to resource development such as Fort McKay, urban reserves in municipalities with more modest growth prospects presents challenges.

4. *Municipal leadership in creating urban reserves.* For apparent reasons, as holders of vast crown lands, the Federal and provincial governments have taken the lead in negotiating comprehensive agreements and creating new reserves under the ATR process. Municipalities have taken a back seat to the process, and only become substantively involved with the negotiation of service agreements, and thereafter become continuously involved as the urban reserve develops.

Provided that the First Nations who are new owners of Kapyong Lands strike mutually acceptable financial and planning agreements with the City of Winnipeg and development does proceed, this could serve as a model to allow other remote reserves to create jointly owned development corporations to acquire an interest in urban land. But rather than waiting for federal or provincial properties to become available, potential "surplus" city properties could be offered for urban reserves. These include underutilized and underperforming recreational areas (golf courses), as well land vacated due to as tax sales, city facilities that are moved, etc. Unlike the ATR process, where First Nations have the right of first refusal for surplus federal lands, municipalities have an interest in pushing its surplus land to a higher and better use to boost values and tax revenues. First Nations could be a mechanism to augment the tax base.

This presents an opportunity for a municipality to indicate its willingness to welcome such new Indigenous communities by offering its surplus land. Given the population in remote reserves in Saskatchewan, Manitoba, and Northern Ontario, a consortium of cities could lead the process. In Saskatchewan, Regina, Saskatoon, and Prince Albert are logical members of such a group, while in Manitoba, Brandon, Thompson, and Winnipeg are potential members of such a group. Finally, in Ontario Kenora and Thunder Bay could round out this "club."

This approach would require the financial participation of the Federal Government to acquire these lands under the Treaty Land Entitlement process. In many cases, these public lands may have high intrinsic and financial value and that could impede their transfer to First Nations. Quite simply, a city has the option of selling its surplus land to the highest bidder which presents it with a much simpler source of revenue, than negotiating a municipal services agreement.

It is also unlikely that the federal government would finance the totality of requests for the ATR process, especially for urban land with high value. Under the Treaty Land Framework Agreement (1997), Canada set aside $630 million for acquisition of lands and processing costs in Manitoba and Saskatchewan, which could be quickly consumed by acquiring a small number of reserves. It is also unclear how much city owned urban land augmented with acquisitions from private owners could become available in these eight central cities.

Many urban reserves are much smaller than Kapyong, comprising a city block or even a single building. These are much more feasible to incorporate as reserve lands, but a key question remains. What is the net benefit to a First Nation of using the prolonged process of creating an urban reserve under the ATR process as opposed to simply buying the property in fee simple as many Indigenous businesses and persons already do? Where a First Nation can acquire surplus public lands with federal financing, the economic rationale exists; but without contributions of other parties purchasing the property outright makes more economic sense. Of course, if municipal services agreements result in lower costs in perpetuity to the First Nation than paying the property taxes and other costs of a fee simple land owner, it has every incentive to pursue reserve status. However, municipal taxpayers may tire of this arrangement.

5. Conclusion

Creating urban reserve offers First Nations an opportunity to advance their economic wellbeing by having a stake in the urban economy. The Kapyong model offers remote First Nations a model for creating a consortium to acquire surplus public lands. Key elements of success for these new entities are the creation of modern agreements to support flexibility in planning and to extend limited property rights in the form of leaseholds to monetize the value of land. Also important are effective tax and land use codes to maximize the joint return from the land by the Indigenous and Settler communities. Finally increased proactive involvement of municipal governments in Ontario, Manitoba and Saskatchewan will extend the benefit of urban land ownership to remote Firsts Nations with limited economic development prospects.

However, it is unclear that significant municipal lands could be acquired without federal subsidy. Municipalities would be reluctant to offer their surplus lands at a discount, and then negotiate agreements that result in a perpetual fiscal shortfall, The Kapyong Lands represents a crucially important test case, which if Winnipeg and Treaty One Development Corporation can negotiate mutually acceptable agreements, the answer to whether this can become an enduring model for concrete reconciliation is simple – it depends!

References

Alchian, A. A., & Demsetz, H. (1973). The Property Right Paradigm. *The Journal of Economic History*, *33*(1), 12.

AMM. (2017). *TLE Information Toolkit*. Association of Mantoba Muncipalities. http://www.amm.mb.ca/download/guides/TLE-packageFINAL.pdf

Bailey, M. J. (1992). Approximate Optimality of Aboriginal Property Rights. *Journal of Law & Economics*, *35*, 183–198.

BC Treaty Commission. (2019). http://www.bctreaty.ca/

Boehm, T. P., & Schlottmann, A. (2008). Wealth Accumulation and Homeownership: Evidence for Low-Income Households. *Cityscape*, *10*(2), 225–256.

Caesar, C., Donner, H., & Kopsch, F. (2019a). The impact of leasehold status on apartment price. *Journal of Housing Economics*, 101629. https://doi.org/10.1016/j.jhe.2019.04.001

Caesar, C., Donner, H., & Kopsch, F. (2019b). The impact of leasehold status on apartment price. *Journal of Housing Economics*, 101629. https://doi.org/10.1016/j.jhe.2019.04.001

Canada. (2008a, November 3). *Land Management* [Promotional material]. https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738#ch9

Canada. (2008b, November 3). *Treaties and agreements* [Administrative page]. https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231

Canada. (2009, March 27). *Treaty Land Entitlement in Saskatchewan* [Fact sheet]. https://www.aadnc-aandc.gc.ca/eng/1100100034825/1100100034826

Canada. (2011a, May 13). *Treaty Land Entitlements in Manitoba* [Fact sheet]. https://www.aadnc-aandc.gc.ca/eng/1305306991615/1305307177471

Canada. (2011b, September 28). *First Nations Land Management Act* [Promotional material; reference material]. https://www.aadnc-aandc.gc.ca/eng/1317228777116/1317228814521

Canada. (2012a, March 20). *Additions to Reserve* [Administrative page]. https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447

Canada. (2012b, March 20). *Additions to Reserve* [Administrative page]. https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447

Canada. (2013a, February 15). *The Numbered Treaties (1871-1921)* [Reference material]. https://www.rcaanc-cirnac.gc.ca/eng/1360948213124/1544620003549

Canada. (2013b, September 26). *Historic Treaties and Treaty First Nations in Canada Infographic* [Reference material]. https://www.rcaanc-cirnac.gc.ca/eng/1380223988016/1544125243779

Canada. (2017). *Audit of the Additions to Reserve Process* (p. 28). Crown-Indigenous Relations and Northern Affairs Canada. https://www.rcaanc-cirnac.gc.ca/eng/1506686798147/1536849538309

Canada. (2019). *Approved Additions to Reserve Proposals*. https://www.aadnc-aandc.gc.ca/eng/1466532960405/1466533062058

Canada, G. of C. I. and N. A. (2016, June 13). *Land Management Manual, Chapter 10—Additions to Reserve/Reserve Creation—2016* [Guide; policy; resource list]. https://www.aadnc-aandc.gc.ca/eng/1465827292799/1465827347934#mm

Canada, L. S. (2019, July 15). *Consolidated federal laws of canada, Payments in Lieu of Taxes Act*. https://laws-lois.justice.gc.ca/eng/acts/m-13/page-2.html#h-355105

Carlson, K. (1997). A Legacy of Broken Promises. In *You are Asked to Witness: The Sto:lo in Canada's Pascific Coast History*. Sto:lo Heritage Trust.

City of Winnipeg. (2010). *Municipal Development and Services Agreement—Long Plain.* http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=10431&SectionId=260678&InitUrl=

City of Winnipeg. (2018). *Municipal Development and Services Agreement—Peguis First Nation (1075 Portage).* http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=17258&SectionId=508527&InitUrl=

Condominium Authority of Ontario. (2019, September 18). *Condominium types*. https://www.condoauthorityontario.ca/en-US/condominium-living/condominium-types/

Cruikshank, D. A. (2017). Calder Case. *The Canadian Encyclopedia*. https://www.thecanadianencyclopedia.ca/en/article/calder-case

Deloitte. (2016). *BCTC Final Report: Socio-economic Benefits of Modern Treaties*. BC Treaty Commission. http://www.bctreaty.ca/sites/default/files/Deloitte-BCTC-FinalReport.pdf

Delta Municipality. (2004). *The Corporation of Delta—Delta Launches Legal Action*. https://delta.civicweb.net/filepro/documents/90809?preview=92672

Demsetz, H. (1967). Toward a Theory of Property Rights. *The American Economic Review*, *57*(2), 347–359.

Denis, J. S., Duhaime, G., & Newhouse, D. (2017). *Indigenous Conceptions of Well Being:Rejecting Poverty, Pursuing Mino-Bimaadiziwin*. *10*(2), 124–146.

First McKay First Nation. (2019). *Annual Reports—Fort McKay First Nation*. http://fortmckay.com/annual-reports/

Flanagan, T., Le Dressay, A., & Alcantara, C. (2010). *Beyond the Indian Act: Restoring Aboriginal Property Rights*. MQUP. http://uml.idm.oclc.org/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=403790&site=ehost-live

Fontaine, T. (2015, March 13). *Demystifying urban reserves | CBC News*. CBC. https://www.cbc.ca/news/canada/manitoba/demystifying-urban-reserves-1.2993051

Henderson, W. B. (2016, October). *Indigenous Peoples in Canadian Law*. The Canadian Encyclopedia. https://www.thecanadianencyclopedia.ca/en/article/aboriginal-people-law

Implementation Monitoring Committee. (2020). *The Manitoba Framework Agreement*. http://www.tleimc.ca/index.php/mfa/the-manitoba-framework-agreement-treaty-land-entitlement-mfa

Iwama, D. (2018). *On the Road to the New Reserve: Considering Canada's Preferred Path to Land Restitution* (p. 4). Yellowhead Institute.

Land Claims Agreement Coalition. (2019). *What is a Modern Treaty?* https://landclaimscoalition.ca/modern-treaty/

Lavasseur, J. (2018, October 16). *Parker lands developer's $30M lawsuit alleges City of Winnipeg, 4 bureaucrats acted in bad faith | CBC News*. CBC. https://www.cbc.ca/news/canada/manitoba/parker-land-lawsuit-winnipeg-1.4865168

Liidlii Kue First Nation. (2013, April 2). *Liidlii Kue First Nation—Governance*. Liidlii Kue. https://www.liidliikue.ca/leadership/governance

Manuel, A., & Derrickson, R. (2015). *Unsettling Canada: A National Wakeup Call*. Between the Lines.

Miller, J. R. (2009). *Compact, Contract, Covenant. Aboriginal Treaty-Making in Canada*. University of Toronto Press.

Millette, D. M. (2014). *Incremental Planning: The Tsawwassen First Nation Experience*. *9*(1), 29–43.

Monfared, S., & Pavlov, A. (2019). Political Risk Affects Real Estate Markets. *The Journal of Real Estate Finance and Economics*, *58*(1), 1–20. https://doi.org/10.1007/s11146-017-9619-y

NAEDB. (2014). *Improving the Economic Success of Urban Additions to Reserve—Stage 1*. N. http://www.naedb-cndea.com/en/publications/

NAEDB. (2015). *Improving the Economic Susccess of Urban Addtions to Reserves: Achieving Benefits for First Nations and Local Governments Stage 2*. National Aboriginal Economic Development Board. http://www.naedb-cndea.com/en/publications/

NAEDB. (2017). *Additions-to-Reserve: Lessons Learned From FirstNations*. National Aboriginal Economic Development Board. http://www.naedb-cndea.com/en/publications/

Neimanis, V. P. (2013, December). *Crown Land | The Canadian Encyclopedia*. https://www.thecanadianencyclopedia.ca/en/article/crown-land

Nogha Enterprises Ltd. (2019). *Nogha Enterprises Ltd*. http://www.nogha.com/

Preston, V., & Lo, L. (2000a). Asian theme malls in suburban Toronto: Land use conflict in Richmond Hill [Canadian urban landscape examples, 21]. *Canadian Geographer; Toronto*, *44*(2), 182–190.

Preston, V., & Lo, L. (2000b). Canadian urban landscape examples—21. *Canadian Geographer; Toronto*, *44*(2), 182–190.

Promislow, J. (2014). Treaties in History and Law. *U.B.C Law Review*, *47*(3), 1085–1183.

Public Legal Education Association of Saskatchewan. (2011). *From Dream to Reality*. Office of the Treaty Commissioner (Saskatchewan). http://www.otc.ca/public/uploads/resource_photo/FromDreamToReality1.pdf

Quesnel, J. (2016, August). *Urban reserves can spur First Nation economic development*. Fraser Institute. https://www.fraserinstitute.org/blogs/urban-reserves-can-spur-first-nation-economic-development

Riley, S. F. (2012). Land use regulations and the returns to low-income homeownership. *The Annals of Regional Science*, *49*(3), 745–766. https://doi.org/10.1007/s00168-011-0450-8

Rogers, S., Ballantyne, C., Thompkins, E., & Ballantyne, B. (2018). Price of the Soil: Property Values of Leasholds and Certificates of Possession. *Journal of Aboriginal Economic Development*, *11*(1), 60–74.

Tk'emlups te Secwépemc. (2019). *Lands, Leasing & Tax*. https://tkemlups.ca/departments/lands-leasing-tax/

Todd, R. (2008). Aboriginal Peoples and the Land: Ownership, Understanding and Development. *British Journal of Canadian Studies*, *21*(1), 105-128,152.

Tsawwassen First Nation. (2019a). *Planning and Development*. Tsawwassen First Nations. https://tsawwassenfirstnation.com/portfolio/planning-and-development/

Tsawwassen First Nation. (2019b). *TFN History and Timeline | Tsawwassen First Nation*. https://tsawwassenfirstnation.com/general-info/tfn-history-and-timeline/

Tsawwassen First Nation. (2019c). *TFN Vision & Mandate | Tsawwassen First Nation*. http://tsawwassenfirstnation.com/general-info/tfn-vision-mandate/

Wainer, A., & Zabel, J. (2019). Homeownership and wealth accumulation for low-income households. *Journal of Housing Economics*, 101624. https://doi.org/10.1016/j.jhe.2019.03.002

Winnipeg. (2016). *An Overview of Best Practices for the Establishment of and Development within Aboriginal Economic Development Zones*. Planning, Property and Development Department.

Winnipeg. (2018). *Municipal Service and Development Agreement—Pequis First Nation and Winnipeg*. https://www.google.com/search?q=municipal+service+and+development+agreement&rlz=1C1GGRV_enCA751CA751&oq=municpal+service+and+development+agre&aqs=chrome.1.69i57j33l5.15450j0j7&sourceid=chrome&ie=UTF-8

Yao, H., & Pretorius, F. (2014). Demand Uncertainty, Development Timing and Leasehold Land Valuation: Empirical Testing of Real Options in Residential Real Estate Development. *Real Estate Economics*, *42*(4), 829–868. https://doi.org/10.1111/1540-6229.12052

Notes

[1] I would like to acknowledge the helpful comments of Adrian McNair (Tsawwassen First Nation), Wanda Charles (University of Manitoba), Darryl Neufeld (Indigenous Services Canada) and Michael McCandless

[1] 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 either under the Indian Act (Historic Treaty), a modern treaty under the First Nations Land Management Act, or a Comprehensive Land and Self Government Agreement. The terms *reserve* and *band* solely in the context of their use within the Indian Act and where adopted by the First Nation itself (e.g. Musqueam Band). Generally, the term *First Nation Community* is preferred as a generic reference. The term *Settler* refers to any non-Indigenous resident of Canada. The word *Aboriginal* appears when referencing the census, other historically rooted official documents, and when used by Indigenous organizations themselves. The term *treaty* refers to any of the agreements negotiated between Indigenous groups and settlers, starting with the first agreements in 1701 negotiated between France and First Nations, through the Proclamation of 1763, the numbered treaties to the most recent agreements under the First Nation Land Management Act (1999).

[1] Dakota Tipi and Dakota Plains First Nations did not sign Treaty 1 and are not part of the Kapyong Lands agreement. Peguis First Nation appears as part of Treaty 2, but is a signatory to Treaty 1.

[1] Municipal revenues typically comprise property taxes, grants from other orders of government, and fees for services such as water, sewer, etc.

Figure 1: Traditional and Current Lands of Tsawwassen First Nation

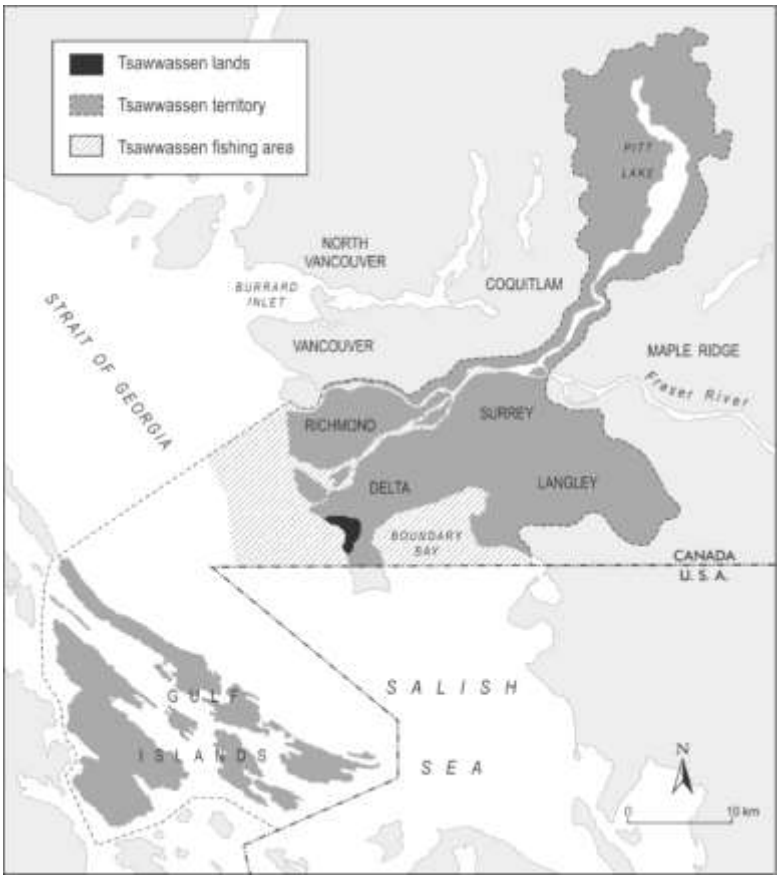
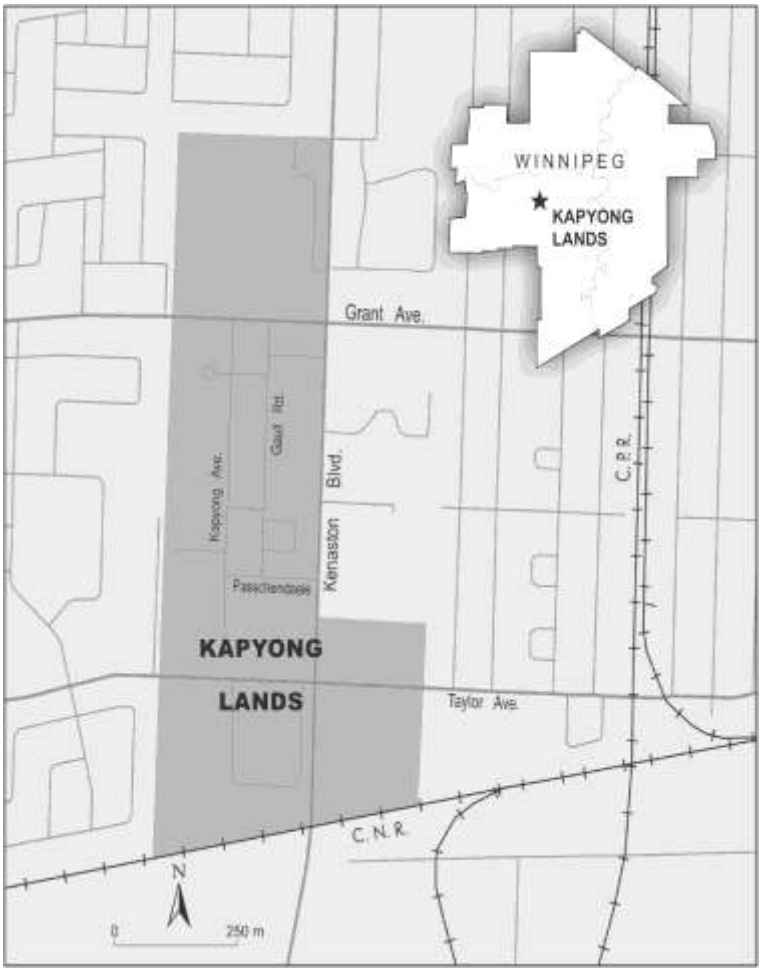
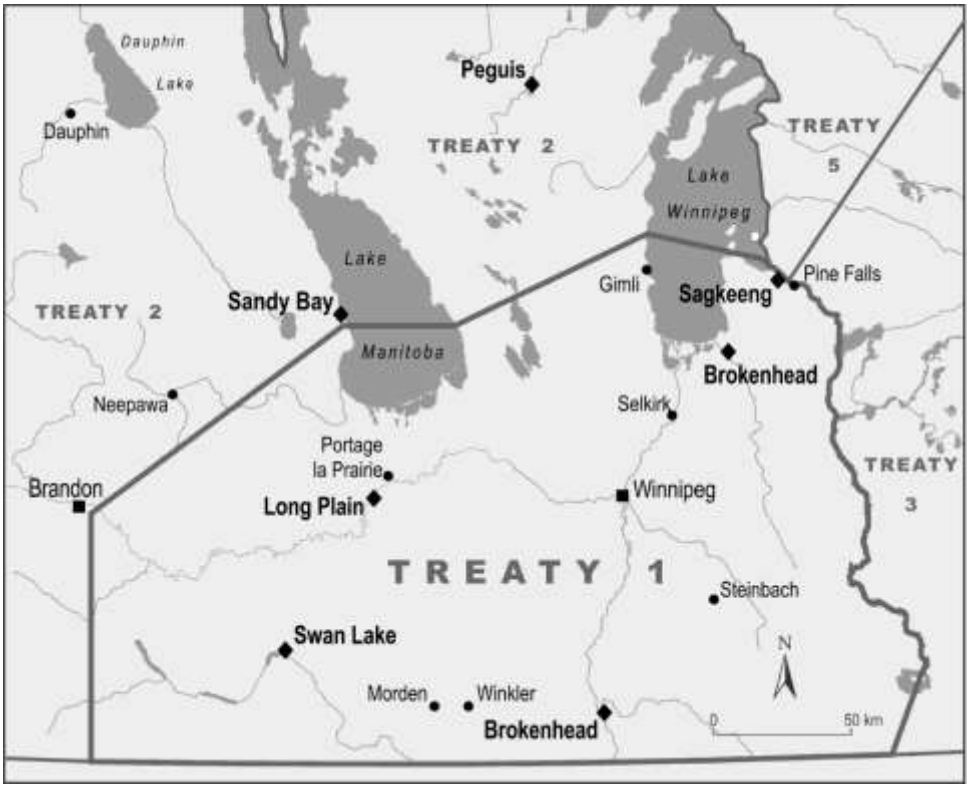


Figure 2: Kapyong Lands




Dauphin Lake
Dauphin
Peguis
TREATY 2
TREATY 5
Lake Winnipeg
Lake Manitoba
Sandy Bay
TREATY 2
Gimli
Sagkeeng
Pine Falls
Brokenhead
Neepawa
Selkirk
Portage la Prairie
Brandon
Long Plain
Winnipeg
TREATY 3
TREATY 1
Steinbach
Swan Lake
N
Morden
Winkler
Brokenhead
0
50 km

Appendix A

According to the Additions to Reserves (ATR) Policy has allowed First Nations to augment their existing reserve lands using three policy provisions:

- *Legal obligation:* Where Canada has a commitment or legal obligation to transfer land due to a land exchange agreement., self government agreement etc.
- *Expansion needs:* This includes transferring land to support residential or economic expansion
- *Compensation*: This would include land transfers arising from rulings by the Specific Claims Tribunal, typically due to an unfulfilled Treaty obligation.

The information maintained by Crown-Indigenous Relations and Norther Affairs Canada records the additions to reserve since 2011. Since 2011, 503 additions have occurred, involving almost 400,000 acres of land (about ¼ of the area of Prince Edward Island.

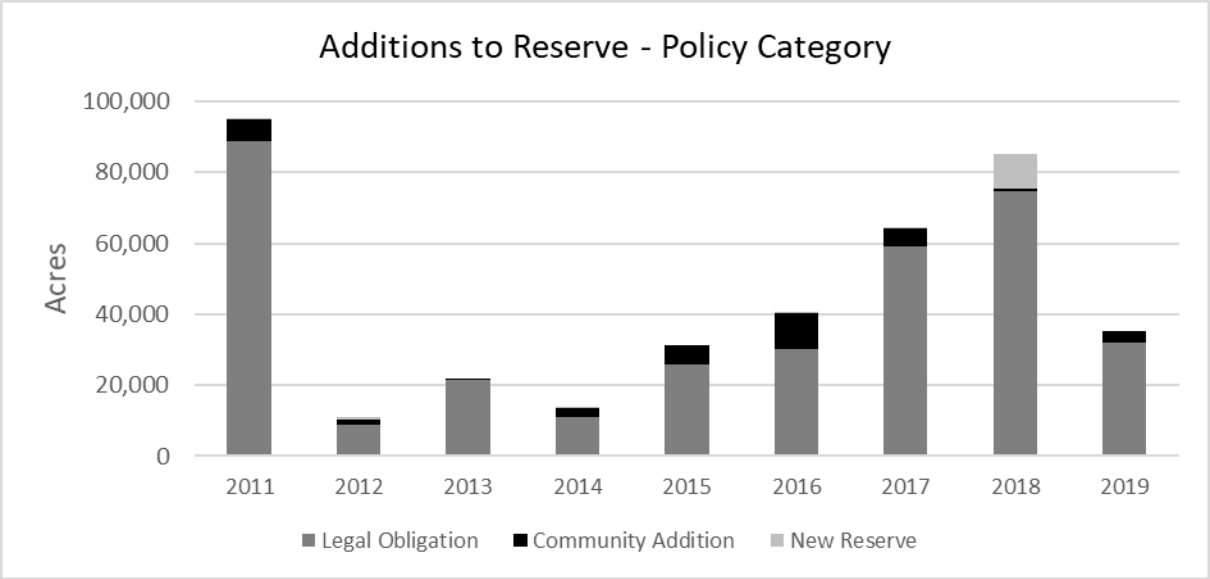


Figure A2 – Additions to Reserve

Most additions to reserve have occurred in rural areas (416) with only four in the North (Table A6). Manitoba and Saskatchewan account for 60% of the total land area added to reserves **Table A4**, and 74% of the total number of transfers **Table A5**. Many additions occur under the Legal Obligation policy, with very few due to Compensation (New Reserve) **Table A9**. The nomenclature used on the web site does not align with the provisions of the ATR policy.

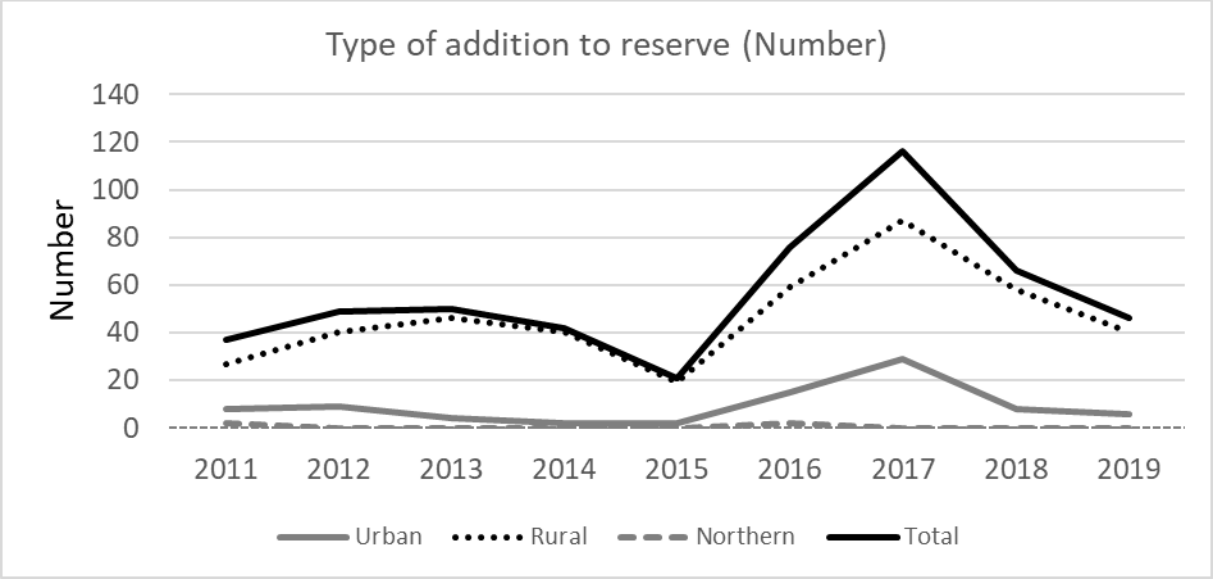


Figure A3 – Additions to Reserve

The rapid increase in approvals between 2015 and 2017, has declined sharply, especially the approvals for urban reserves.

Table A4 - Additions to Reserves (Acres)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Atlantic	164	142	0	0	0	3	32	221	3,935	4,497	1.1%
Quebec	1	1,081	0	2,386	29	10,001	367	315	259	14,438	3.6%
Ontario	1,060	0	0	0	0	1,908	29,624	26,036	146	58,773	14.8%
Manitoba	23,515	112	3	0	0	3,119	28,446	40,712	22,530	118,436	29.8%
Saskatchewan	32,536	9,151	15,399	11,066	3,915	16,245	5,587	17,758	5,373	117,031	29.4%
Alberta	543	13	0	0	5,338	8,780	0	0	0	14,674	3.7%
Northwest Territories	37,264	0	0	0	0	0	0	0	0	37,264	9.4%
British Columbia	33	403	6,490	35	21,792	230	646	99	3,118	32,847	8.3%
Total	**95,115**	**10,902**	**21,892**	**13,487**	**31,075**	**40,285**	**64,701**	**85,140**	**35,361**	**397,960**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A5 -Additions to Reserve (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**201**	**Total**	**Percent**
Atlantic	3	5	0	1	0	1	4	1	8	23	4.6%
Quebec	1	2	0	1	1	7	4	2	1	19	3.8%
Ontario	4	0	0	0	0	2	11	4	1	22	4.4%
Manitoba	5	1	1	1	0	9	67	32	21	137	27.2%
Saskatchewan	21	31	30	38	12	44	28	23	10	237	47.1%
Alberta	1	1	0	0	1	1	0	0	0	4	0.8%
Northwest Territories	1	0	0	0	0	0	0	0	0	1	0.2%
British Columbia	1	9	19	1	7	12	2	4	5	60	11.9%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A6 - Additions to Reserves by Location Category (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Urban	8	9	4	2	2	15	29	8	6	83	16.5%
Rural	27	40	46	40	19	59	87	58	40	416	82.7%
Northern	2	0	0	0	0	2	0	0	0	4	0.8%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A7 - Additions to Reserves by Location Category (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Urban	38,275	391	13	36	46	6,915	886	350	150	47,063	11.8%
Reserve	53,528	10,511	21,879	13,451	31,029	28,728	63,815	84,790	35,211	342,942	86.2%
Northern	3,312	0	0	0	0	4,642	0	0	0	7,955	2.0%
Total	95,115	10,902	21,892	13,487	31,075	40,285	64,701	85,140	35,361	397,960	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A8 - Additions to Reserve - Policy Category (Acres)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Legal Obligation	88,823	8,932	21,489	11,066	25,707	30,226	59,167	74,720	32,014	352,144	88.5%
Community Addition	6,157	1,347	403	2,386	5,367	10,046	4,899	724	3,347	34,678	8.7%
New Reserve	135	623	0	35	0	13	635	9,696	0	11,137	2.8%
Total	**95,115**	**10,902**	**21,892**	**13,487**	**31,075**	**40,285**	**64,701**	**85,140**	**35,361**	**397,960**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A9 - Additions to Reserve - Policy Category (Number)

	2011	2012	2013	2014	2015	2016	2017	2018	2019*	Total	Percent
Legal Obligation	25	34	38	39	19	61	103	54	39	412	81.9%
Community Addition	11	11	12	2	2	13	12	10	7	80	15.9%
New Reserve	1	4	0	1	0	2	1	2	0	11	2.2%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	

* Partial year
Source: Author's Calculations based on (Canada, 2019)

[i] I would like to acknowledge the helpful comments of Adrian McNair (Tsawwassen First Nation), Wanda Charles (University of Manitoba), Darryl Neufeld (Indigenous Services Canada), Kelly Shields (City of Winnipeg), and Michael McCandless.

[ii] The term *Indigenous community* refers three types of entities. Reserves defined under the Indian Act, areas defined under a comprehensive land and self-government agreement, and settlements on unceded lands.

[iii] The phrase "First Nation urban community" covers a community such as TFN which has negotiated a comprehensive land and self-government agreement independent of the Indian Act and an urban reserve such as Kapyong Lands defined within the Indian Act.

[iv] The term Indigenous community in this paper refers to a First Nation situated within of proximate to an urban area and whose land rights are covered by a comprehensive agreement or a reserve as defined by the Indian Act.

[v] Dakota Tipi and Dakota Plains First Nations did not sign Treaty 1 and are not part of the Kapyong Lands agreement. Peguis First Nation appears as part of Treaty 2, but is a signatory to Treaty 1.