

INDIGENOUS LAND TITLE INITIATIVE

Background

Canada and First Nations both have an urgent need to develop a joint strategy to increase First Nation productivity. One area of great potential is to improve the productivity of First Nation lands. Where markets are not working, the value of First Nation lands can be less than 10% of the value of similar non-First Nation lands. First Nations are constrained by high transaction costs, nearly four to six times higher than on non-First Nation lands. These high transaction costs arise because the legal and administrative framework to facilitate investment on First Nation land is largely missing. Its absence is a result of the Indian Act. Whereas the legislative and administrative frameworks for federal and provincial governments have evolved responsively over the last 140 years, the Indian Act has remained virtually unchanged.

During the last 30 years, First Nations have begun to legislate their way back into the Canadian economy. It started in 1988 with the first change to the Indian Act ever led by a First Nation – the Kamloops amendment. This allowed First Nations to collect property tax on their lands. Once First Nation governments derived revenues from economic activity, they began to pursue more economic activity on their lands. This meant pursuing other legislation to fill the legal and administrative gaps created by the Indian Act which include:

- The First Nations Land Management Act
- The First Nations Goods and Services Tax Act
- The First Nations Fiscal and Statistical Management Act
- The First Nations Oil and Gas Management Act and
- The First Nations Commercial and Industrial Development Act

Missing in these legislative initiatives is an institutional framework to improve First Nation land tenure certainty.

With respect to land tenure, the current methods for securing title on First Nation lands and the Indian Lands Registry are inadequate. They do not provide sufficient title certainty. This is true regardless of who invests (First Nation and non-First Nation) and regardless of the type of investment (commercial or residential). The consequences of poor land title have been profound. Land certainty is the bedrock of the investment and financial markets. Its absence has deterred investment and greatly lowered land values on First Nation lands. It has resulted in valuable lands being put to very low value uses.

For several years First Nations, the federal government, and the First Nations Tax Commission (FNTC) have worked on developing land title legislation under the Indigenous Land Title Initiative. This initiative is designed to enable First Nations who wish to choose this option to move beyond the debilitating Indian Act land tenure system, to a more modern Torrens-based system which facilitates certainty and economic growth. Continued support from the federal government and eventual passage of the legislation for interested First Nations will lead to greater First Nation integration in the market economy.

The FNNTC estimated in 2011 that based on 68 BC First Nations opting into ILTI over 15 years, \$3.8 billion in increased real estate values, 27,000 FTEs in new employment opportunities, 2,700 new homes built, approximately \$240 million in property and sales tax revenues, and about \$160 million in infrastructure will be generated. According to the FNNTC, this will result in a \$1.1 billion reduction in the cost of poverty.

Summary

Conditions of the ILTI would be as follows:

- The ILTI will allow First Nations to opt-in to a land title legislative framework as an alternative to the Indian Act following a positive vote of its membership;
- Participating First Nations will have the option to hold legal title to the land currently held by the Crown as “reserves” under the Indian Act, and will have the power to enable all types of land tenure, including, if they choose, individual ownership without any loss of jurisdiction over the land;
- Participating First Nations will have expanded jurisdiction to implement a Torrens title system and to manage, develop, and protect their lands;
- A ready-to-use legal framework of regulations and sample laws will allow ILTI First Nations to implement the legal framework for their jurisdictions efficiently and effectively;
- The ILTI will have a profound impact in stimulating investment, reducing poverty, and strengthening First Nation participation in regional economies; and
- First Nations (including T'kemlups te Secwepemc, Shuswap, Skowkale, Aitchlitz, Klahoose, Upper Nicola and others) have passed Band Council resolutions of support for the ILTI initiative.

THE CHAMBER RECOMMENDS

That the Federal Government:

1. develop systems and optional ILTI legislation to improve land tenure certainty on First Nation lands.

Submitted by the Sun Rivers Golf Community