

Price of the Soil¹: Property Values of Leaseholds and Certificates of Possession

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ABSTRACT

This paper presents the empirical analysis of property values across a sample of 228 leaseholds and 79 Certificates of Possession (CP) on 34 First Nation Reserves. The property values were benchmarked against a sample of 338 fee simple property sales in 34 comparable non-Indigenous communities. The results were that leaseholds were discounted 17–75% (with a mean of 24%) and CPs were discounted 65–98% (with a mean of 88%). Data across 14 factors was used to analyze trends in property values. Three trends were noteworthy: (1) Leasehold values were higher in communities where the community housing score (estimate of the quality of housing) was higher; (2) CP values were higher in communities where the ratio of informality was lower (estimate of the proportion of properties held by formalized rights under the Indian Act); and (3) Property values were higher when Chief and Council remuneration was higher. The steep discounts observed here must spur research into the viability of existing land tenure/registration systems on First Nation Reserves and into the merits of new institutions to serve First Nations.

CONTEXT

Evidence from around the world suggests that property registration costs (surveys, registration, transaction fees, etc.) exceeding 5% of property values are not palatable to potential buyers and sellers (Land Equity International, 2015). Evaluations in Canada put property registration costs at 2.9% of the property value (World Bank, 2018). Such analysis has not

¹ The title puts a positive 2018 spin on Duncan Campbell Scott's bigotry of 1914 that "The Indian ... had no title to the soil demanding recognition." To be clear, contrary to Scott, we assert that Indigenous peoples do have title to land, that such land should be of comparable value to other land in Canada and that such land deserves the finest in land management institutions.

yet extended to Indigenous communities in Canada, and — in particular — to the 3,100 First Nation Reserves.

Property values on First Nation Reserves are more a source of speculation than empirical analysis. This study aims to provide part of that missing empirical base. To generalize, the majority view is that Reserves “... may have a land value that is lower than its off-Reserve equivalent” (Alcantara, 2007). Limited data from leaseholds on-Reserve is inconsistent — such values are either lower than or equivalent to property values off-Reserve:

- On the Musqueam Indian Reserve (abutting the City of Vancouver) leaseholds are discounted by 50% to comparable non-Indigenous lands owing to “reserve related factors” (*Hodgson et al v. Musqueam* (2017, at para 101); *Musqueam v. Glass*, [2000] 2 SCR 633).
- On the Tsawwassen First Nation (south of the City of Vancouver), long term pre-paid leaseholds “have sold at discounts relative to off-reserve freehold counterparts of up to 30 percent” (Kesselman, 2000: 1570).²
- On the Westbank First Nation (near the City of Kelowna) and the Kamloops Indian Reserve (abutting the City of Kamloops) the value of leaseholds “approaches the market value of comparable real estate with fee simple title in adjacent jurisdictions” (Fiscal Realities Economists, 2007).
- On the Tsuu T’ina First Nation (near the City of Calgary), “leaseholds were sold on a fully prepaid basis, with 75-year terms, typically for values equal to those of comparable off-reserve freehold properties” (Kesselman, 2000: 1572).

These limited examples illustrate the heterogeneity of First Nation Reserves, buffeted by many internal and external factors. Clearly, the value of property rights on First Nation Reserves is context-dependent. And yet, many Canadians refuse to acknowledge the “elephant in the room”, choosing to ignore that “Aboriginal land values have been reduced and their investments have been diminished” (Borrows, 2015: 126).

A BRIEF HISTORY OF IMPOSED “FORMAL” PROPERTY RIGHTS ON RESERVE

Policies surrounding First Nations involve the better part of four centuries and have progressed through three distinct regimes: French, British, and Canadian. Historically, First Nation policies (including those for property rights) have centred on three concerns — to generalize: (1) driving the fur trade; (2) maintaining the European balance of power in North America; and (3) transforming First Nation societies into “self-reliant agriculturalists” (Surtees, 1966). Much has been written on the changing goals of Indigenous policies through these regimes, but it is the latter goal — transforming First Nation societies — that forms the basis of contemporary Indigenous policy that itself was predicated on three (sometimes contradictory) principles: protection, amelioration, and civilization. “Civilization” was sometimes replaced by different terms such as “advancement”, “assimilation”, “enfranchisement”, or “integration”. but the underlying sentiment was the same (Tobias, 1976). These

² The data on the Tsawwassen First Nation is somewhat dated, and pre-dates the self-government agreement signed by the First Nation in 2009.

principles led to the creation of the formal Reserve system beginning in the 1820s. Simultaneously, and in line with the goals of “civilization”, advocates began promoting the European ideals of formal private property rights on Reserve as a fundamental test of Indigenous “civilization”.

Beginning in the 1820s the prevailing European philosophy was that “private ownership of property and possession would put an end to Indian warfare” due to the fact that “Indians have little property to lose” (Carter, 1990: 17). The call (at least among colonial officials) for privately held property to be formalized on Reserve continued into the 1840s, and culminated in the “Bagot Commission”, which released its final report in 1844. The report “painted a depressing picture of ... deplorable Indian conditions, and unresolved policy questions” and documented difficulties with “squatters on reserves” and “improper recording of land sales and leases” (Leslie, 1982: 39). To deal with these difficulties the commission recommended granting defined parcels to individual First Nation members, introducing a land registry system, and restricting the ability of land holders to transfer their land only to other First Nation members (Alcantara, 2003: 398). Political discussions on property rights also echoed the Bagot Commission’s findings. For instance, the Minister of the Interior in 1878 noted that “the great aim of the Government should be to give each Indian his individual property as soon as possible”,³ and this notion carried forward to the debates surrounding the first *Indian Act* of 1876: “as soon as they knew exactly what they possessed, they would look for enfranchisement”.⁴ Neither the Commission findings nor the political debates of the time recognized that Indigenous communities in North America already had existing and very well defined concepts of property ownership interwoven into their societies (Bobroff, 2001). Colonial officials had, at best, a very misguided view of these existing Indigenous concepts of property — as Alcantara puts it: “Indian notions of property ownership were not inferior to European ones, just different” (Alcantara, 2003).

Nevertheless, in 1876, the first *Indian Act* was passed, and it formalized the colonial designs of property on Reserve within its text. Sections 4–10 of the 1876 *Indian Act* introduced the idea of a “location ticket” and authorized the Government of Canada to subdivide Reserve lands and to grant these plots of lands to individual band members. Location tickets were viewed as documentary evidence of lawful possession by an individual on Reserve. The government of the day regarded location tickets “as an essential feature of the civilization process ... It was a means by which the Indian could demonstrate that he had adopted the European concept of property, which was an additional test of whether he had become civilized” (Tobias, 1976: 212). These “location tickets” were also viewed as an intermediate step. If after a period of three years the location ticket holder could demonstrate effective development (e.g., farming) on the defined parcel, they would be given full fee-simple title to the property, and the property would be removed from the Reserve land base. As some have noted, this process was a “double bonus” to the goals of the Government at the time because it “reduced the size of reserves by acquiring individual title and reduced government costs when removed from band and treaty pay lists” (Leslie, 1999: 49).

³ Parliament, “‘No. 42. Extract of a letter dated 11th November 1878, from His Honour Lieut.-Governor and Indian Superintendent’, Sessional Papers (No. 7)”, in *Annual Report of the Department of the Interior for the Year Ended 30th June, 1878* (Ottawa: Maclean, Roger & Co., 1879), p. 65.

⁴ Parliament of Canada, *House of Commons Debate*, 3rd Parliament, 3rd Session, Vol. 1 (April 4, 1876) at 1038 (Mr. Gavin Fleming).

First Nation communities, however, were not thrilled with location tickets, which were tied to criticisms of the increased government interference in band affairs. Indeed, this led to First Nations thwarting the location ticket goals by:

... refusing to approve subdivision of their reserves. Without a system of allotted land, the issuance of a location ticket was impossible, and, of course, without such a ticket, Indian enfranchisement according to government regulations and procedures could not take place. (Leslie, 1999: 55)

By the late 1880s, it was the belief of the Government of Canada that the property rights system, set out under the *Indian Act*, of allocating location tickets was having the wanted “civilization” effect. For instance, the annual report of the Department of Indian Affairs in 1889 noted that location tickets for the Chippewa Bands near Lake Simcoe in Ontario were having:

... the desired effect of imparting a fresh impetus to their industry, and as a consequence they are rapidly becoming a wealthy Indian community. The desire to improve their holdings and ambition to emulate one another in the production of good crops, erection of comfortable dwellings and commodious outbuildings is the natural result of the sense of proprietary rights which the possession of a title to their holdings engenders. (Canada, 1889)

The issuance of location tickets continued substantially unchanged until the 1940s, at which time an outcry of public support led directly to the call to reform existing Canadian Indigenous policies. A Special Joint Committee of the Senate and House of Commons was formed to address the issues. Over three years (1946–1948) the Committee held 125 meetings, heard 122 witnesses, and received 411 reports from Indigenous groups and other interested parties (Mackay, 1952). The Committee held hearings on a variety of issues, with property rights among them. At a 1946 hearing of the Committee one Government official reported that “lack of funds and qualified staff had impaired a key component of Indian policy — the survey and subdivision of Reserve lands and the allocation of individual location tickets”, adding further that the survey and issuance of location tickets were only operational on 38 Reserves across the country (Canada, 1946).

In 1951, a large-scale amendment to the *Indian Act* was passed. The amendments included the replacement of location tickets with a new interest called a “Certificate of Possession” (CP), and new leasing provisions. Certificates of Possession took over from location tickets as the predominant documentary evidence of lawful possession of land on-Reserve pursuant to the *Indian Act*.⁵ In terms of the actual right being granted, very little changed in the transition from location tickets to CPs in 1951. The substantial change was to

⁵ Other less prominent forms of property rights were issued under the *Indian Act*; they include:

- NETI (No Evidence of Title Issued)/Cardex holding — lawful possession of the parcel is recognized, but for various reasons (generally administrative) a CP was not issued; 27,072 were issued.
- Notice of Entitlements — documentary evidence is present, but no surveyed parcel exists; 9808 were issued.
- OKA Letter — A notice sent to a member of the Mohawks of Kanasatake of their rights being recorded; 2,237 were issued.
- Certificates of Occupation — a temporary right, generally issued to Reserves on the Prairies, which could be converted to a CP if certain conditions were met; 928 were issued.

Data for the above was received via personal correspondence with Indian Land Registry officials at the Department of Indigenous and Northern Affairs in December of 2016.

the approval structure. All future CPs required the approval of the First Nation (via the Band Council) before being issued (Alcantara, 2003). Just as in 1876, very little consideration was given to existing Indigenous customs and traditions around property, despite the local knowledge by Government officials of the efficacy of these customs in property matters. As F.J.C. Ball, an Indian Agent in Vancouver, noted: “[First Nations] have certain ways of doing things which appear haphazard to us, especially in dealing among themselves regarding property, land, etc. but it is surprising how well their unbelievable methods work, where strictly legal methods cause confusion, resentment and unrest” (Ball, 1946).

The subdivision of Reserves into parcels was a point of contention in the House of Commons when the 1951 amendments were being considered. Some Members of Parliament supported surveys and subdivisions “because they felt it was only through these surveys that an individual owner could definitely establish his claims to land on a reserve”, while other Members of Parliament opposed the idea because it was so closely linked to allotment of the land as CPs.⁶ Despite the lack of consensus, surveys for subdivisions were enshrined in the 1951 *Indian Act*. Section 19 of the Act allowed the Crown to “authorize surveys of reserves” and “divide the whole or any portion of a reserve into lots or other subdivisions”.

From 1876–1951, approximately 7000 location tickets were issued (of which only a handful are still active today); and most of these were converted to CPs. Things increased dramatically post-1951. The Department of Indigenous Services estimates approximately 140,000 CPs were issued on 288 Reserves (Flanagan, Alcantara, & Le Dressay, 2010). The exponential increase in CPs over the location tickets is credited to the 1951 *Indian Act* reforms and encouragement by federal officials to use the system (Brinkhurst & Kessler, 2013).

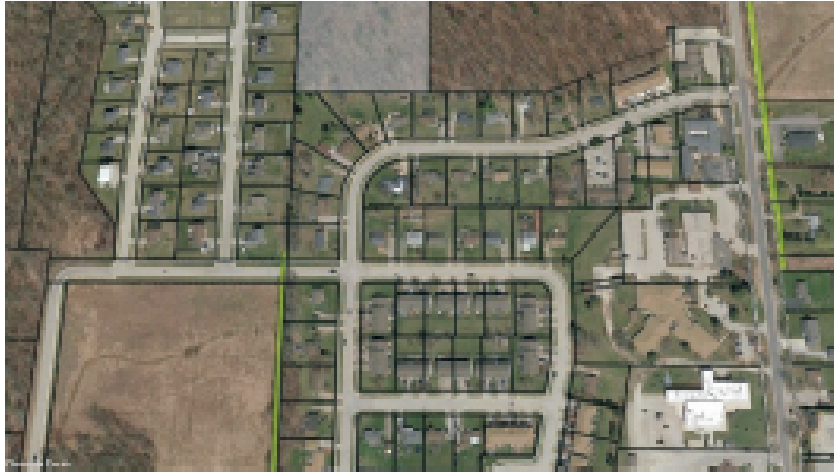
PRESENT DAY — CERTIFICATES OF POSSESSION (CP) AND LEASES

To this day, the most common legal interest under the *Indian Act* in Indigenous communities in Canada is a CP. It is generally considered the strongest form of property right that a First Nation member can hold in an Indian Reserve: it can be subdivided, sold (to another First Nation member), leased to off-reserve residents or corporations, or transferred to an heir, and Canadian courts will hear and settle disputes related to them (Westbank, 1994; Dale, 2000).

While the legal defensibility of a CP makes it a much more securely held property right, it still falls short of a fee simple estate (the norm off Reserve). For example, mortgages under a CP require First Nation or government guarantees, as the land is immune from seizure. The CP cannot be transferred (only leased) to non-First Nation members; and if a CP is bequeathed to an heir who is not a First Nation member, then the heir has six months to transfer the CP to a First Nation member or the CP reverts to the First Nation. The extent of CP use varies across Canada: some Reserves have no CPs, some no longer allow CPs, and some have over 10,000 CPs (Figure 1). In addition, the process to obtain a CP can be arduous. Navigating the administrative approvals takes from 6 months to 11 years (Alcantara, 2005).

⁶ Parliament of Canada, *House of Commons Debates*, 21st Parliament, 4th Session, Vol.2 (March 16, 1951), p. 1365.

FIGURE 1
Heavily CP Covered Area on the Six Nations Reserve (ON)



Leasing under the current *Indian Act* takes two predominant forms — leases within designated areas, and leases on land held by individuals under a CP. In 2014, 835 leases on designated Reserve lands were issued, with a total lease value of \$87M.⁷ A sample of a leasehold on the Tsuu T’ina Nation Reserve is shown in Figure 2.

There are substantial differences between leasing under the *Indian Act* and leasing in other jurisdictions in Canada:

- Leases in designated areas — Section 38(2) of the *Indian Act* allows a First Nation to “conditionally surrender” or “designate” parcels of land to the Government of Canada for leasing purposes. A designation does not extinguish the underlying First Nation interest and it must be assented to by a majority of First Nation members who are eligible to vote. Following a successful designation, the federal government (on behalf of the First Nation) can lease the land to third parties. This multiple-tiered system has created problematic situations like the conflict between the Musqueam First Nation and INAC where the former wanted the latter to “enforce the terms of its leases against tenants who had defied the rent review provision” (Flanagan & Alcantara, 2004).
- Leases on CP held land — in principle, the only requirement is that the Minister of INAC approve the lease. This approval from the Minister, however, is not necessarily a straightforward process. On the one hand, Canadian courts have held that the Minister must not

⁷ Data on lease numbers was received via personal correspondence with Indian Land Registry officials at the Department of Indigenous Services (formerly INAC) in June of 2017.

FIGURE 2
Sample of Leasehold Property on the Tsuu T'ina Nation Reserve (AB)



approve leases on CP lands that conflict with land use planning concerns of the First Nation (Tsartlip Indian Band, 2000). On the other hand, the Canadian Human Rights Tribunal has ordered that the Minister cannot refuse to lease CP land simply because the lessee stands to benefit (i.e., that it is “in that individual’s best interest”). To refuse the lease is to be “paternalistic” and “discriminatory” (Louie and Beattie, 2011).

- Of course, leasing fee simple lands off Reserve across all Canadian jurisdictions does not require assent by the majority of the community, nor does it require approval by a Minister of the Crown.

METHODOLOGY

Empirical evidence of property values on First Nation Reserves for both leaseholds and CPs is needed for two reasons: (a) to determine the factors that affect such values; and (b) to evaluate the viability of existing land tenure/land registration systems. To that end, three research questions were formulated:

1. What is the market value of leaseholds on Reserve compared to similar lands off Reserve?
2. What is the market value of Certificates of Possession (CP) on Reserve compared to similar lands off Reserve?
3. What factors influence on-Reserve market values?

Three common transactions were used for the basis of evaluating property values on Reserve: (a) transfers of CPs from one First Nation member to another (or to the First Nation itself); (b) leasehold sales in designated areas; and (c) leasehold sales on CP held parcels. Leaseholds in designated areas and on CP parcels were conflated to provide overall leasehold values for the community.

Given the diversity in the on-Reserve property sample, varying real estate markets had to be controlled. This was accomplished by assembling samples of the nearest off-Reserve properties to those in the on-Reserve sample. On-Reserve market values (i.e., the median for the community) were compared to medians for comparable off-Reserve properties. This resulted in a relative property value for each Reserve. In total, 149 leaseholds across 20 Reserves, 79 CPs transfers across 14 Reserves, and 338 fee simple/freehold parcels across 34 off-Reserve communities were evaluated. These were separated into five samples:

- Sample 1 — Leaseholds (Land and Homes) — this sample consists of 149 leases across 20 Reserves. The data was taken from 2017 realty listings through the Multiple Listing Services (MLS).⁸ In addition to the listed price, the size of the lot/parcel and the square footage of the home were collected.
- Sample 2 — Certificates of Possession (Land and Homes) — this sample consists of 41 CP properties across 10 Reserves. These sales (or transfers) were obtained from the Indian Land Registry System (ILRS). The transfers documented either a CP sale between members of the same First Nation or a sale between a CP holder and the First Nation. The sale amounts were adjusted to 2017 values using Statistics Canada Housing Price Indexes for the area over the given period (Statistics Canada, 2017). In addition to the transfer amount, the size of the lot/parcel and the square footage of the home were collected.⁹
- Sample 3 — Certificates of Possession (Land only) — this sample consists of 38 CP properties across 6 Reserves. The data collected is similar to Sample 2, except it consists of land sales only (no improvements).
- Sample 4 — Off-Reserve sample (Land and Homes) — this sample consists of 273 property sales across 31 off-Reserve communities. The data was taken from the MLS (similar to Sample 1). The listings were selected based on their geographical proximity to leaseholds in Sample 1 and CPs in Sample 2.
- Sample 5 — Off-Reserve sample (Land only) — this sample consists of 65 property sales across 13 off-Reserve communities. The data collected is similar to Sample 2, except it consists of land sales only (no improvements).

Market values on Reserve and off Reserve were reduced to a price per square foot for comparison purposes. Descriptive statistics were computed for all communities, and differences in median values were evaluated using a Welsh's T-test (95% confidence interval).

⁸ Multiple Listing Service (MLS) is available online at <https://www.realtor.ca/Residential/Index.aspx>

⁹ If the area of the home was not available, it was calculated by digitizing the home footprint off aerial photography.

The samples contain a few possible error sources that were not controlled. First, prices obtained from the MLS are asking prices. It is not clear by how much these prices may have changed upon the actual sale of the home and property. Second, size of the home or land (in square footage) was considered the biggest cost driver and thus the basis for evaluation, so other more intangible factors were not considered (e.g., proximity to schools or other amenities, nicer views, public transit access, and so on). Third, state of repair of the property, age of the construction, and overall aesthetics of the property were not considered. Fourth, some of the CP sample contains sale values dating back 10 years or more. These values were adjusted to present day values using Statistics Canada housing data, but some error may be introduced through this adjustment if values changed in a non-linear or regionally inconsistent manner.

To answer research question three (factors influencing the property value), 14 variables were collected across all the communities in the samples. The variables were classified as either solely external, solely internal, or both:

Solely external:

1. Population abutting the Reserve (within ~50km radius)

Solely internal:

2. Population of the First Nation
3. Proportion of on-Reserve population who are members of the First Nation
4. Number of houses on Reserve and the proportion that is individually owned, individually rented and First Nation housing
5. Land use planning on Reserve
6. Length of term of elected Chief and Councillors
7. Remuneration of the Chief and Councillors
8. Ratio of informal land tenure outside the *Indian Act* (Ballantyne, MacDonald, & Ballantyne, 2017)

Both external and internal:

9. Community Well Being; and scores on Income, Education, Housing¹⁰ and Labour Force
10. Proportion of housing that is unsuitable for living conditions
11. Proportion of housing that is built pre-2000
12. Unemployment rate
13. Median household income
14. Mobility over a five-year period

Several multiple regression analyses were performed using these 14 variables, with the dependent variable as either the absolute value of the property (\$/sq ft) or the relative value of the property against the off-Reserve comparable (\$/sq ft). The advantage of employing this type of multiple regression analysis is in the *ceteris paribus* interpretation of the estimated coefficients. The disadvantage is that this method assumes a causal relationship. The regression coefficients can be interpreted as the effect of a specific independent variable on the dependent variable, when holding the effect of all other independent variables constant.

¹⁰ The housing score is of domestic structures that are in “an adequate state of repair and are not overcrowded” (INAC, *CWB Index, 1981–2011*, 2015).

RESULTS

Research Question 1 — Market Value of Leaseholds in Indigenous Communities

Twelve Reserves (out of 20) had statistically significant leasehold discounts ranging from 17% to 75%. On the eight Reserves that had non-statistically significant leasehold discounts, the value of the leaseholds was assumed equal to the freehold properties in the comparable off-Reserve communities (Table 1). The mean discount across the entire sample of 20 communities was 24%.

First Nation Reserve (Leasehold)	Comparable Community	Leasehold Discount	Statistically Significant Difference?
Buffalo Point	Piney/Woodbridge/ Badger, MB	Equal	No
Christian Island	Midland, ON	-47%	Yes
Curve Lake	Selwyn/Lakefield/ Buckhorn, ON	-71%	Yes
Kamloops	Kamloops (city), BC	Equal	No
Kettle Point	Lambton/Wyoming, ON	-70%	Yes
Makwa Lake	Loon/Paradise Hill/ Meadow Lake, SK	Equal	No
Musqueam/Capilano	Vancouver, BC	-75%	Yes
Nipissing	North Bay, ON	-17%	Yes
Okanagan	Vernon, BC	-40%	Yes
Osoyoos	Oliver, BC	Equal	No
Parry Island	Parry Sound, ON	Equal	No
Quaaout/Sahhaltkum/ Scotch Creek	Sorrento/Chase, BC	Equal	No
Skowkale	Sardis, BC	-30%	Yes
Squaam/Hustalen	Adams Lake, BC	-70%	Yes
Tsuu Tina	Calgary, AB	-32%	Yes
Westbank	Kelowna, BC	-25%	Yes

Research Question 2 — Market Value of Certificates of Possession (CP) on Reserve

Thirteen Reserves (out of 14) had statistically significant CP discounts ranging from 65% to 98% (Table 2). The mean discount across the sample was 88%.

First Nation Reserve (Certificates of Possession)	Comparable Community	CP Discount	Statistically Significant Difference?
Alderville	Roseneath/Alnwick/Haldimand, ON	-74%	Yes
Chippewa of the Thames (Land only)	London/St. Thomas, ON	-76%	Yes
Christian Island	Midland, ON	-76%	Yes
Curve Lake (Land only)	Selwyn/Lakefield/Buckhorn, ON	-92%	Yes
Eskasoni (Land only)	Sydney, NS	-88%	Yes
Garden River	Sault Ste Marie, ON	-79%	Yes
Kahnawake	Montreal, QC	-86%	Yes
Kamloops (Land only)	Kamloops (city)	-94%	Yes
Membertou	Sydney, NS	-64%	Yes
Millbrook	Truro, NS	-66%	Yes
Sarnia	Sarnia (city), ON	-98%	Yes
Sarnia (Land only)	Sarnia (city), ON	-97%	Yes
Six Nations	Brantford, ON	-79%	Yes
Six Nations (Land only)	Brantford, ON	-93%	Yes
Sucker Creek	Manitoulin Island/Little Current, ON	-65%	Yes
Wikwemikong	Manitoulin Island/Little Current, ON	Equal [†]	No

† An outlier for reasons unknown.

Research Question 3 — Factors Influencing Market Values in Indigenous Communities

For leaseholds, multiple regression results were inconclusive. Two of the factors had a positive trend: community housing score and remuneration of Chief/Councillors (Tables 3 and 4). As housing scores or remuneration increased, both absolute lease values (\$/sq ft) and relative lease values (compared to off Reserve) increased. For CPs, the results were also inconclusive. Only two trends were observed (Tables 5 and 6):

- A positive trend between Chief/Councillor remuneration and market values, and
- A negative trend between informal land tenure and market values.

TABLE 3 Regressing Community Housing Score and Remuneration against Absolute Lease Value (\$/sg ft)						
	Coef.	Std. Err	T	P > T	[95% Conf Interval]	
Community Housing Score	5.861769	1.47665	3.97	0.004	2.456609	9.266929
Chief Remuneration	0.0014576	0.0003449	4.23	0.003	0.0006623	0.002253

TABLE 4 Regressing Community Housing Score and Remuneration against Relative Lease Value						
	Coef.	Std. Err	T	P > T	[95% Conf Interval]	
Community Housing Score	0.134987	0.0076991	1.75	0.118	-0.004255	0.031253
Chief Remuneration	0.00000257	0.0000018	1.43	0.190	-0.00000157	0.00000672

TABLE 5 Regressing Informal Land Tenure and Chief Remuneration against Absolute CP Value (\$/sg ft)						
	Coef.	Std. Err	T	P > T	[95% Conf Interval]	
Ratio of Informality	-3.999958	1.929911	-2.07	0.130	-10.1418	2.141881
Chief Remuneration	0.0000299	0.0000166	1.80	0.170	-0.0000229	0.0000827

Table 6 Regressing Informal Land Tenure and Chief Remuneration against Relative CP Value						
	Coef.	Std. Err	T	P > T	[95% Conf Interval]	
Ratio of Informality	-0.481965	0.2218531	-2.17	0.096	-1.097928	0.133998
Chief Remuneration	0.00000294	0.00000149	1.97	0.120	-0.0000012	0.00000708

ANALYSIS/DISCUSSION

The results indicate substantially different market values for leaseholds and CPs on Reserve. Across 40% of the sample, leaseholds approach (or even exceed) market values of comparable freehold properties in non-Indigenous communities. In the remaining 60% of the sample, leaseholds are valued substantially less than freehold properties in non-Indigenous communities. The factors that influence this wide range of leasehold values is not clear. The regression analysis was inconclusive, with trends only observed between leasehold values and community housing score, and Chief and Council remuneration. The trend between housing scores and Indigenous leasehold market value might reflect the desirability of the community to potential lessees. A higher housing score means more homes are in “an adequate state of repair and are not overcrowded” (AANDC, 2015). Likewise, the trend observed with remuneration given to Chief and Council could reflect stronger governance in a community, and thus more security for potential investors, which ultimately leads to a higher leasehold value.¹¹ Alternatively, the higher remuneration could be a function of a community’s own source revenue, and thus the ability to pay Chief and Council more. Overall, the inconclusive results across such a wide spectrum of factors is illustrative of the variability and unpredictability of the leasehold market on Reserve.

For CPs the results are clearer. Across the sample, the mean discount for a CP property compared to a freehold property off Reserve is 88%! Some in the sample had discounts as high as 98%. In analyzing the CP market values against the various factors, two trends were observable. There was a positive trend between property values and Chief and Council remuneration, and a negative trend between the ratio of informality and property value (see Tables 5 and 6). The trend between higher remuneration and value of CPs reflects the similar trend in increased value of leaseholds. The negative trend in property values from increased informality might reflect the decreased value that the community places on formalized *Indian Act* CP interests, where traditional and customary rights are more common.

This is not to suggest that reforming the existing land tenure system would inevitably lead to higher property values. Indeed, “even with tenure reforms in place, credit, investment, and land markets themselves may fail to materialize at all ... Reasons for these gaps may be ... inadequate access to existing markets, and the low income of potential borrowers” (Baxter & Trebilcock, 2009).

The steep discounts observed in the CP sample and in 60% of the leasehold sample are troubling. None of the collected variables, however, correlated with property values in the samples. A tentative speculation is that the constraint on who can purchase a CP may lower property values regardless of incomes, unemployment, and other factors in the community. This speculation is supported by the considerable higher value that leaseholds on Reserve bring (relative to CPs).¹²

¹¹ Flanagan and Johnson’s observations contradict this hypothesis — they found high payment of Chief and Councillors is a negative indicator of Community Well Being, and tentatively concluded that “high payment indicates that local government is highly politicized, serving more as a revenue source for influential individuals and their families ...” (Flanagan & Johnson, 2015).

¹² Despite being a less secure property right.

CONCLUSION

This research marks the first step; small sample sizes preclude further speculation. Suffice to say that the inconclusive results across the factors illustrate the variability and unpredictability of land/property markets on Reserve, the effect of property rights, and the difficulty in measuring institutional costs and benefits. To be clear, we are not suggesting that the CP system be reformed or that the land market that is constrained by legislation (i.e., the *Indian Act*) be scrapped. Such discussions can only be led by First Nations and Indigenous communities, whose views on the merits and demerits of CPs vary.

However, given the steep discounts observed, these findings should spur research into the viability of existing property systems in Indigenous communities in Canada. Such research might follow two disparate paths. On the one hand, what of fit-for-purpose systems, whose operating costs are commensurate with the values of the properties? Given that Canada's registration costs an average 2.9% of property value (World Bank, 2018) and that this study reveals significantly discounted values on Reserve, it is unlikely that property registration costs on Reserve are below the 5% target (Land Equity International, 2015). On the other hand, what of innovative institutions (e.g., the Nisga'a model of fee simple title, or an Indigenous land titles registry) that offer the same efficiencies to on-Reserve property owners as now offered to off-Reserve property owners?

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