

Nations Prosperity in Canadian Agriculture
and Food:
Navigating the Opportunities and Challenges in
One of Canada's Biggest Industries

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INTRODUCTION

Agriculture and food are a big player in the Canadian economy, and First Nations are positioned to become leaders in the industry. While First Nations businesses, people, and communities face unique challenges in agriculture and food, there are numerous tapped and untapped advantages and opportunities.

In this paper we will address the opportunities for First Nations in the agriculture and food industry, including food security, food sovereignty, adding value to a farm product through food manufacturing, and the positives of branding your product. Along with the opportunities, this paper will look at the barriers — like lack of access to capital — that cause challenges when entering agriculture and food, and some ways to overcome those barriers. We'll also look at what to expect when working with financial institutions and how to prepare for applying for financing.

Land management is a significant part of any agricultural business. When one adds in the laws and regulations around First Nations land use, then land management becomes even more complex. This paper will take an in-depth look at First Nations land management and how the *Indian Act* affects it. The paper will also address fee simple land, the additions to reserve process, models for economic development, tax advantages, buckshee leases, certificates of possession, and other land management topics.

The purpose of this paper is to provide information on the topic of First Nations agriculture, not to offer professional legal, financial, or business advice. The writers of this paper acknowledge the historical challenges First Nations people have faced in Canada and

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agriculture, but the intent is to look at today's opportunities and navigate the current regulations. Throughout this paper, the use of the words agriculture or farm includes crops, livestock, and ranching, unless stated otherwise. In this paper we refer to the agriculture and food industry as one industry comprising farming and food manufacturing.

Simultaneously navigating the agriculture and food industry and First Nations business requires research, professional legal advice, and detailed planning. While this paper covers numerous relevant topics in agriculture and food, we acknowledge that there is much more research that needs to be done in First Nations and Indigenous agriculture, and we encourage our partners, industry stakeholders, government, and academia to further flush out the ideas and related topics. We encourage the collection and collation of data in areas of arable Indigenous land, leased lands, technology in Indigenous communities, and more.

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1. OPPORTUNITIES

Defining Food Security and Food Sovereignty

Among the opportunities in agriculture and food is combatting food insecurity. To put it simply, food insecurity means not having enough food to eat. For First Nation communities, food security is drastically lower than for non-First Nation communities in Canada. A recent study found that 48% of First Nations communities face food insecurity, with some communities being as high as 60% (Chan et al., 2019). By comparison, food insecurity in Canadian households as a whole was found to be just over 12% in 2012 (Health Canada, 2020).

“A well-built food system can benefit the entire community.” (Givens, 2020)

Moving from food insecure to food secure is not as easy as starting a farm. There are numerous steps involved in getting into agriculture; navigating through that process is challenging. The United Nations Sustainable Development Goals state that the key to food security is an increase in agricultural production (United Nations, n.d.). Agriculture creates food and jobs, which are remedies to food insecurity; however, food sovereignty can be seen as a more permanent solution. If agriculture is a key step to food security, then food security is a key step towards food sovereignty. Making sure the people in a community have enough food to eat is food security, but taking control of your community's food system is sovereignty.

First Nation food sovereignty is First Nation control over First Nation food (Sherman, 2020). Food sovereignty is about more than just food, however; it is about the relationship between people and their food. This means it's not only about producing food for your community but also about creating a food system from the field to the plate, and how that system can benefit the people in a community (Robin, 2019). To put it another way, it's about vertical integration of the food system — owning your value chain (Will, 2020). This includes how food is grown, processed, and distributed — it also includes the people who work along the steps of the food system, or value chain.

A well-built food system can benefit the entire community. The Quapaw Tribe in the United States have taken a long-term approach to their own food sovereignty (Givens,

2020). In 2010 they decided to regain the food sovereignty they had before European contact. They started small by purchasing five head of bison. From there, they saw an opportunity to grow and partner with their tribe's casino restaurant — hypothetically, this could be a relationship with any nearby business.

They began looking at the food and beverage needs of their community, and found gaps where they could add to their food system. They wanted fresh vegetables for their restaurant and their community members, so they built greenhouses. The greenhouses now produce 8,000 pounds of food each year, and 40% of the casino's vegetables come directly from those greenhouses. The community used a lot of honey, so they got involved in beekeeping. They served or sold coffee in their businesses, so they began roasting and packaging their own coffee.

There was a need for beef, so they bought 75 head of black Angus cattle in 2014; but owning cattle was just the start of vertical integration of their beef. To have the cattle processed into beef, they had to ship the product to Colorado, then to Missouri for dry aging, then bring it back home. To truly own their food system, the Quapaw needed to create their own meat processing plant. Quapaw leadership admits to it having been a significant challenge but recognizes that it is essential to their food sovereignty.



Throwing the cattle some salt on Cowessess First Nation.

Since 2010 the Quapaw have been able to successfully develop their own food system by taking calculated steps. It's about more than selling their food; it's vertical integration of their food system, and jobs are created all along the way. Plus, much of their food is given back to the community to ensure that the elders, youth, and those in need have enough protein and healthy food to eat. Knowing the food is grown in their own community instills consumer pride.

The Quapaw example is grand. There are many small First Nation communities that would not be able to expand the same way the Quapaw Tribe could. But this example shows the diversity in agriculture and food production, and the opportunity that exists to vertically integrate operations into the local and regional community. It shows how an Indigenous community can move from food insecurity to food sovereignty.

Defining the Gap

Being aware of the barriers facing First Nations in agriculture and food is essential to building a plan that breaks through those barriers. Let's look at the two main barriers in agriculture for First Nations businesses:

1. the *Indian Act* creates a lack of access to capital; and
2. lack of experience and knowledge in agriculture among the Indigenous workforce.

The regulations within the *Indian Act* create the lack of access to capital. The *Indian Act* prevents First Nations from leveraging land in the form of providing security. Looking back in Canadian history, the *Indian Act* also gave the Department of Indian Affairs the ability to institute the *Pass System*, which did not allow individuals to do business on reserve and did not allow First Nation people to leave the reserve (Indigenous Corporate Training Inc., 2015). This added significant challenges to agriculture, an already challenging industry. Over time, this barrier created a vacuum in First Nations capacity to find success in agriculture. As a result, many First Nations farmers left the industry, creating a gap in agricultural knowledge for generations — the second barrier.

Barrier One — The Indian Act and Lack of Access to Capital

The *Indian Act* governs First Nation status, land, business, and leadership. It can impact business opportunities in some ways. When it comes to agriculture, we will review a few sections of the *Indian Act* and how it can be coupled with the *Framework Agreement on First Nations Land Management*. First, let's look at Section 89 of the *Indian Act*.

Section 89(1):

Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

It is widely known that Section 89 of the *Indian Act* prevents First Nations from accessing capital or receiving lending on First Nation land. This makes it difficult to get loans from banks; and since the agriculture and food industry is heavily driven by access to capital, this cannot be overlooked. For example, crop inputs (fertilizer, pesticide, herbicide, etc.) for each growing season can cost hundreds of dollars per acre, so having access to financing throughout the year is a necessity.

There are options that allow a First Nation to access financing. Section 89(1.1) of the *Indian Act* states that a reserve land can be designated and as a result, it can be mortgaged.

Section 89(1.1):

A leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

In other words, when a First Nation wants to lease lands under the *Indian Act*, the Minister of Indigenous Services [“Minister”] must have the land designated for leasing as stated in Sections 37(2) and 38(2) of the *Indian Act*.

Section 37(2):

Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been designated under subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.

Section 38(2):

A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

To surrender a portion of reserve land so that it can be designated requires a referendum by the First Nation membership. This process can take up to two years to complete. There are other options worth considering.

The Framework Agreement on First Nations Land Management

“This process helps to counter impacts of Section 89 (1) of the Indian Act — and allows a First Nation access to capital.” (Henderson, 2017)

The *Framework Agreement on First Nations Land Management* (“*Framework Agreement*”) is another option that lets a First Nation secure financing. First, a little clarification: the *Framework Agreement* is an option for Band governments to opt out of the land management sections of the *Indian Act* and replace those sections with their own law or land code. To opt out of those sections of the *Indian Act*, bands need to sign the *Framework Agreement*. It’s an agreement between a First Nation and the government of Canada (Henderson, 2017). Later in this paper, we’ll discuss some of the details of the *Framework Agreement*. To take advantage of all the *Framework Agreement* allows, a First Nation would need to sign it and ratify it. The *Framework Agreement* allows its signatories to enact their own land code, which will be the fundamental land law of the First Nation, replacing 44 sections of the *Indian Act*. This means that in their land code a First Nation can choose to allow leasehold interests on First Nation land to be mortgaged, without being designated via surrender to Her Majesty as shown in Section 38(2). This also means that leasehold interests are subject to seizure by third parties. It is important to note that if a leasehold mortgage is seized, the First Nation has the first right to redeem, or buy back, the mortgaged lease (First Nations Land Management Resource Centre, n.d.). This process helps to counter impacts of Section 89(1) of the *Indian Act* — and allows a First Nation access to capital.

Taking advantage of these opportunities to gain access to capital requires a deliberate and coordinated effort between a First Nation government and its economic development corporation or farming operation. This is significant process that requires proper attention and planning.

Partnerships with other governments or entities can also provide opportunities to access capital. One example is the Siksika Nation in Alberta. They entered into a partnership with the provincial government and the Indian Business Corporation (Slade, 2015). The loans were small by comparison to many agricultural ventures, but it did allow cow-calf farming operations to access capital they may not have otherwise been able to do.

Another option to overcome the challenges of access to capital is to acquire fee simple land; this could be through the Treaty Land Entitlement (TLE) framework, or band-specific agreements. This will be addressed later in the paper.

Second Barrier — Access to Knowledge in Agriculture

The second barrier highlighted earlier is the lack of experience and knowledge in agriculture among First Nations people. There is a lot to unpack with that statement, but ultimately this impacts the First Nations workforce with experience in agriculture. There are corporations, agencies, and organizations working to remedy this. The Canadian Agricultural Human Resources Council (CAHRC), for example, is researching Indigenous agriculture and food businesses at all levels by conducting interviews with the people and communities involved. CAHRC is doing this so they can better understand the needs and knowledge gaps for Indigenous agriculture. There are numerous organizations doing work like this, and it needs to continue.

It is worth pointing out that many First Nations individuals have experience with livestock, horses, and crops. By comparison, though, a smaller percentage of First Nations people are involved in agriculture than Canadians as a whole. The 2016 Census of Agriculture shows that 1 in 58, or 1.7%, of all Canadians are involved in agriculture (Statistics Canada, 2018). Statistics from that same year show that 0.42%, or about 1 in 250, of First Nations people are involved in agriculture (Gauthier & White, 2019). Those numbers indicate that there is a gap in agricultural involvement among First Nations people compared to Canada as a whole; and as a result, a gap in agricultural experience and knowledge as well.

“[Our] younger generation that are going to school now, some of them should go into agriculture.” (Elder Joseph Jimmy, interview by the author, September 2019)

This means that while many First Nation communities have people available as a workforce, that workforce requires training in agricultural knowledge — from basic to complex. In 2019, FCC conducted interviews with a variety of people involved in Indigenous agriculture. In our interview, Elder Joseph Jimmy of the Thunderchild First Nation said, “[Our] younger generation that are going to school now, some of them should go into agriculture. No not only teaching, social work, recreation. Not only those things, but also agri-



Terry Lerat, Farm Manager on Cowessess First Nation, examines the product of harvest in 2019 with employee.

culture.” In fact, nine out of 10 interviewees recognized the challenges of training their workforce. This is different from many non-First Nations farming operations. Whereas 98% of Canadian farms are family-owned and operated (Agriculture More Than Ever, 2013), many First Nation farming operations are owned and operated by a First Nation band or economic development corporation — in part because of the barriers presented by the *Indian Act*, but also due to the communities’ approach to economic development. Reserve land is communally owned, and the returns from economic development are for the benefit of the shareholder, the community at large.

The key difference between a family-owned and operated farm and a farm that’s owned and operated by a First Nation or economic development company is that the family farms have family members employed, often with generations of agricultural knowledge ingrained, and may receive dividends of a successful year. Farms run by bands or economic development corporations, on the other hand, rely on employees that are compensated with salary or wage — often hiring from their communities, but not living on the farm property. According to internal FCC interviews, this lack of family connection to the farm and agricultural knowledge can result in a high turnover rate on First Nations farms.

One option to help bridge the knowledge gap for First Nation farms is for the band or economic development corporation to hire a farm manager who has expertise in farming. There are examples of First Nation farms hiring an Indigenous farm manager from the community; there are also examples of a First Nation farm hiring a non-Indigenous farm manager from outside the community. Each First Nation can decide what works best for them, but having a farm manager who is experienced in the sector they’ll be working is the most important trait. Having a farm manager also allows roles to be defined. The farm manager can be in control of hiring, training, and even mentoring someone to take over the role of farm manager in the future.

Regardless of who is running your farm, there are valuable resources that are needed for a successful farming operation. For example, knowing the soil classes in the area determines application rates of fertilizer. Often, information like this can be obtained from hiring an agronomist, or even directly from the retailer when making crop input purchases.

2. BRANDING AND FOOD MANUFACTURING

Adding Value to Your Product

All agriculture products are refined, processed, and packaged into a final product. This is often referred to as adding value or food manufacturing. This represents a valuable component of the agriculture and food industry. Let’s look at an example of how turning a food into a product creates more value. In the 1990s the Van Dyk family, who farmed in Nova Scotia, began harvesting wild blueberries they discovered growing on their farm. They sold the berries to local grocery stores, but only had about a four-to-six-week window for harvest. There was opportunity to add more value to their product.

The Van Dyks had an idea to make wild blueberry juice. After proper research, they began creating the product and the brand. Today, Van Dyk’s Wild Blueberry Juice is sold Canada-wide, and internationally as well (Brett, n.d.). This shows how a product that generated revenue for a maximum of six weeks in a local market was turned into a year-round product that is being sold across the country.

Value of Indigenous Branding

Opportunities like this exist for Indigenous agriculture and food businesses. It also plays into a strength. Creating a product that is authentically Indigenous — and strategically showing that in your product’s brand — has proven to be successful in the market. Let’s look at the example of Tanka Bars. Co-founded by a member of the Oglala Sioux Tribe in South Dakota, Tanka Bars uses buffalo meat and berries to create a pemmican protein bar.

“Research and examples around the world show that consumers are often willing to pay more for Indigenous-sourced and Indigenous-branded food products, providing that the quality is good.” (Noble, 2020)

The company’s mission is not just to make pemmican protein bars, but to use their product to create jobs for Indigenous people, increase health and build a buffalo-based economy. Tanka Bars has shown success and resilience as they compete with major national food brands. In the last month of 2018, Tanka Bars sales increased by 300%. Sales increased so fast that they were unable to keep up with the demand (Noble, 2020).

Research and examples around the world show that consumers are often willing to pay more for Indigenous-sourced and Indigenous-branded food products, providing that the quality is good (Balogh et al., 2016). That emerging trend, coupled with the well-known consumer preference of buying local, point to the advantages of processing raw food products and creating a brand for that finished product. According to a recent study from Nielsen, 58% of consumers said buying local produce is important to them. In that same study, consumers were asked to rank 16 grocery shopping topics, and buying local had the highest rating (Nielsen, 2019). And in many cases, consumers define buying local not only as food from near their community but also as food from within their own country (for example, a consumer preference of buying Canadian beef). So, the buying local preference can be an advantage beyond your community.

First Nation brands represent inclusion. In the economy, those brands boost the economic resiliency — not just of a community, but also the country. Food manufacturing provides jobs and financial sovereignty and stability to a community. Incorporating traditional First Nations values of caring for the land and maintaining a sustainable food source align well with the corporate social responsibility in the agriculture and food industry.

A Look into Food Manufacturing in Canada

The value-add sector can also be a big employer. According to Agriculture and Agri-Food Canada, the food and beverage industry is Canada’s second-largest manufacturing employer and provides jobs for nearly 250,000 Canadians. Food and beverage manufacturing accounts for 2% of Canada’s Gross Domestic Product (Agriculture and Agri-Food Canada, 2020).

By 2025 AAFC is aiming for \$140 billion in agri-food domestic sales, a significant increase. In 2019 that industry had approximately \$110 billion in domestic sales. Among AAFC’s five key areas to strengthen agri-food in Canada are an increase in developing and diversifying Canada’s agri-food markets, various ways of boosting competitiveness, and having a diverse workforce in the industry with a unique set of skills.

These numbers show the importance of this industry in Canada and also the need to continue to grow this industry. There is room for Indigenous businesses to contribute to food

manufacturing in Canada. Keeping that top of mind while planning an entry into agriculture can help a business and community build towards vertical integration.

3. FINANCING

Basics of Working with Financial Institutions

The reality is that starting a farm, or getting involved in agriculture, requires financing from a lender. Knowing what is required for a farm to thrive is only part of the picture. You also need to be aware of what specific financing is required from your lender.

Farms often have their own set of needs, so the type of lending can vary. For the most part, though, on average starting a crop farm from scratch would require:

- Line of Credit
- Crop Input Financing
- Equipment Financing
- Loan for structures

Farms require structures including barns, bins, corrals, storage for equipment, and shops. It's the loan for structures that financial institutions may have the most difficulty approving. Structures that reside on reserve land can, primarily, only be financed if it has become designated land through Section 38(2) of the *Indian Act* or through a change using the *Framework Agreement*. Another option to designate land can be found later in this paper in the "Additions to Reserve and *Reserve Creation Act*" section.

These processes can allow a financial institution to lend based on the debt and equity of the First Nation, and then they can perfect or establish a security interest (providing other criteria are also met). If the reserve land is not designated land through the *Indian Act* or the *Framework Agreement*, the land cannot be leased, which adds significant challenges to getting lending approved.



Talking the harvest plan before jumping into the combine at Thunder Farms 2019.

A line of credit and a loan for crop inputs are different than a loan for structures. Usually, a general security agreement is signed between a financial institution and its customer for lending like this. In these cases, it's the working capital that is relied upon for repayment. A financial institution may rely on the working capital to repay the debt and repayment capacity rather than the collateral that backs up the financing.

When purchasing equipment, financial institutions are most receptive to purchases made through a dealership using a conditional sales contract. This is because a conditional sales contract allows for security to be perfected (i.e., the interest in an asset is secured and cannot be claimed by any other party) by the right of possessing the equipment given certain provisions of law.

Private purchases for equipment may still be able to be financed but require a Section 89 waiver and a Band Council resolution. While this is possible, it results in more risk, and financial institutions may not approve this lending.

Business Planning

Begin these lending negotiations with all financial institutions from the best position possible. This includes having a strong business plan prepared. A business plan not only helps new farms put into perspective their needs, it also shows lenders that their potential customer knows its business and its goals. There are online tools that can help create a business plan.

Futurepreneur Canada is a national non-profit organization that does financing, mentoring, and support for entrepreneurs age 18–39. They offer a free online business plan writing guide for anybody who needs it. An Internet search for 'Futurepreneur business plan writer' will bring up the online tool. Other financial institutions have online tools as well. You can find more business planning tools on the FCC website, fcc.ca.

Business plans can include projected growth, but that should not be the only focus. Entrepreneur.com suggests including a contingency plan in your business plan that shows how you are able to continue paying back a loan during tough times or worst-case scenarios (Entrepreneur Media, 2014).

There are some financial institutions that even offer assistance in preparing a business plan. For example, Saskatchewan Indian Equity Foundation offers up to 75% of the cost of having a business plan written by a professional business plan consultant. Part of that planning stage is having some savings established. Many aboriginal financial institutions like SIEF require up to 10% of the funds they'll disperse to be covered by the customer.

4. LAND MANAGEMENT

Before purchasing land for agricultural use, knowing your options is important. When a First Nation buys land through the TLE framework, or by other means, there are two options:

1. Convert the land to reserve status through Additions to reserve process
2. Do not convert the land to reserve status, thereby making it fee simple land

Land converted to reserve status will be regulated by the *Indian Act*. Fee simple land is not regulated the same way, which means it provides borrowing leverage because it can be

used as security in accessing lending from financial institutions. Let's look at these two options in detail, starting with fee simple land.

Fee Simple

Fee simple ownership is recognized in Canadian law as the most complete form of ownership. It entitles the owner to full enjoyment and use of the property unencumbered by all other interests or estates, restricted only by laws of general application, such as zoning laws and environmental laws (Appraisal Institute of Canada, 2010). Where a First Nation chooses to expand their reserve by purchasing land in fee simple, the *Indian Act*, RSC 1985, c I-5, s. 18(1), will not apply to the land as it does in the case of reserve land. The question of whether a First Nation should hold title to land in fee simple, as opposed to holding an interest in the land as reserve land under the *Indian Act*, depends on the First Nation's priorities. For instance, where land is held in fee simple, many of the protections under the *Indian Act* will not apply, such as the statutory limits on seizure, attachment, or taxation of reserve land. This, however, is likely minimally impairing, as fee simple land allows for financing and efficiency in development, diversification, and expansion efforts.

On the other hand, many of the restrictions surrounding disposition, leasing, and access that limit a First Nation's ability to market and leverage their lands will also not apply. While provincial laws and regulations, including provincial land titles legislation, property assessment, and taxation laws and municipal bylaws will apply to the lands, a First Nation's ability to develop and grant interests in fee simple lands is generally more attainable and expedient under provincial legislation than a First Nation operating under the auspices of the *Indian Act*.

Additions to Reserve

An Addition to Reserve (ATR) is the addition of a piece of land to an existing reserve, or the creation of a new reserve for a First Nation. The Government of Canada first introduced an ATR policy in 1972, and later updated it in 2001. In 2016 the Government of Canada introduced a new policy directive, *Indigenous and Northern Affairs Canada Land Management Manual*, Chapter 10 — Additions to Reserve/Reserve Creation — 2016 (the ATR Policy), which includes streamlining the ATR proposal process (Indigenous and Northern Affairs Canada, 2019). Through the ATR Policy, First Nations may purchase lands, which can then be converted into reserve lands in both urban and rural settings. The newly purchased land does not need to be geographically connected to an existing reserve. The ATR process improves First Nations' access to land and resources which can be used for economic development activities. ATRs can be obtained under three categories:

1. legal obligations and agreements by the Government of Canada;
2. community additions where a First Nation with a reserve seeks additional reserve land for economic development, among other purposes; or
3. tribunal decisions where a First Nation obtains lands as compensation through the Specific Claims Tribunal. (Indigenous and Northern Affairs Canada, 2019)

Additions to Reserve Land and Reserve Creation Act

On December 13, 2018, the Federal Government enacted the *Addition of Lands to Reserves and Reserve Creation Act*, SC 2018, c. 27, s. 675 (“*ATR Act*”) as part of Subdivision D of the omnibus *Budget Implementation Act, 2019, No. 1*, SC 2019, c. 29. The *ATR Act* was intended to streamline the ATR process, and facilitate more timely decisions. The *ATR Act* allows First Nations to designate and lease reserve land prior to the ATR process being completed. This allows First Nations to put leases or permits in place on lands owned by them while they await ATR approval. The *ATR Act* came into force on August 27, 2019.

Section 5 of the *ATR Act* allows a First Nation to designate land either before title is transferred to the Crown (since legal title to all reserve lands in Canada is held in the name of the Crown for the benefit of the applicable First Nation) or before the ATR process is finalized. Once the Minister accepts the designation, a lease may be entered. The designation will take effect once the lands are added to reserve. The designation process allows First Nations to lease their land for agricultural, commercial, or other purposes, while preserving the status of the land as reserve. Under the *Indian Act*, land designation is a prerequisite to leasing reserve land.

Additions to Reserve Process

The ATR process involves the following four phases:

1. Initiation
2. Assessment and Review
3. Proposal Completion
4. Approval

The timeline to complete the process of adding land owned in fee simple to reserve lands is uncertain and can take between 12–24 months. The process becomes more complicated where the land intended to be added to reserve is encumbered by a third-party interest, for example, through leases, licences, permits, easements, rights of way, etc. In the reserve addition process, the First Nation must first identify any existing encumbrances and charges. Then, the encumbrances must generally be resolved, extinguished, replaced, or minimized, and any consents required by third parties must be obtained prior to reserve creation so that Justice Canada is satisfied that the First Nation will receive adequate rights to the proposed reserve land.

Leveraging Land through Fee Simple Ownership

Under fee simple ownership a First Nation holds the right to sell or lease their property interest, to occupy the property, to mortgage their property interest, and to gift their property interest. As noted above, this considerably widens the scope of options available to a First Nation in comparison with reserve lands under the *Indian Act*. One of the clearest examples of this stems from section 89 of the *Indian Act*, which prevents real or personal property on reserve of an Indian or band from being subject to charge, pledge, mortgage, attachment, levy, seizure, distress, or execution. Provisions in the *Indian Act*, such as the one in section 89, deter commercial lenders from entering into transactions involving reserve land. Unlike

reserve land, property held in fee simple may be used as collateral for loans and First Nations will be able to leverage the land and any property on it for securing financial ventures.

“Fee simple ownership enables First Nations to develop and manage lands and operate businesses outside of the purview of the Indian Act land management system.” (Canada, House of Commons, 2014, p. 17)

Developing projects and carrying on business on fee simple lands is generally less expensive than reserve lands. On-reserve development is governed by the *Indian Act*, which regulates property ownership, lands, governance, resources and financial management, and in many cases mandates federal ministerial approval for projects to proceed. The process of applying for and receiving project approvals can be both time consuming, bureaucratic, and financially exhaustive (The National Indigenous Economic Development Board, 2017, p. 17). While reserve lands bring with them the possibility of *Indian Act* tax exemptions, they also limit the market value of the land, and limit the ability of First Nations to participate in Canada’s commercial economy, which is largely based on fee simple ownership.

In 2012, Manny Jules summarized the disadvantage of holding lands as reserve lands instead of fee simple when he stated that “[t]he problem with [Additions to Reserves] is that they make formerly productive lands unproductive by converting valuable fee simple land into Indian reserves. Reserve lands are generally about one-tenth as productive as other lands in Canada” (Quesnel, 2016, para. 5). Fee simple ownership is synonymous with participation in a modern, fast-moving economy, where secure and individualized property rights are assumed.

In areas with a higher demand for First Nations land, such as reserves located near cities, fee simple ownership may be used to effectively amplify economic development projects (Canada, House of Commons, 2014, p. 31). Fee simple ownership enables First Nations to develop and manage lands and operate businesses outside of the purview of the *Indian Act* land management system. As Chief Clarence Louie, Chairperson of the National Indigenous Economic Development Board, has commented, “Under the *Indian Act*, land management processes involving common activities such as leasing, and registration are expensive, complex, and often extremely slow. This presents significant challenges for large-scale, land-based economic activity, such as major resource development” (Canada, House of Commons, 2014, p. 17).

Tax Advantages with Reserve Lands

There are two tax advantages associated with income-earning activities taking place on reserve lands:

1. section 87 exemptions; and
2. the absence of property tax.

Section 87(1) of the *Indian Act* sets out that:

Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the First Nations Fiscal Management Act, the following property is exempt from taxation:

- (a) the interest of an Indian or a band in reserve lands or surrendered lands;
and
- (b) the personal property of an Indian or a band situated on a reserve.

Section 87 exemptions apply to business income if the income-earning activities take place on reserve. The question of whether income derived from agricultural activities is tax-exempt under the *Indian Act* will be very fact-specific, and we strongly recommend consulting legal counsel when determining prior to claiming an exemption.

One of the key factors in determining whether a farming business can qualify for the section 87 tax exemption is the location of farming, which varies considerably based on the type of farming. The most important factor for grain, vegetable, and fruit farming is the location of the land where crops are grown and harvested. Similarly, the location of cattle farming is determined by rangelands. When assessing taxation for all other types of farming, the nature of business and specific facts will be informative, in addition to the location of the farmland. If only some of the total revenue-generating activities take place on reserve, and the rest off-reserve, section 87 exemptions may be applied proportionally, with business expenses taxed proportionally unless a more reasonable allocation exists (Canada Revenue Agency, 2019).

First Nations may levy their own property taxes against third parties operating on reserve lands by implementing their own property tax regime pursuant to the *First Nations Fiscal Management Act*, SC 2005, c. 9, as discussed further below. Correspondingly, property taxes levied on fee simple lands would be payable to a municipality. Therefore, it is an advantage for First Nation businesses to be able to avoid property tax while operating on their own reserve lands.

Tax Advantages with Fee Simple Lands

Tax deductions are available for agricultural income and equipment based on whether an individual is engaged in full-time farming, part-time farming, or hobby farming. If an individual relies on farming for most of their income, they are considered a full-time farmer. Full-time farmers are entitled to claim home expenses, such as mortgage or rent payments, property taxes, utilities, maintenance costs, capital cost allowances, telephone, and home insurance, so long as their home is used to some degree for business purposes. Full-time farmers are also entitled to deduct all farm business expenses, including seeds, fertilizer, pesticide, crop insurance, machinery, and interest on loans. Finally, full-time farmers may deduct losses from their sources of income carried back three years and carried forward a maximum of 20 years. Similarly, part-time farmers may deduct portions of home office and farming business expenses, as well as a portion of any farm losses, the maximum claim amount being \$17,500 (FBC, 2017).

Models for Economic Development on Reserve Lands and Fee Simple Lands

Case Study — Musqueam First Nation, British Columbia

The Musqueam First Nation has control over 352 hectares of land, which includes three small reserves and several parcels of fee simple land acquired through settlements, negotiations, and purchases. In 2014 the Musqueam First Nation, Squamish Nation, and Tsleil-

Waututh Nation executed an agreement allowing the Nations to collaborate in Crown negotiations for land dispositions on shared territory. Through this agreement, Musqueam First Nation, Squamish Nation, and Tsleil-Waututh Nation have acquired multiple fee simple interests. Some of these interests are held jointly by development corporations, including the MST Development Corporation, which was established in 2016 to initiate growth, opportunity, and well-being for the respective Nations' members (Musqueam Indian Band, 2018, p. 27).

In *Musqueam Indian Band v Glass*, 2000 SCC 52, at para. 1, the Supreme Court of Canada held that the lease land on the Musqueam reserve was only worth half as much as similar land near Vancouver that was held in fee simple. By utilizing the land held in fee simple, such as their University of British Columbia Golf Course lands and Burnaby lands for development purposes, the Musqueam Indian Band has increased the speed and liberty in pursuing economic development projects. The Musqueam Indian Band has applied a single, strategic land use plan to all their lands ("Musqueam Land Use Plan"). While the Musqueam Land Use Plan is not enforceable on fee simple lands, it provides decision-making support for land use and developmental planning. Under this model, the Musqueam Land Use Plan informs the Musqueam reserve bylaws, which govern all on-reserve development projects, while provincial legislation and regulations govern development projects on all fee simple lands. All lands held by the Musqueam Indian Band in fee simple are subject to taxation; however, the lands have been registered under a bare trust for the band to protect all interests.

Hybrid Model

First Nations may hope to minimize their tax while maximizing their efficiency to produce the greatest profit through implementing a business structure that operates on both reserve lands and fee simple lands. This may involve operating a head office on reserve while growing and harvesting crops on fee simple land. The Canadian Revenue Agency sets out four guidelines for determining what income is eligible for section 87 tax exemptions, but these guidelines are applied at the discretion of Canada Revenue Agency; companies which fit squarely within a guideline are not guaranteed section 87 exemptions. Ultimately the courts will look to the test as set out in the Supreme Court of Canada decision, *Williams v Canada*, [1992] 1 SCR 877 ("*Williams*"), to determine where the income-generating activities take place and, thus, whether income should be taxed. The *Williams* test is, however, exceedingly vague, and definitions of income-generating activities are highly contested. If First Nations are able to successfully design a hybrid company which falls within one of the guidelines set out by the Canada Revenue Agency, then they may be able to claim tax exemptions on income earned from agricultural activities on fee simple lands; but there is always the risk of a challenge from the Canadian Revenue Agency.

Thunderchild First Nation

Thunder Farms Ltd. is based on the Thunderchild First Nation in Saskatchewan and is entirely First Nations owned. The Nation originally leased out their agricultural land on a cash rent basis before recognizing their opportunity for agricultural development. Thunderchild First Nation operates largely on reserve land but also uses Treaty Land Entitlement lands. The company has adopted a mixed farming model and leases land from the First Nation.



Thunder Farms 2019 harvest crew at start of workday.

5. BUCKSHEE LEASES AND CERTIFICATES OF POSSESSION

Buckshee Leases and Section 58 Permits

Section 91(24) of the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11, places all reserve land under federal jurisdiction, held by the Crown for the use and benefit of First Nations. Subject to the application of the *First Nations Land Management Act*, SC 1999, c. 24, or an applicable self-government agreement or modern treaty, the use and management of all reserve lands is regulated by the *Indian Act*. Under the *Indian Act*, reserve land is held collectively for the benefit of all members of a reserve. For a member to have an enforceable right to exclusively occupy reserve land, an allotment must be made in accordance with the *Indian Act*. Under subsection 20(1) of the *Indian Act*, the First Nation must allot the land to the member, and the Minister must approve the allotment. Pursuant to section 29 of the *Indian Act*, a lease between a First Nation and a non-member is only valid and enforceable where the lease is approved and granted by the Department of Indigenous Services and registered in the Indian Land Registry.

A buckshee lease is a lease or agreement between a First Nation, or a member of a First Nation, and an individual who may or may not be First Nations that has not been approved by or registered with the Department of Indigenous Services in accordance with the *Indian Act*. As such, buckshee leases are unenforceable and do not carry with them the security of tenure. Buckshee leases are common on reserves where the band does not have land management powers under the *Indian Act* and are often used for agricultural purposes. Parties of a buckshee lease do not obtain rights to possession against the First Nation or member; rather, the lease is carried on by the goodwill of the First Nation or member. Further, subsection 28(1) of the *Indian Act* renders any agreement to use or occupy reserve land as void if the same is not approved by the Minister. As the Supreme Court of Canada commented in its decision, *R. v Deveraux*, [1965] SCR 567 at 550, “the scheme of the *Indian Act* is to main-

tain intact for bands of Indians, reserves set apart for them regardless of the wishes of an individual Indian to alienate for his own benefit any portion of the reserve of which he may be a locatee.”

Alternatively, a third party who wishes to gain an enforceable right to use the land may obtain an agricultural permit under section 58 of the *Indian Act*. This permit will remedy the challenges of unenforceability of buckshee leases; however, ministerial permits do carry with them an added expense and inconvenience.

Customary Allocations and Certificates of Possession

A customary allocation or custom allotment interest is an interest in land granted to an individual by a resolution of a First Nation council or applicable custom or law of the First Nation for the use of land for agricultural purposes. Similar to buckshee leases, customary allocations are not considered a legal interest in land under the *Indian Act* or Canadian law, but rather are based on a form of agreement between the member and the First Nation council. Issues may arise when determining what party has the obligation to maintain the property, allocating liability, and divesting the property in a testamentary document.

Alternatively, individual members of a First Nation may obtain allotments on reserves by following the procedures under subsection 20(1) of the *Indian Act*. An allotment is the right to exclusively use and occupy a defined parcel of land on reserve. Section 20(2) of the *Indian Act* allows for the Minister to issue a Certificate of Possession “to an Indian who is lawfully in possession of land in a reserve a certificate ... as evidence of his right to possession of a land described therein” once an allotment is approved. A Certificate of Possession is merely evidence of the allotment, and does not itself create any proprietary rights. In light of the fact that an allotment under subsection 20(1) of the *Indian Act* grants the individual member an enforceable right of possession, this offers more legal certainty than a traditional or customary allotment or a buckshee lease.

That being said, subsection 20(1) allotments are subject to restrictions and do not entitle holders to the same rights accrued under fee simple ownership. The holder is still entitled to use and possess the property; however, under section 24 of the *Indian Act*, a Certificate of Possession may only be transferred or willed to another member, or the band itself. Section 25 of the *Indian Act* clarifies that when a Certificate of Possession holder is no longer entitled to live on reserve, they have six months to transfer the certificate to the band or another member before the land defaults to the band.

Challenges of Buckshee Leases and Certificates of Possession

The challenges of buckshee leases held by individuals are demonstrable. Entrepreneurs and business owners are at the mercy of the band as they have no legal right to the occupation and use of land allotted to them through buckshee lease(s). As a result, a First Nation is only able to charge a portion of what the land would otherwise be valued at to entice individuals to take on the legal risk. The band council of the Siksika Nation, as they were then, stated their direct opposition to buckshee leases on the basis that they benefit the individual at the expense of the Nation as a whole, contrary to the communal values of the Nation (Flanagan, et al., 2010, p. 84).

While Certificates of Possession may provide a legal right to exclusive use and occupation, First Nations must act in their fiduciary duty to the Nation as a whole when allocating lands. If a First Nation allocates too much of their reserve lands, then their economic development ventures will be inhibited due to minimal land availability. Further, the First Nation gives up substantial control over the allotted lands for the individual's use. A holder of a Certificate of Possession has the power to lease the land to a member or non-member (though ministerial approval is required for this), to extract natural resources, and to farm the land freely. With this comes a risk that the individual will over-exert the land, stripping it for personal economic growth that does not benefit the First Nation as a whole (Brinkhurst & Kessler, 2013, p. 2). Importantly, neither buckshee leases nor customary allotments may be used as leverage to gain financing from banks; however, section 58 agricultural permits and Certificates of Possession may be.

Leveraging Buckshee Leases and Certificates of Possession

“Contrary to the high risk associated with buckshee leases, many First Nations have leveraged them for economic success.” (Okanagan Indian Band, 2011, pp. 16–17)

To mitigate the risks associated with Customary Allotments, a First Nation may choose to grant Certificates of Possession for company-run use with restricted liberties to protect the land and the community interest in it. A First Nation granting Certificates of Possession may also enact bylaws which govern individual Certificate of Possession holders' abilities. The goal in this model is to encourage business development on reserve while ensuring that lands will not be used contrary to the future benefit of the First Nation.

Contrary to the high risk associated with buckshee leases, many First Nations have leveraged them for economic success. If a First Nation wants to impose a tax on buckshee leases, they may do so by implementing a bylaw pursuant to section 83 of the *Indian Act* or do so within its own taxation system pursuant to the *First Nations Fiscal Management Act* or its own customary laws. Manny Jules has suggested that taxing buckshee leases can improve the services available while bringing certainty to land values. The Adams Lake Indian Band collects taxes from buckshee leases through a Minister-approved bylaw which simultaneously exempts all members from taxation. The band has identified that community support for developing taxation models and revenue accountability, using revenue to improve service and program delivery, and providing updated budget and year-to-date reports to members are best practices for successfully leveraging buckshee leases through taxation (Okanagan Indian Band, 2011, pp. 16–17).

6. GOVERNANCE AND TAXATION MODELS

First Nations Land Management Act

First Nations may choose to exercise jurisdiction over the management of their reserve lands through the *First Nations Land Management Act*. If a First Nation is registered

through the *First Nation Land Management Act*, their reserve lands will be governed under a land code created and ratified by the First Nation rather than by the *Indian Act*. Lands under this jurisdiction remain reserve lands and still benefit from the section 87 tax exemptions. Under the *First Nations Land Management Act*, Nations enter into individual agreements to determine operational land management funding and the transition to the First Nation land code. This agreement, as well as the land code, must be ratified by the First Nation members (Indian and Northern Affairs Canada, 2002).

Even where a First Nation utilizes the *First Nations Land Management Act*, there are inherent limitations to their management authority over the lands. The Crown maintains the underlying title to the land, and as such a First Nation cannot sell its reserve lands; however, they may exchange their lands for other lands which will be transferred into reserve lands.

First Nations that adopt the *First Nations Land Management Act* scheme will benefit by gaining full jurisdiction over their lands and laws relating to those lands, the ability for members to secure mortgages without ministerial guarantee, expedited land transaction registration, and the ability for non-status members to hold land.

Models for the First Nations Land Management Act

First Nations have taken a wide variety of approaches to applying the *First Nations Land Management Act* to their lands. While some communities, such as the Tla'amin Nation, implemented immensely less restrictive transfer rules than those in the *Indian Act*, others, such as the Chemawawin Cree Nation, have implemented restrictions to almost the same extent as those in the *Indian Act*. With the spectrum ranging from allowing for long-term leases to non-members with no community vote to all transfers requiring band council approval, the *First Nations Land Management Act* may be used to reinforce community control over land or to ameliorate the economic benefit from a less restrictive land market (Lavoie & Lavoie, 2017, p. 565).

Limited Partnership Model

A common business vehicle employed by First Nations is a limited partnership created pursuant to applicable provincial or territorial partnership legislation. An advantage of a limited partnership is a combination of limited liability protection and tax efficiency. As partnership legislation does not contain a great degree of detail as to the obligations and operating structures required of the limited partners, the partners get to decide the “rules” applicable to the specific limited partnership. The general partner is usually filled by a corporation and is fully liable for the business, whereas the limited partner is liable only for their investments in the partnership. All business failures or liabilities cannot be extended to limited partners (as long as they don’t take an active role in the business). A corporate bare trustee may be used as a partner to mitigate any interference by the *Indian Act* and to also enable income allocation to the band if they are eligible for the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), section 149(1)(c) exemption discussed below.

Traditional Model

John Allan Curry advocates that a “Traditional Model” of corporate governance should be used for smaller communities, while the “Economic Development Corporation Model”, discussed further below, may also be implemented to separate business and politics. Under

the Traditional Model, all on-reserve businesses have a board of directors consisting entirely of Chief and Council (Curry, 2008). While this may enable speedy decision-making and collaboration between the Indian band and businesses, it also leads to immense fluctuation when a new Chief and Council are elected. The short terms of elective office (prescribed under the *Indian Act* and some First Nation constitutions or bylaws) also politicizes most official decision-making, including with respect to business decisions, as Indigenous leaders understandably may act to preserve their elected positions. This frequently makes business planning difficult, leads to instability in business management, and places extraordinary burdens on First Nation business enterprises to maintain stable growth and to find outside investment. As a result, successful First Nation businesses often require some degree of insulation from First Nation politics.

Economic Development Corporation Model

The Economic Development Corporation Model creates Development Corporations that are owned by band members and consider and serve the community's financial needs. Development corporations run the day-to-day operations of financial ventures, while maintaining distance from the highly politicized Chief and Council structure. This model is used by many nations in British Columbia, including the Musqueam First Nation and Osoyoos Indian Band, two of the most prosperous First Nations in Canada. The separation between a business' board of directors and the band's government is beneficial to business performance and corporate success (Curry, 2008, p. 22).

Taxation

First Nations governments should take three key areas into consideration when developing a governance structure to pursue economic development: (a) risk mitigation and liability; (b) maximizing profits; and (c) separating political and business considerations.

To best mitigate liability risks associated with business ventures for economic development, a First Nation should consider creating a separate corporate entity. As a shareholder of the corporation, no liability for business operations should be accrued by the First Nation. With this being considered, if a business is incorporated, the business is no longer eligible for section 87 tax exemptions as a corporation is not an "Indian" or "band" as defined under the *Indian Act*. However, incorporation increases access to capital and eligibility for government funding, and decreases personal liability for business debts and obligations.

Minimizing taxation can be achieved in relation to First Nation agricultural development in two ways. First, if income-earning farming activities are conducted on reserve land and the business is not incorporated, the section 87 tax exemption will apply, and no income taxes will be applied. Second, if income-earning farming activities are conducted on fee simple land with other business activities conducted on reserve, a First Nation may apportion tax deductions under the *Income Tax Act* and Canadian Revenue Agency guidelines and tax exemptions for the work done on reserve. Considering the numerous deductions and tax breaks available to farmers (as discussed above) and the reduced costs of development on fee simple land, it may be beneficial to consider this approach to minimize costs and, thus, maximize overall profits.

An Indian band, in most cases, is exempt from tax as a "public body performing the function of government" under section 149(1)(c) of the *Income Tax Act*. Tax exemptions

under section 87 of the *Indian Act* are extended by section 149(1)(d.5) of the *Income Tax Act* to all corporations owned at least 90% by the First Nation, so long as 90% of their income is earned on reserve.

If a business plan requires investments from third parties, fee simple land is usually more attractive for investors.

TECHNOLOGY

Farms today use technology as a differentiator. The advantages of effective use of technology in farming can allow businesses that may not have generations of experience in agriculture to play leapfrog, not catch-up. Today's in-field equipment can help with steering accuracy and application of inputs, and a lot more. Some equipment is compatible with desktop software that lets users manage their own farm and accounting data. Agriculture and food is an innovative industry, and many successful businesses are using technology effectively.

A look at five categories of automation in farm equipment, shared by CASE-IH, gives an idea on the state of technology in agriculture and where it's headed. The five CASE-IH categories are

1. guidance of manned vehicles;
2. coordination and optimization of manned vehicles;
3. operator assisted autonomy — where one manned vehicle leads an autonomous vehicle;
4. supervised autonomy — where someone can supervise or guide unmanned vehicles; and
5. full autonomy — where practically no supervision is required and equipment runs using artificial intelligence. (Case I-H, n.d.)



Harvest begins on Thunder Farms.

As of this writing, any fully autonomous farm vehicles are only working prototypes (Nanalyze. 2018) and not being sold commercially.

We acknowledge there is more research to be done on how technology in agriculture and food can directly benefit First Nations farm businesses. In the meantime, let's look at some existing technology and its advantages.

Desktop and Mobile Farming Software

Farm technology can help gain efficiency in the farm office. Keeping track of records and farm data and being organized for the farming year is easier with the right agricultural software. There are desktop and mobile software applications that allow for digital control of recordkeeping, shareability, human resources and reporting standards in Canadian agriculture. Software built for farm businesses works more intuitively with the information you need in farming — for example, having the information needed to file for crop insurance or for filing taxes.

“This allows for data ownership as recommended through First Nations Information Governance Centre’s OCAP.” (First Nations Information Governance Centre, n.d.)

FCC offers basic, free versions of AgExpert Accounting and AgExpert Field. These basic versions let users back up farm data securely, create income and expense reports and balance sheets, manage accounts payable and receivable, and other farm management tasks.¹ The software lets users share information securely with accountants or other partners. Regarding data ownership, the farm data generated through AgExpert software is owned by the software customer, not by FCC. This allows for data ownership as recommended through First Nations Information Governance Centre’s OCAP (ownership, control access and possession) set of standards (First Nations Information Governance Centre, n.d.).

The features of different farming software brands vary, and some in-field farm equipment is more easily compatible with certain brands of software. Knowing your needs as a farm can help determine which farming software is best suited for you based on its features. Each farm is encouraged to conduct its own research on farming software based on the needs of the farm business and the First Nation involved.

Being aware of farming technology is important when building a business plan. Knowing what level of technology or size of equipment or number of vehicles is needed should be determined in the planning stages of a farm business. This creates realistic expectations for the farm business and the financing.

Embracing technology in agriculture cannot be underestimated as a vital part of First Nations success in agriculture and food. Having said that, we acknowledge there is a need for more research on the unique needs of First Nations and Indigenous agricultural software needs. While research for the software needs of agriculture as an industry do exist, the understanding of how those needs differ from the needs of Indigenous agriculture is lacking.

¹ A variety of paid professional versions can be found <https://www.agexpert.ca/en/products/accounting.html>.

8. CLOSING COMMENTS

In 2016 at the seventh annual World Indigenous Business Forum in Saskatoon, Saskatchewan, a delegation of Indigenous business leaders from across the globe redefined Indigenous Development to accurately reflect what they do as follows:

“Indigenous development is the organized effort by Indigenous Peoples to honour, enhance, and restore their well-being while retaining a distinctiveness that is consistent with their ancestral values, aspirations, ways of working, and priorities on behalf of all Future Generations. Their efforts also strive to share a holistic model of livelihood that respects the Creator, the Earth and promotes sustainability now and for the generations to come.” (World Indigenous Business Forum, 2016)

In their approach to economic development, we see that First Nations are not simply operating a business, they are protecting and growing their language, culture and traditions, and imbedding their knowledge and values into their business mission, vision, and values. This, of course, drives their higher purpose to support the well-being of their shareholder, their community members well into the future. As stewards of the land, the responsibility to preserve and protect their lands for the benefit of future generations is paramount to them. As First Nations re-enter the agriculture sector, it will be exciting to see the types of products, governance, business, social enterprise, land management, and farming models that will be developed to support these community values and aspirations.

One example of how First Nation knowledge and values are being integrated into their business is File Hills Qu’Appelle Developments (FHQD) in Saskatchewan. FHQD is developing a greenhouse that will produce fresh herbs and vegetables for resale, build food security within their member communities, and provide access to traditional medicines that will be made available in their healing lodge and hospital as both facilities offer clients western and traditional treatment options. This model is unique in that it blends economic development, food sovereignty, social enterprise, and access to traditional forms of medicine. There exists a tremendous opportunity for research to collect and share best practices and lessons learned across the sector as First Nations develop sophisticated approaches and mature as primary producers and manufacturers.

The agriculture sector represents one of the greatest opportunities for First Nation communities to nurture their economic development goals and aspirations. Many First Nations are stewards of vast tracts of land and water and are uniquely positioned to move from land lessors to leaders in agriculture. Those Nations without large land bases may find opportunities in fishing, forestry, non-timber forest products, and the agri-food and agri-business value chain. With access to substantial areas of arable land, niche products, and knowledge, agri-food and agri-business and export opportunities First Nations are also complemented by the fastest growing population in Canada. This places First Nations in a position to succeed in their agriculture efforts.

Canada’s relationship with First Nations is complex as are the processes for settling outstanding land claims, and this differs greatly across Canada. The Peace and Friendship Treaties signed in the Maritimes focused on building cooperation and ending conflict between First Nations and the British. “Others, like the Upper Canada Treaties (1764 to 1862), Vancouver Island (Douglas) Treaties (1850 to 1854) and Numbered Treaties in Ontario, across the Prairies, as well as parts of the Northwest Territories (1871 to 1921), involved First Nations ceding or surrendering their rights to the land in exchange for a variety of benefits. These benefits included reserve lands, access to education and healthcare,

farming equipment and animals, annual payments, ammunition, clothing and certain rights to hunt, trap, and fish. Unlike later treaties signed in other parts of Canada, the Peace and Friendship Treaties did not involve First Nations surrendering rights to the lands and resources they had traditionally used and occupied” (Crown-Indigenous Relations and Northern Affairs Canada, 2015).

While some treaties set aside lands reserved for Indians, these remain a point of contention with ongoing litigation against the government of Canada to resolve shortfall and reparations for not honouring various benefits and obligations contained within the Treaties. Much of Canada remains unceded and was never surrendered, and modern-day Treaty-making and negotiations continue today. The reality is that as a group, First Nations are the most successful litigants against the government of Canada, and it is anticipated they will continue to add to their land holdings and focus financial reparations into fulfilling their economic development, financial, and food sovereignty goals moving into the future. This means that for the foreseeable future; First Nations will be building out their agriculture projects to fully monetize their land base.

The *Indian Act* poses significant barriers to Canadian financial institutions, FCC as we have operated historically and most of all First Nations who have been excluded from economic development. FCC is committed to sharing information and to helping First Nation agriculture in Canada reach its full potential. To that end, FCC is working on our lending strategy and increasing access to capital. We recognize the challenges in agriculture, but we also recognize our accountability in perpetuating some of those challenges; that’s why we’re reviewing our own policies and building a strategy that encourages and fosters greater Indigenous participation in agriculture for Métis, Inuit, and First Nations.

As we researched this paper and engaged stakeholders, we found that access to agricultural information specific to First Nation can be difficult to find. We encourage experts and knowledge keepers to share the information they do have. Reach out to organizations like Canadian Agricultural Human Resources Centre and Farm Management Canada to see how they can assist you, and how you can assist them.

While this paper focused on the opportunities and challenges for First Nations agriculture, we recognize that there is a need for more research and knowledge sharing on Métis and Inuit in agriculture. This paper is not a comprehensive look at First Nations agriculture either. We encourage our partners, peers, and the research community to consider diving deeper into First Nation agriculture.

As First Nation individuals, communities, and economic development corporations begin to revitalize their agriculture efforts and re-enter the agriculture sector, there exists a gap in their knowledge and capacity to successfully operate. There also exists a lack of exposure, knowledge, and relationships between First Nations and key industry stakeholders and associations, government funding and services, and the non-profit sector, as well as academic institutions.

Many of these stakeholders are similarly unfamiliar with the history, goals, opportunities, and needs of First Nations. There is an opportunity to harness, connect, and contribute to the growing opportunity First Nations have in agriculture with the business acumen, network, research and training, and related supports mainstream industry, government, academia, and non-profit sector partners can offer. There are myriad stakeholders who are seeking ways in which to connect and network to capitalize on opportunities and to coordinate their collective efforts, research, products, and services to streamline First Nation entrance, expansion, and success in the agriculture sector from the farm to fork.

In closing, FCC, government, industry, academia, and non-profits are committed to pursuing our goals with a focused approach on improving our understanding and partnerships with Canada's First Nation peoples. FCC's overarching goal is to support the agriculture sector in a way that allows it to be a leader in job creation and innovation and to foster the same in our role and relationships with those involved in First Nation agriculture. We aspire to become a catalyst, leveraging our partners across all sectors to support First Nation agriculture initiatives and interests that include helping communities and individual entrepreneurs develop capacity, access capital, partnerships, and networks in the financial, industry and advisory sectors.

Our collective efforts and partnerships need to ensure that First Nation producers and processors have access to needed capital through all economic cycles and to provide access to capital to allow First Nation economic development corporations, producers, and businesses to enter the entire the agriculture value chain to develop and grow their businesses, adopt innovative practices and technology and pursue new markets.

Collectively, we also need to focus our efforts to integrate products and services that facilitate succession planning between farm families and businesses with interested First Nation businesses, assist young and new farmers entering the industry, promote sustainability, and enhance Canada's First Nation food-processing sector to add value here at home before export. This includes work with Business Development Canada, Export Development Canada, and Indigenous Service Canada, along with Agriculture and Agri-Food Canada, and organizations such as the International Inter-Tribal Trade and Investment Organization, to ensure that First Nation agriculture and agri-food companies have the support, knowledge, and networks to succeed in international markets.

As First Nations focus on preserving their culture, wealth creation through monetization of their lands, and bringing traditional knowledge into 21st and, even, 22nd century agriculture, we have discussed the opportunities and challenges, ranging from branding, taxation, land management, ownership and designation, governance models, and technology, among other areas. As First Nations build their agriculture businesses, there are many areas to consider and a need to exercise due diligence throughout all of the planning stages. Supporting First Nation participation and growth in the agriculture sector will not only support their own economic development goals, but grow Canada's economy and economic resiliency, hone our reconciliation efforts, and assist moving our First Nations communities forward in the agriculture sector.

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