

J o u r n a l o f  
**ABORIGINAL**  
ECONOMIC DEVELOPMENT

Volume 11, Number 1



*Journal of  
Aboriginal Economic Development*

VOLUME 11, NUMBER 1



Captus Press

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The Journal of Aboriginal Economic Development is the first journal devoted exclusively to issues and practices in the field of economic development and Aboriginal peoples' communities. The journal, published jointly by Captus Press and Cando (Council for the Advancement of Native Development Officers), offers articles that are of interest to those who teach and those who work in the field.

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# The Artist

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## Nancy Desjarlais

NATIVE ARTIST

Nancy Desjarlais is of Cree/Métis heritage from the Fort McMurray First Nation in northern Alberta. Her art is inspired by the spiritual, mythological and natural connections that run through the veins of her ancestry. She also draws upon the movement of the times, using her paintings as a calming ground reflecting peace and tranquillity.

While growing up in Edmonton, Alberta, Nancy learned that imagination and creativity not only gave her great comfort but also gave her joy. Making art at a young age opened the door that would lead to her fulfilment as an artist.

Nancy obtained her BFA in painting and printmaking from the University of Alberta. It was in university that she learned to use mixed media. In 1993, she entered paintings into the annual Peace Hills Trust Native Art competition, where she won first and third prizes.

In 1995, Nancy moved to Vancouver Island, where she developed her style and techniques in mixed media and, inspired by the ocean and the petroglyphs close by, she painted a series of works that included these themes.

In 2009, Nancy won first prize in the Peace Hills competition for her painting *Spirit Horses Running Over Rough Terrain*.

Nancy moved back to Edmonton to be close to her family. She works with the Edmonton Public School system and continues her painting practice.

Her work can be viewed at [nancydesjarlais.blogspot.com](http://nancydesjarlais.blogspot.com)

Artist's Statement  
*Spirit Horses Running Over Rough Terrain*

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Nancy Desjarlais

NATIVE ARTIST

This painting, called *Spirit Horses Running Over Rough Terrain*, was painted with simplicity and joy in mind. To Nancy, the horses running free, guided by the four sacred directions, signify the spirit running free, even when the journey is rough.

The painting won the first prize in the 2009 Peace Hills competition.



*'Uy' skweyul* (Good day, in Hul'q'umi'num'). It is with immense pleasure that I present to you the 21st Issue (Volume 11, Number 1) of the *Journal of Aboriginal Economic Development (JAED)*.

Although I have been involved in the publication of this journal for more than two decades, I am always amazed by the new, unique, and novel topics that emerge from one year to the next, including topics that add in significant ways to a larger and all-encompassing community and economic development narrative. Take this issue for example. It includes discussions on emerging opportunities, such as transit pipelines, the legalization of marijuana, property values of leaseholds and certificates of possession, e-commerce on reserve, and Indigenous tourism. And as economic opportunities can be seized only if the community is equipped to pursue them, the issue also presents other perspectives that are critical to successful economic development, including effective leaders who blaze the trail and the value of strategic planning. The journal provides continuing coverage of commercial development, small business development, Indigenous–corporate relations, and balancing capitalism and cultural traditions.

The articles in this issue are imbued with economic opportunities and ways to seize them. This positive tone continues to the end, with a longitudinal exploration of the enhancement of the state of the Aboriginal economy in relation to educational level completed, measured by employment, unemployment, and wage rates.

I trust you will find this issue informative, interesting, and useful. As always, we look forward to your feedback and invite you to submit articles, case studies, community or leadership profiles, or other stories, which we will review for inclusion in our upcoming issues of *JAED*.

In ending, thank you, respected friends and colleagues — *Huy tseep q'u Siiem nu Siye'yu* — for continuing to assist Cando, Captus Press, and the Editorial Board of *JAED*, in creating, publishing, and sharing this important Journal. And a BIG congratulations, Cando, on the celebration of your 25th Annual National Conference and AGM!

*Huy ch q'u*. Thank you.

Warren Weir



# Introduction

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Wanda Wuttunee

Variety is the spice of life. This issue's Lessons from Experience focuses on individual and community success from both wealth and cultural perspectives. The issues that are close to the hearts of many are offered here for sharing and illumination.

When a community is divided by an artificial barrier, it requires the community and a champion to bring unity. A highway split Paqtnekek Mi'kmaw Nation, Nova Scotia, in the 1960s, and their champion, Rose Paul, Director of Lands and Economic Development, took on the challenge and succeeded. She earned the Individual award in Cando Economic Developer of the Year.

The momentum of growth in a community can't be beat. Glooscap First Nation is a new, small community with big plans. Successful business efforts include a highway commercial development, a Tim Hortons franchise and development of 5–10-year strategic plans. Community support and positive relationships with all levels of government marked by positive, honest and long-term relations are their framework for success, which was recognized in the community category.

Tammy Belanger, Glooscap First Nation member, won the Aboriginal Private Sector Business award for the success of Green Leaf Enterprises, her business, which she started in 2000. Her businesses include a Christmas shop, floral design classes, and training courses for growing vegetables for interested communities. Her best and only marketing is on Facebook.

Legalization of marijuana has had an impact on economic strategies being developed by communities. Noah Wilson has taken the experiences from his own community and placed them in a case study, complete with extensive instructor notes with a variety of questions about this effort, which can be used by the readers.

Emily Dishart engages the question of the role of capitalism in Tsawwassen First Nation, BC's economic experience. The author states that the community's economic decisions are enhancing cultural traditions and Indigenous sovereignty. They have worked hard to set a political framework that gives them the control they need, which is outlined in the article in some detail.

Finally, L. Javed Sommers reflects on the possibilities of achieving Indigenous sovereignty through economic development and the reasons corporations might be persuaded to support community efforts in this regard.

Ekosi and enjoy.

## 2017 Economic Developer of the Year Award Winners

Sam Laskaris

CANDO CONTRIBUTOR

**Recognize! Celebrate! Honour!**



In 1995, the Cando Economic Developer of the Year Award was created to recognize and promote recent or long-standing of sustainable economic self-sufficiency.

Aboriginal economic development initiatives throughout Canada. All winners past and present have a common desire to advance their communities as each pursues a vision

Throughout the years, it became apparent that there were businesses and individuals also deserving of recognition for their contributions to the advancement of Indigenous economic development. That is why today Cando grants Economic Development of the Year Awards in three separate categories:

- Individual EDO
- Community
- Aboriginal Private Sector Business

Three candidates exemplifying outstanding Indigenous economic development were awarded at the Cando 24th Annual National Conference. Two finalists in each of the categories were selected to present to an audience during a special plenary at the conference. When all finalists had been given an opportunity to present, the conference delegates voted via a secret ballot for the finalist who they believed was the most deserving of the top award in each category.

It is an honour to present to you the 2017 Economic Developer of the Year Award winners!



*2017 Cando Economic Developer of the Year Award winners*

(Left to right) Tammy Belanger, Green Leaf Enterprises;  
Chief Sidney Peters, Glooscap First Nation; and Rose Paul, Paqtnkek Mi'kmaw Nation



**Cando Economic Developer of the Year Award Winner**

**Individual Category**

**Rose Paul**

Paqtnkek Mi'kmaw Nation

Members of Nova Scotia's Paqtnkek Mi'kmaw Nation have plenty of reasons to smile these days. And they can thank Rose Paul, the Director of Lands and Economic Development of their First Nation, for that.

Shortly after joining the First Nation's administration department in 2006, Paul focused her thoughts on the community's need of a highway interchange.

That's because since the 1960s, when Highway 104 (part of the Trans-Canada Highway) was built, the Paqtnkek First Nation has basically been divided into two. The southern portions of the First Nation were not easily accessible and, thus, not developed.

That is changing now, though. In July of this year members of the community voted overwhelmingly to surrender parts of their land in order to have a highway interchange and connector roads built. This will allow both residential and retail properties to be built.

“It was a very long process, very difficult, and there were a lot of barriers we had to go through,” Paul said.

In part for her continued efforts in making this deal become a reality, Paul was chosen to receive Cando’s economic developer officer of the year award. She was honoured at the Cando Conference, held October 22–25 in Fredericton, N.B.

During her allotted 20-minute presentation, Paul included various slides about her First Nation and its long-anticipated project. She discussed the history of the venture and challenges faced along the way.

Meanwhile, the vast majority of those from Paul’s community were looking to develop the southern portions of their First Nation. A total of 277 ballots were cast in the land-surrendering deal, and 265 of those were in favour.

The highway project is expected to cost \$15.3 million. The First Nation will also receive more than \$2 million in compensation for the use of its land and to move some families and reconstruct homes that will be affected by the project.

Paul believes eventually adding businesses and homes to the First Nation will be a win–win for all.

“It’s good to see my community feel better and to know we can improve the life of all of our members,” she said.

Construction on the highway interchange began in August. It is expected to be completed by the fall or winter of 2018.

Though she played an instrumental role in seeing the project become a reality, Rose said she is not the only one who deserves recognition.

“Somebody had to do the heavy lifting,” she said. “But it was the community working together with the leadership and government that helped this project stay alive.”

Paul also said the fact the highway interchange is becoming a reality now has proven to be a big boost to members of the First Nation, who have visions of starting up their share of businesses.

“People are thinking about how they can be entrepreneurs now,” she said. “A lot of people are coming forward wanting to do their own businesses.”

By winning Cando’s EDO of the year award, Paul helped Nova Scotia register a sweep of the accolades up for grabs at the conference.



## **Cando Economic Developer of the Year Award Winner**

### **Community Category**

### **Glooscap First Nation**

Nova Scotia’s Glooscap First Nation has made some giant strides in recent years.

“For such a young community, we have come a long way,” said Chief Sidney Peters, who has held his position since 2012.

The Glooscap First Nation, which was only established in 1986, has undergone tremendous growth under Peters' leadership.

In fact, thanks in part to various successful ventures the First Nation has captured some national recognition. Glooscap was chosen as Cando's community of the year.

Glooscap captured this accolade following a vote of delegates that attended the Cando Conference, staged October 22–25 in Fredericton, N.B.

"I'm happy, of course, and excited about it," Peters said. "It's nice to see your peers recognize all the efforts you have put in. Sometimes you don't think how much time you've put into it."

Glooscap currently has 375 members. About 100 of those live on the First Nation.

"We're a small community," Peters said. "But we have big dreams."

Peters said he didn't feel out of place at the Cando Conference, even while seeing others from much larger First Nations discussing projects in their own communities.

"I felt comfortable there," he said. "What I liked about it was people were coming up to me and telling me how happy they are with what we have done."

Peters believes having a progressive Council and a qualified and dedicated staff has resulted in recent growth on his First Nation.

"We are also lucky that we have very positive relationships with all levels of government, municipal, provincial and federal," he said. "While we don't always agree on government policies and how they operate, we work to develop positive, honest and long-term relationships with government and their staff."

While Peters was the one who made the presentation about the Glooscap First Nation at the Cando Conference, he said many others deserve credit as well.

"A lot of it goes back to our staff and our community," he said. "We had community backing."

A boost to the First Nation came in 2014 with the creation of Glooscap Ventures, the First Nation's economic arm that oversees all of the community's businesses.

Recent expansion on the First Nation includes a highway commercial development named Glooscap Landing. The first phase of this project, which is now open, features a gas bar and convenience store.

A Tim Hortons franchise will also be included in the mix in the near future.

Peters said creating Glooscap Ventures has also resulted in growth with existing businesses.

"They have also worked to expand our commercial fisheries through increased access to the lobster fishery along with a new state of the art vessel," he said.

And the Glooscap First Nation is not resting on its laurels. Shortly after Glooscap Ventures was created, officials from the First Nation established a 5-year action plan and a 10-year strategic plan in the hopes of growing further.

Peters said being named community of the year by Cando will not affect any of these plans.

"There's still stuff in our strategies we need to focus on," he said. "It's just a matter of prioritizing it."

Peters added those in his First Nation know they are on the right path, not only because of praise they are receiving but also because of the number of others who want to work together.

"It just shows you what we're trying to do seems interesting," he said. "More and more people want to partner with us."





## **Cando Economic Developer of the Year Award Winner**

### **Aboriginal Private Sector Business Category**

#### **Green Leaf Enterprises**

Tammy Belanger admits she was not quite sure which direction her life would take when purchasing some property back in the summer of 2000.

The plan was to turn the property, located in the tiny Nova Scotia community of Wilmot, into a business named Green Leaf, which would include a flower shop, Christmas shop and a greenhouse.

Belanger, a member of the Glooscap First Nation, had some obvious concerns as to whether the business would take off.

“The building was originally to be used as a shop but converted into a house if need be,” she said.

“Originally we thought, let’s see how we make out the first three years, and we’ll go from there. After that, there was no looking back.”

Well, the business has been a huge hit. And the shop has been expanded twice and is now four times its original size.

Green Leaf’s success has now also earned Belanger some national recognition. That’s because her operation captured Cando’s Aboriginal Private Sector Business award this year.

Belanger was presented with her award at the Cando Conference, which concluded on October 25th in Fredericton, N.B.

Belanger had another reason to celebrate at the conference. Hometown, Glooscap First Nation, was named the community of the year.

“We are one big family,” she said of those from her First Nation. “They won just before me, so we were all so pleased.”

Belanger is also thrilled that her own business has flourished despite her not having poured money into advertising or marketing campaigns. A Facebook page for Green Leaf Enterprises is maintained.

“Our best advertising, though, is word of mouth,” she said. “They’re singing our praises, which brings new people into the store.”

One of the Green Leaf Enterprises’ attractions is that it has the only Christmas shop in the Annapolis Valley. Various Christmas ornaments and decorated trees are available for purchase year-round. Staff at the business host classes covering topics such as floral design, wreath making and centrepiece making. It also provides training courses for First Nation communities across the province on how to grow their own vegetables.

“I’m really pleased with what we’ve done for the community and what we give back to the community,” Belanger said.

The national accolade from Cando will put even more of a spotlight on Green Leaf now.

“I think it’s fantastic,” Belanger said. “It’s very rewarding and it’s a huge compliment.”

This marked the first time Belanger had attended the annual Cando Conference. Green Leaf was one of the four businesses nominated for its category for a Cando award this year. And it was one of the two finalists in its grouping invited to the national conference.

“It was a huge honour to be recognized, even to be recognized in your own community,” she said.

As one of the two finalists in her category, Belanger was required to make a 20-minute presentation on her business.

Conference delegates then voted on the winners in all categories.

“I spoke to a lot of great people and learned a lot at the conference,” she added.

And she was also glad she could extol the virtues of her own business.

“People could see how we’ve diversified and what our ambitions are,” she said.

And then capturing the top honour in her category was just icing on the cake for Belanger.

“Words can’t describe how happy and how proud we are,” she said. “It makes us reflect on the work we’ve done. And we’re very proud as a team.”

# A Case Study on How Indigenous Community Leadership is “Weeding” Through Emerging Economies

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Noah Wilson

NATIVE STUDIES STUDENT IN ABORIGINAL GOVERNANCE STREAM  
UNIVERSITY OF MANITOBA

## SECTION 1: THE CASE STUDY

### Introduction

Historically, First Nation communities have been largely left out of new and emerging economies in Canada. Under the powers of the *Indian Act* (1876), it would be hard to ignore how the Department of Indian and Northern Affairs Canada (INAC) often actively promoted a systemic dependency on the state through the detailed administration and control of Indigenous peoples’ lives and assets in Canada. In many ways, INAC’s responsibility to administer the *Indian Act* (1876) has created an extra layer of oppressive bureaucracy that has historically prevented First Nations from having the self-determining autonomy required to control their own economic destinies and participate in the development of the knowledge-based economy found in Canada today. As a result, Indigenous community leadership from around the country are working hard to create self-governing and self-determining communities by diversifying their revenue streams through Indigenous economic initiatives and business ventures.

On April 13, 2017, Bill C-45 (the *Cannabis Act*) was introduced in the House of Commons to provide legal access to cannabis and to control and regulate its production, distribution and sale. The announcement of the legalization for the production, distribution, and sale of cannabis immediately garnered excitement because of the huge economic implications and opportunities that would emerge across Canada. Many First Nation communities were no exception to the general interest in the tremendous potential of this emerging industry. The legalization and regulation of cannabis is an historical legal, economic, and cultural event in Canada, and it provides a unique opportunity for a case study that explores the strategic frameworks and decision-making processes that Indigenous leadership across the coun-

try are utilizing to become key stakeholders in the development of an emerging cannabis industry in Canada.

## Background

As the newly elected Chief of Oniigaanii First Nation, you have high hopes that your vision and leadership abilities can bring meaningful change to your community. As Chief, you know that the Council has very little time to waste to be successful in your tenure of office, because you know that the *Indian Act (1876)* limits the Chief and Council to holding office for only two years.

To get started, you know that a Oniigaanii Comprehensive Community Plan (CCP) initiative was produced by previous Oniigaanii leadership to be used as a strategic framework for the socio-economic development of your community. Oniigaanii's CCP represents a strong community consensus about what the important issues and challenges are and which steps are needed to create a prosperous and successful community. The Comprehensive Community Plan (CCP) has two phases and you see that phase one has been completed using a three stage process:

- Part 1: Establishing a Steering Committee
- Part 2: A Community-based Needs Assessment and Situation Analysis.
- Part 3: The Planning Stage

Phase one of the Comprehensive Community Plan (CCP) required that the community identify 12 selected categories to acknowledge and address the problems, issues, and opportunities identified through the strategic community consultation process used to complete the community-based needs and situation analysis. Since you only have two short years in office, you have pragmatically chosen three key planning areas to focus on during the decision-making processes used for identifying and accepting new initiatives for the community. The three key planning areas you have chosen to prioritize, in no particular order, are:

1. **Economic Development:** improving the economic well-being of Oniigaanii members by directly reducing poverty and the burden that comes with poverty for households and families, creating jobs through small business success and Band enterprises, and increasing the wealth of the Oniigaanii First Nation in terms of earned income and investments.
2. **Community Development:** the process of developing the capacity of the Oniigaanii community to collectively address its healing, developmental issues, and socio-economic opportunities.
3. **Governance:** the protocols and processes of community decision making, as well as the prevailing policies, priorities, activities and the working cultures created by those entrusted with governance positions.

After identifying the key decision-making planning elements in Phase one of the Comprehensive Community Plan, you move onto Phase two of the CCP titled "Implementation". For implementation of the CCP, you appoint a trusted CCP Coordinator, who will oversee a

Permanent CCP Steering Committee that consists of representatives from all the key departments and agencies in Oniigaanii First Nation. The Permanent CCP Steering Committee will be responsible for identifying the pros and cons of each initiative presented by the Council and will then make recommendations on options that the Council has going forward. As the newly elected Chief, you want to ensure that this Permanent Steering Committee has the right leadership in place to guide and direct the implementation of new CCP initiatives that will ultimately be empowered by the decision-making processes administered by the Chief and Council, as well as by the Board of Trustees of the Treaty Land Entitlement (TLE) Trust fund. The Board of Trustees uses a strategic framework to determine whether any new economic and community initiatives presented by Council align with the TLE Selection, Acquisition, and Development Strategy that was created shortly after Oniigaanii First Nation settled a treaty land-entitlement claim with the Canadian government.

Near the beginning of your tenure as Chief, the federal government introduced a bill in the House of Commons that will legalize the access to cannabis while controlling and regulating its production, distribution and sale. You understand that the window of opportunity to become a key stakeholder in a rapidly emerging industry in Canada is very small and that historically First Nation communities have been restricted from taking advantage of emerging economies by the oppressive bureaucracy imposed on them by the administration of the *Indian Act* (1876). Shortly thereafter, the provincial government announced that they will only be issuing four licences for the production and retail of cannabis in the province and that applicants must go through an extensive and rigorous application process to acquire these licences.

National Cannabis Canada (NCC) is a company specializing in delivering secure, safe, and responsible legal medical cannabis and has hailed Oniigaanii as a well-established First Nation community in the province. The company approached your Council about an opportunity to partner with them and four other First Nations to become a strong and attractive consortium applicant for one of the four retail cannabis licences announced by the province. Based on the highly competitive application process and the small window of opportunity that your community has to take advantage of an emerging economy, the Council agreed to use their executive powers to sign on as a member of the proposed consortium for the application of a licence to operate retail cannabis stores in the province.

After a long process, the province announced that Oniigaanii First Nation has been selected as a member of the consortium that obtained one of the four coveted conditional approvals from the province for a licence to operate retail cannabis stores in the province. After a public announcement of this opportunity, a problem was raised and brought to the attention of your Council — many community members and some of the leaders within the Permanent CCP Steering Committee felt they should have been consulted before the Council pursued a cannabis retail licence. There was growing community pressure demanding that the permanent CCP Steering Committee conduct an inquiry into whether pursuing a cannabis initiative aligns with the goals of the Comprehensive Community Plan. You immediately asked your CCP Coordinator to independently lead an inquiry with the permanent CCP Steering Committee, and you advised the CCP Coordinator to use the previously identified key CCP planning areas as a strategic framework for determining the pros and cons of this initiative. The CCP Coordinator will then have to use the consultation process to provide recommendations that the Council must consider going forward.

After conducting a community consultation meeting with key members of the community concerned with the initiative and the Permanent CCP Steering Committee, the CCP

Coordinator reported back to the Council with findings and recommendations. The inquiry primarily focused on the problems, goals, and recommendations of Prosperity Development and Community Development planning areas of the CCP. The top goals and recommendations made for prosperity development were that the Band should: (a) increase the number and profitability of Band owned and operated enterprises that provide both employment and earned income for the band; and (b) to generate a diversity of income streams for wealth creation for Oniigaanii First Nation. The top goals and recommendations for community development were: (a) to create a Oniigaanii healing and wellness movement; and (b) to address the extremely high rates of drug and alcohol abuse in the community that stem from the historical traumas felt by everyone in the community.

The CCP Coordinator pointed out that in regard to Governance, Oniigaanii First Nation has a long history of political conflict and factionalism, which has made it difficult for the Council to separate politics from good business practices and thus has led to missed economic opportunities. But on the other hand, increased community participation in the decision-making processes of the community's economic activity was a highlighted Governance planning goal in the CCP. Ultimately, under your leadership, the Council will have to decide how to move forward on the cannabis initiative. In consultation with the CCP Coordinator, the Council has narrowed down three potential options on how to proceed:

1. Use the executive powers of the Council to decide whether to move forward or pull out of the cannabis initiative without further consultation with the community.
2. Conduct a binding vote within the Permanent CCP Steering Committee to either continue with this initiative or pull out of the consortium and pursue other economic initiatives.
3. Hold a Community Referendum Vote to see whether they should either continue with this initiative or pull out of the consortium because of the lack of community support.

As Chief, you will now be a part of the many Indigenous leaders across the country who are now strategically navigating how to incorporate an emerging cannabis industry into a community dealing with decades of historical trauma, and you will ultimately have to decide whether or not a cannabis initiative even has a place within your community and its Indigenous identity.

## SECTION 2: QUESTIONS AND PROJECT IDEAS

### Questions

1. Under your leadership as Chief of Oniigaanii First Nation, what kind of decision-making model or methods should the Council employ to determine how to proceed with the cannabis initiative, considering the economic and community development barriers that many First Nation Communities face? Note: Discuss foreseeable dilemmas that will arise in this decision-making process, and use your decision-making model to justify the appropriate decision.

2. Pretend that you are reviewing the problems identified by the permanent CCP Steering Committee inquiry that mainly focused on the CCP economic and community development planning areas with the CCP Coordinator. Research the history of an Indigenous community that is actively pursuing a cannabis initiative in Canada. Based on that history, create a list of any economic and community developmental challenges and opportunities that you think the CCP steering committee would have identified based on the goals that they identified in the case study.
  - (a) How do you see the cannabis initiative aligning with the various CCP goals and challenges identified by the Permanent CCP Steering Committee?
  - (b) How wouldn't the cannabis initiative align with the identified CCP goals and challenges?
  
3. Assume that, as a Council, you decide that the cannabis initiative is a once in a lifetime opportunity that should be pursued. In that case, how would this affect your decision, and how will you gain the support of the community for this initiative based on the option you think is best?
 

Note: Discuss the potential positive and negative consequences of your decision and why you believe it is the best option to make the cannabis initiative a community business success story.

## Project Ideas

1. Research, choose, or create an Indigenous decision-making model or strategic framework. Create a flow chart that begins with the three options provided in the case study, and use the decision making framework, the identified key community planning areas, and any additional relevant information to show the potential positive and negative consequences of each decision.
2. Conduct research on a First Nation Community that is actively pursuing a cannabis initiative. Find the answers to questions like: What is the history of the community, and how does this history affect their socio-economic situation now? What is the organizational structure of the First Nation Band? What major laws, acts, and policies guide how the business affairs of the First Nation are to be conducted? How does the cannabis initiative fit within the First Nation Community's strategic decision making framework(s)? e.g., Comprehensive Community Plan, Economic Development plan, TLE Strategic Plan, Decision-making model, etc.
3. Investigate the reasons why so many First Nation Communities are looking to get into the cannabis business, and why they make such an attractive partner for outside organizations already established in the cannabis industry.

## SECTION 3: INSTRUCTOR'S GUIDE

This case study should be used to explore how First Nation communities are navigating the challenge of strategically coordinating their socio-economic activity with the new and

emerging economic opportunities in Canada, such as the legalization of cannabis. This case study is designed to target and identify the important systemic and practical socio-economic development barriers faced by Indigenous communities that should be considered during business related decision-making processes and assessment of opportunities. It is important to note that Oniigaanii First Nation is a fictional First Nation that was created to allow participants in the case study the freedom to explore the strategic frameworks and decision-making processes of the many Indigenous Communities that are actively pursuing cannabis-related initiatives and participating in the development of the emerging cannabis industry. Oniigaanii means “Leader” in Anishinaabemowin. Oniigaanii was the chosen name of the fictional First Nation in the spirit of the Indigenous visionaries like Chief Peguis, Louis Riel, Pitikwahanapiwiyyin (Poundmaker), Mary Two-Axe Earley, George Erasmus, Murray Sinclair, and the many other notable people who have contributed to closing the socio-economic gap between Indigenous and non-Indigenous peoples in Canada today.

All the information used to create the fictional Oniigaanii First Nation and its strategic framework(s) was inspired by the final draft of *The Peguis First Nation Comprehensive Community Plan: 2011 to 2021*, interviews with key community leadership, and publicly available information found on the official Peguis First Nation website. National Cannabis Canada (NCC) was a fictional company loosely based on National Access Canada (NAC), which recently partnered with Peguis First Nation on their upcoming cannabis initiative. Peguis First Nation is an example of a community that is navigating the challenge of strategically coordinating their current economic initiatives, such as the cannabis initiative, with the implementation of the community’s strategic economic and community development frameworks. The Peguis First Nation’s *Comprehensive Community Plan (CCP)* is an example of a publicly available strategic framework created to identify the steps that the First Nation must take together as a community to have prosperous future.

See Links:

Official Peguis First Nation website: <http://www.peguisfirstnation.ca/>

CCP: [http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp\\_plan.pdf](http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp_plan.pdf)

## Part 1: Setting the Stage

The economic implications and anticipated business development opportunities associated with legalization of cannabis in Canada became a legal reality when the First Reading of Bill-45, the *Cannabis Act (2017)*, was introduced in the House of Commons by the Minister of Justice on April 1, 2018. Many First Nation communities were no exception to the growing number of people, businesses, and communities in Canada that saw the legalization of cannabis as an immense opportunity to engage in a “... new economy that will bring jobs and other financial spin offs to all.” (Peguis First Nation, 2017) In anticipation of Bill C-45, the *Cannabis Act (2017)*, Peguis First Nation joined a consortium between several Manitoba First Nations and National Access Cannabis (NAC). On February 16, 2018, Peguis First Nation Chief Glenn Hudson and the Peguis Band Council announced their selection as one of the four consortiums that obtained a conditional approval by Manitoba for a licence to operate retail cannabis stores in the province.

See Link: <http://www.peguisfirstnation.ca/> (Sections: Cannabis Initiative)



On the Peguis First Nation website, Peguis publicly announced their new partnership with the Nation Access Cannabis (NAC) Opaskwayak Cree Nation (OCN), Long Plain First Nation, and now Brokenhead Ojibway Nation as part of a new cannabis initiative. There is a second Manitoba partnership that includes Fisher River Cree Nation, Chippewas of the Thames of Ontario, and US-Based retailer Native Roots Dispensary as reported by Christian Aumell (2018) of Global News. The “Cannabis Initiative” section highlights that National Access Cannabis is Canada’s leader in best practices on delivering secure, safe, and responsible access to legal cannabis and brings “... their business systems, branding and economies of scale, central services, and managerial support to the partnership” (Peguis First Nation, 2018). Chief Hudson acknowledges that the project partnership has the potential of creating a synergy of economic opportunity and prosperity for First Nation people. The partnership comes on the heels of the Opaskwayak Cree Nation (OCN) acquiring a 10 per cent stake in NAC, making OCN the NAC’s largest shareholder. As a result, OCN’s Chief, Christian Sinclair, obtained a seat on the NAC board of directors, and shortly thereafter NAC signed partnerships with four other First Nations across Ontario and Manitoba. The Chief Executive Officer of National Access Cannabis, Mark Goliger, states that this partnership presents “... a fantastic economic opportunity for the participating First Nations, with the benefit of NAC’s established operating model, First Nations will supply legal cannabis, leveraging our deep knowledge of safety, security and harm reduction through a network of First Nation owned stores in Manitoba” (NAC, 2017).

See Link: [http://nationalaccesscannabis.com/NationalAccessCannabis/media/Media/National-Access-Cannabis-Establishes-Landmark-Limited-Partnership-Agreements-with-3-First-Nations-in-Manitoba\\_1.pdf?ext=.pdf](http://nationalaccesscannabis.com/NationalAccessCannabis/media/Media/National-Access-Cannabis-Establishes-Landmark-Limited-Partnership-Agreements-with-3-First-Nations-in-Manitoba_1.pdf?ext=.pdf)

With economic activity of an Indigenous community there should first be an acknowledgement of the Indigenous nation or community’s unique history because those historical legacies are inextricably linked to the unique socio-economic challenges and opportunities that each Indigenous community has today. Sharon Stevenson, Trust Manager for Peguis First Nation Trust, stresses the particular importance the Peguis Community Story and highlights the fact that “... if we are to truly follow the seven generations teaching, we have to know the history of the community, to know who we are as people and to clearly see where we need to go” (2018). According to background information found on the Peguis First Nation website (2018), Peguis has a long and complex history that began long before the arrival of European immigrants in a settlement found near the Red River valley to the immediate north of Selkirk. After the arrival of Europeans, the area came to be known as the Parish of St. Peter’s, and Chief Peguis was known as an established and recognized authority in the area. At the time Manitoba entered into Confederation in 1870, the land still remained subject to Aboriginal title, and Peguis emphasizes the fact that none of the land in Manitoba was surrendered to the Crown by First Nations. Subsequently, *Treaty One* (1871) was executed the year after Manitoba entered Confederation. Under the written terms of *Treaty One* (1871), Peguis First Nation was entitled to the allocation of land for its reserve based on 160 acres for each family of five, or 32 acres per person.

According to Peguis Treaty Land Entitlement, a number of issues arose surrounding the methods used to survey and calculate the amount of TLE owing to Peguis, and this led to a longstanding land dispute that was never settled before Canada took surrender of the St. Peter’s Reserve in 1907. Peguis First Nation was relocated 190 km north of Winnipeg in the

Manitoba Interlake region. Peguis First Nation disputes the Canadian government's long-standing position that the present Peguis Reserve of 75,000 acres provided all the land they were entitled to under *Treaty 1* (1871). In addition, Peguis First Nation claimed that the initial surrender of St. Peter's Reserve was an illegal and non-binding land acquisition because it did not clarify what exactly was being negotiated with St. Peter's Reserve.

Peguis First Nation Newsletter No. 8 (2006) provides an overview of the additional TLE claims made by Peguis. It states that on June 29, 1998, after 91 years of struggle by Peguis First Nation, Canada finally accepted the Peguis outstanding TLE claim, as well as agreeing to the fact the 1907 surrender of St. Peter's Reserve was legally invalid. This initiated negotiations for both the settlement of the additional TLE settlement and the illegal Surrender Claim settlement. The general terms of the TLE settlement included a right to an additional 166,794 acres and overall settlement proceeds of \$64,425,000. In addition to the TLE settlement, on June 13, 2009, Peguis members voted in favour of a proposed settlement claim for the amount of \$126,094,903 into the newly established Peguis First Nation Surrender Claim Trust. These settlements are very important to the economic activity of Peguis First Nation today because the settlements are intended to compensate Peguis for the loss of land as well as the enormous economic loss incurred as result of Canada's failure to comply with land surrender requirements of the *Indian Act* (1876), *Treaty 1* (1871), and the illegal surrender of St. Peter's Reserve.

Peguis First Nation's story is an a prime example of why it is essential to understand the history of a First Nation before attempting to explore economic activity because each Indigenous community has a unique history and relationship with Canada that contributes to the socio-economic conditions and developmental abilities of the community today. In January 2012, Peguis First Nation's finished a Background Report and Strategic Framework for TLE Selection, Acquisition, and Development with the Institute of Urban Studies at the University of Winnipeg. The report provided Peguis First Nation with the conceptual and analytical tools to help focus the objectives, principles, criteria and priorities of their Land Acquisition Strategy and has helped impact the social and economic future of Peguis. The Peguis CCP and TLE Land Acquisition strategy, in combination with the Surrender Claim Trust's goal to support the social and economic development of the community, has significant implications for the success of the recently announced cannabis initiative. Perhaps the most significant implication is that the cannabis initiative can now be established in both an on-reserve and urban reserve market-setting. *Financial Post's* Mark Rendell (2018) reports that with regard to the NAC partnership with the several Manitoba First Nations, "... there's a particular focus on urban reserves in cities such as Winnipeg, Brandon, and Thompson." (2018).

See Link: <http://business.financialpost.com/business/first-nations-entrepreneurs-big-winners-of-manitoba-cannabis-plan>

## **Part 2: Indigenous Economic Activity and the Emerging Cannabis Industry**

The case study focuses on a fictional First Nation Band Council that, under the leadership of a newly elected Chief, represents the central governing authority of the First Nation. This governing authority is required to make key decisions that will directly influence the community and economic development of the First Nation community members to whom

they are accountable. The Peguis First Nation Governance and Management Policy Guide (2009) states that the Chief and Council act as the central authority of government for Peguis First Nation and exercise the powers set out in the *Indian Act (1876)* in Part 3. Peguis First Nation continues to assert their inherent right to self-determination and self-government as recognized under the United Nations Declaration on the Rights of Indigenous Peoples (2007). Although they make this assertion, the Policy Guide acknowledges that aspects of the *Indian Act (1876)* regulations apply until self-government arrangements are negotiated with Canada.

This long-term comprehensive community planning initiative began in 2009 when the Treaty Land Entitlement (TLE) Board of Trustees contracted the Four Worlds Centre of Development Learning to facilitate consultations with the Peguis First Nation Trust and the Peguis First Nation Band Administration and Program Support, with approximately 600 community members providing their input, including 200 youth. In 2010, Peguis First Nation dedicated their “Peguis Comprehensive Community Plan: 2011–2021” to their children and their children for seven generations, as well as to the legacy of Chief Peguis, characterized by “... his vision, his determination, his wisdom in negotiating the troubled waters of his time and his strength in never giving up, never letting go of the intent of seeing his people protected, secure and prosperous.” (p. 1). According to the Peguis CCP (2010), Chief Peguis had a powerful vision and the leadership abilities to lead his people wisely and with great diplomacy through many challenging circumstances, from ensuring the survival of the first European settlers in the Selkirk area through the harsh prairie winters to successfully leading a difficult transition from a hunting/gathering economic base to one of agriculture and industry.

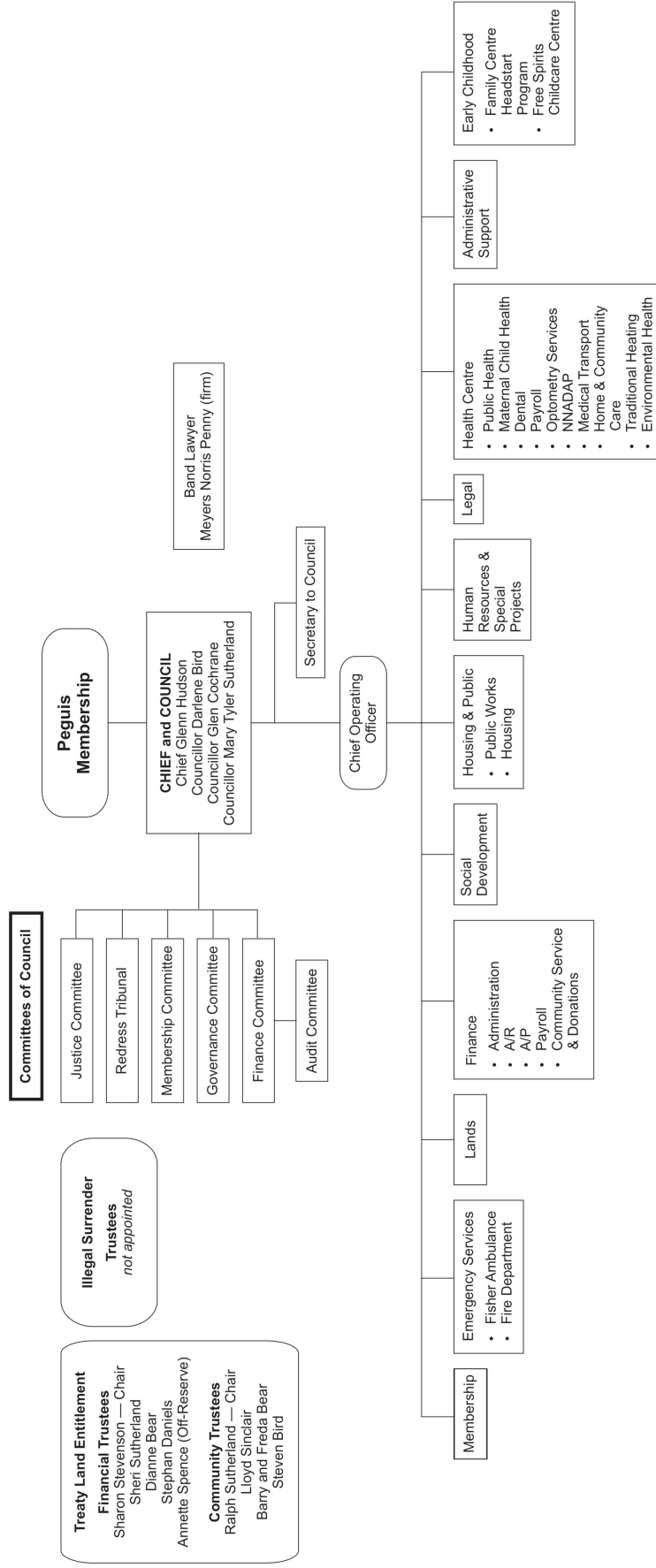
The organizational structure of Peguis First Nation government is designed so that the allocation of community resources and decision-making are channelled into key organizational units that centre on the Chief and Council, who are organized under a portfolio system. Figure 1 is a visual guide of the organizational structure and reporting lines of Peguis First Nation that can be used to appreciate the importance of the Chief and Council to the success of the community.

The case study mirrors the difficult situations faced by Chief Peguis in a modern setting. It examines an excellent strategic community development framework for decision-making. The Peguis CCP represents a strong community consensus about important issues and challenges, with a two phase plan that describes which steps are needed to create the community they want. Phase one, called “Making the Plan”, consists of three parts:

- Part 1: Establishing a Steering Committee
- Part 2: A Community-based Needs Assessment and Situation Analysis.
- Part 3: The Planning Stage

The Planning stage of the Peguis CCP has 15 planning areas out of the problems, issues, and opportunities identified by community-based needs and situation analysis. Out of the 15 total planning areas, the Prosperity Development, Community Development, and Governance sections were three areas of focus here, and each section identifies the key socio-economic challenges, goals, and implementation steps that must be navigated during the decision-making process of community leadership. Phase 2 of the Peguis Comprehensive Community Plan, titled “Implementation”, provides “A Learning Engine” to be implemented within the Comprehensive Community Plan. This learning engine requires a solid group of

**FIGURE 1**  
**Organizational Structure and Reporting Lines of Peguis First Nation**



Source: Peguis First Nation Governance and Management Guide, p. 7, <http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/govmaneguide.pdf>

implementers to gain a regular rhythm of needed learning experiences that are oriented to action. The Peguis Comprehensive Community Plan (2011) states that

[t]he key to implementing this “learning engine” within comprehensive Community Planning is to view these four “moments”: (a) *action*; (b) *reflection* on actions taken and your experience with taking action; (c) *learning* from the collective and cumulative experience of the whole network of implementers and from formal training is plugged into the process at strategic intervals; and (d) *planning*, which is really reaffirming or refining your ongoing plans. (Peguis CCP, 2010: 101)

This is an example of the type of decision-making models that can be used for the implementation of economic development initiatives like the cannabis initiative. This decision-making strategy is particularly interesting: through deep community consultation, the CCP identified key areas for the “learning engine” that include

(a) personal wellness and healing; (b) transforming community conflict; (c) building healthy organizations and workplace cultures; (d) community development; (e) developing effective interventions and programs to address key social issues; (f) addictions, abuse, and trauma; (g) Peguis cultural foundations (h) effective leadership for change; (i) group facilitation; and (j) grantsmanship and fundraising. (Peguis CCP, 2011: 100)

### Part 3: Quick Links for Additional Case Study Information and Selected Readings

Socio-Economic Stats on Indigenous peoples in Canada:

- <http://www.statcan.gc.ca/daily-quotidien/171025/dq171025a-eng.htm>
- <https://www.statcan.gc.ca/pub/89-645-x/89-645-x2010001-eng.htm>
- <https://libguides.tru.ca/censuscanada/aboriginalstats>

Selected Readings on Relevant Legislation, Policies, and Policy Guides:

1. The legalization of Cannabis
  - (a) Federal Bill C-45: *The Cannabis Act* (2017)
    - i. <https://www.canada.ca/en/services/health/campaigns/introduction-cannabis-act-questions-answers.html>
    - ii. <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/first-reading>
    - iii. [https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?ls=c45&Parl=42&Ses=1&source=library\\_prb&Language=E#a2-13](https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c45&Parl=42&Ses=1&source=library_prb&Language=E#a2-13)
  - (b) Manitoba Legislature Bill 11: *The Safe and Responsible Retailing of Cannabis Act* (2017)
 <http://web2.gov.mb.ca/bills/41-3/b011e.php>
2. The *Indian Act* (1985): <http://laws-lois.justice.gc.ca/eng/acts/i-5/>
  - (a) Recommended Sections:
    - i. Section 18 (Reserves)
    - ii. Section 53 (Management of Reserves and Surrendered and Designated Lands)
    - iii. Section 61 (Management of Indian Moneys)

- iv. Section 74 (Elections of Chiefs and Band Councils)
  - v. Section 81 (Powers of the Council)
3. Peguis Strategic Frameworks and Policy Guides:
    - (a) Complete list of Peguis First Nation Policies:  
<http://www.peguisfirstnation.ca/policies/>
    - (b) The Peguis First Nation Comprehensive Community Plan (2011):  
[http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp\\_plan.pdf](http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp_plan.pdf)
    - (c) Peguis First Nation Background Report & Strategic Framework: TLE Selection, Acquisition, and Development (2012):  
<http://winnspace.uwinnipeg.ca/bitstream/handle/10680/793/2011-01-01percent20Peguis%20First%20Nation%20Background%20Report%20%26%20Strategic%20Framework.pdf?sequence=4>
    - (d) The Peguis First Nation Governance and Management Guide (2009):  
<http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/govmaneguide.pdf>
  4. Knowledge-Based Economic Events: Development of Cannabis Industry and Indigenous Peoples:
    - (a) CBC News: Status First Nations to remain tax exempt on marijuana sales on reserve lands (Jan. 10, 2018):  
<http://www.cbc.ca/news/indigenous/first-nations-tax-exempt-cannabis-1.4481386>
    - (b) CBC News: First Nations entrepreneurs are asserting sovereignty and seizing the new cannabis economy (Jan. 10, 2018):  
<http://www.cbc.ca/news/indigenous/first-nations-entrepreneurs-are-asserting-sovereignty-and-seizing-the-new-cannabis-economy-1.4481747>
    - (c) Financial Post: First Nations entrepreneurs big winners of Manitoba cannabis plan (Feb.16, 2018):  
<http://business.financialpost.com/business/first-nations-entrepreneurs-big-winners-of-manitoba-cannabis-plan>
    - (d) CBC News: Province promises hands-off approach to cannabis retailers after announcing 4 groups that will operate stores (Feb 16, 2018):  
<http://www.cbc.ca/news/canada/manitoba/retail-cannabis-stores-manitoba-1.4538478>

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- The Four Worlds Centre for Development Learning. (2011, July). *The Peguis First Nation Comprehensive Community Plan* (Peguis First Nation, Band Council), online: [http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp\\_plan.pdf](http://www.peguisfirstnation.ca/wp-content/uploads/2015/12/comp_plan.pdf) (Accessed: March 26, 2018).
- The *Indian Act*, R.S.C. 1985, c. I-5, online: <http://laws-lois.justice.gc.ca/eng/acts/i-5/> (Accessed: March 28, 2018).

# *Tsawwassen First Nation — A Case Study for Economic Development in Coexistence with Thriving Indigenous Culture*

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On April 3, 2009 the Tsawwassen First Nation Final Agreement came into effect, thus becoming the first treaty signed in B.C. under the BC Treaty Commission. Among the conditions of the lengthy agreement were provisions for the economic goals of TFN as they aimed to exercise their rights as a treaty nation, rights that existed but had been denied by the colonial governments for centuries. Among the economic goals of TFN were residential developments, for both TFN members and the general public, and commercial developments. The Tsawwassen Mills retail and entertainment centre, completed in 2016, is one of the largest shopping outlets on Indigenous land in Canada.<sup>1</sup> The development provides jobs for TFN community members as well as bringing funds into the TFN government. For the Tsawwassen community members the Tsawwassen Mills, among other TFN developments, is an assertion of Indigenous sovereignty over their land. However, scholars critique the economic development of not just TFN, but many Indigenous nations in British Columbia. I aim to analyze and refute the arguments behind the critical historiography of Indigenous economic development in Canada through the use of Tsawwassen First Nation as a case study. I argue that TFN is able to keep their connection to the environment while simultaneously developing on that land. I also argue that TFN is in tune with the goals of their ancestors and the principles of Coast Salish law in their economic development. As well as with an analysis of Tsawwassen's environmental sustainability and strong traditionalism, I argue that TFN used developmental revenue in order to strengthen their cultural practices and establish good relationships with other sovereign states, thus refuting the principal concerns of scholars.

When discussing issues such as sovereignty, cultural traditions, and economic development, it is difficult to avoid promoting colonial ideals. Therefore, I use these terms with specific meanings in the context of Tsawwassen First Nation. In this context, sovereignty will

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<sup>1</sup> The Tsawwassen Mills was built, and is owned, by Ivanhoe Cambridge, a Canadian real estate company, which signed a 99-year lease with TFN for the plot of land owned by TFN.



be used to describe TFN's assertion of their rights to their land, language, culture, resources, and economic development. Cultural traditions, in the scope of this paper, are the goals, values, language, laws, ceremonies, actions, and beliefs of TFN throughout history, not simply colonial history, and today. Economic development will be used in this paper to describe the projects, developments and land leasing administered by TFN after the finalization of their treaty in 2009. The terms Final Agreement and treaty will also be used interchangeably in this paper, for the Final Agreement and the treaty are the same document, simply at different stages in the BCTC process. It is also important to note that I do not intend to speak for Tsawwassen First Nation community members or their opinions on the role of economic development in state sovereignty and cultural traditions of TFN. I simply aim to use TFN as a case study for illustrating that despite scholarly critique, Indigenous nations can and are using economic development in order to protect and enhance cultural traditions and Indigenous sovereignty.

Much of the historiography surrounding Indigenous economic development is overwhelmingly critical on two accounts. First, scholars critique the effects of resource development on the environment and the relationship between Indigenous culture and the environment. Second, scholars critique the rapprochement of western neoliberal capitalism with Indigenous cultures as a threat to traditional forms of Indigenous sovereignty. Throughout this paper I aim to demonstrate, through the use of Tsawwassen First Nation as a case study, that these two historiographical criticisms are not applicable to all Indigenous nations or all treaties, agreements, and economic projects.

Scholars of the first major critique link Aboriginal economic development to resource extraction, thus threatening the relationship between Indigenous peoples and the natural landscape. Nuuchahnulth scholar Clifford Atleo argues that resource development is counter-intuitive to the cultural goals of the Nuuchahnulth peoples. Atleo is offering a unique perspective on his own community, in which he condemns the resource development of his nation as destroying Nuuchahnulth cultural practices, saying that hunting for economic development is the Nuuchahnulth "selling their relatives" (Atleo, 2010: 66). Atleo also notes that when his community attempts to undergo sustainable resource development they are overwhelmed by the demands of corporations, thus threatening the agency of his nation. Jeff Corntassel argues that western conceptions of economic development threaten Indigenous attachment to the land, as well as Indigenous attribution of objects, sites, and regions as culturally important for their nation (Corntassel, 2008: 108). Despite his criticisms, Corntassel does make recommendations for ways in which Indigenous nations can use economic development in coexistence with their cultural and environmental traditions, as I will discuss later in this paper.

The second major scholarly critique of Indigenous economic development focuses on the negative effects of neoliberal capitalism on the legal and social structures of the Coast Salish. Neoliberalism, a policy that emerged in the last decades of the 20th century, emphasizes private ownership, deregulation of economic affairs and a reduction of government spending on social welfare programs. Clifford Atleo uses the neoliberal argument to criticize the effects of economic development on Indigenous culture and resurgence, arguing that neoliberal attitudes and conventions enforce individualism among Indigenous groups, thus threatening the traditionally collective ways of living of Coast Salish peoples (Atleo, 2009: 5). Atleo also notes that through economic development the binary of "modern" and "primitive" continues to dominate discourses of Indigenous sovereignty, thus continuing problematic colonial rhetoric around Indigenous nations and the use of their land (Atleo,

2009: 3). Along with Atleo, Glen Coulthard's *White Skin Red Masks* argues that a second wave of colonialism began in the 1970s and 1980s in which oppression was replaced by the politics of recognition, which, in his opinion, is simply an extension of previous colonial policies and a reiteration of problematic colonial rhetoric (Coulthard, 2014: 4). Coulthard continues, arguing that Indigenous peoples search for governmental recognition of their rights by illustrating their nationhood through economic development, rather than, as Coulthard recommends, achieving an internal respect and recognition of their rights as nations and communities (Coulthard, 2014: 6). Coulthard and Atleo both argue that Indigenous economic development undermines the cultural beliefs and values of the Coast Salish and other Indigenous groups; however, these views fail to credit the adaptability and malleability of Indigenous culture, thus undermining nations' ability to have economic development projects that coexist with cultural traditions and revitalization, as can be seen through an analysis of the Tsawwassen First Nation.

Tsawwassen First Nation's treaty and economic development projects are, countering to the scholarly critique, in line with the historical goals of TFN and the principles of Coast Salish law. Both of these alignments illustrate Tsawwassen's economic development as coexisting with their traditional cultural values, principles, and ways of living. The effects of colonialism on TFN, both on their culture and on their economic opportunities, cannot be underestimated. However, I argue that through post-treaty economic development projects TFN is able to re-assert their traditional role over their land in a way that coincides with the wishes of their ancestors and with Coast Salish legal traditions.

First, the TFN treaty and economic development projects coincide with the historical goals of Tsawwassen First Nation. These goals include self-government, control over their rights and resources, and, most significantly in the aim of this paper, the importance of economic independence to assert sovereignty over TFN land. In 1914 The Royal Commission on Indian Affairs visited the Tsawwassen band, represented by Chief Harry Joe, and the meeting was transcribed for the use of the Province in their goals to remove and reallocate land from Indian Reserves. The commission report discusses various issues, including the size of the Tsawwassen reserve, their cattle and agricultural holdings, and how Tsawwassen was making use of the land (Royal Commission on Indian Affairs for the Province of British Columbia [RCIAPBC], 1914). Commissioner Shaw referenced that Chief Joe demanded that TFN have "title to the lands themselves" (RCIAPBC, 1914: 6). Shaw then asked if they "would like to have the land to [themselves] so that they could [sell] it at any time," to which Chief Joe responded: "in that regard, we could decide afterward" (RCIAPBC, 1914: 7). Later on in the interview Chief Joe is asked whether or not, once he has title, he would lease or sell his land to whites, to which the chief responded: "that is something that we can talk about afterwards" (RCIAPBC, 1914: 8). Chief Joe's responses to the questions of Commissioner Shaw clearly have one goal: to achieve title over their land in order to then make decisions about the use of their land themselves. Although Chief Joe is not alluding that TFN will undergo economic development on their land, he is demonstrating TFN understanding of their agency and power being tied to their right to occupy their traditional territory and use it as they wish. On the TFN website a timeline explains their history, and under the section labelled "1914 Royal Commission on Indian Affairs" there is a commentary that links Chief Joe's demands with those of 21st century TFN community members:

For the first half of the 20th century, Tsawwassen was largely ignored by everybody, except for a few bureaucrats. All of this would change starting in the 1950's as commercial development and public infrastructure occurred. Ironically, this provided the

basis for the development of a people with strong and committed leaders and a determination to overcome the many obstacles put in our way. (Tsawwassen First Nation website)

Chief Joe was emphasizing the importance of having title to their land in order to maintain their power over traditional territories and resources. The timeline on the TFN website illustrates how Chief Joe was beginning a long process that enabled TFN to continuously understand the value of their land, both culturally and economically, for themselves and the settler nations. This continued understanding of power being held in their right to their land drove the treaty negotiations and fuelled economic plans after the signing of the treaty. Economic development would become the catalyst for the treaty negotiations as well as the largest result of the treaty, thus aligning 21st century TFN with Chief Joe's knowledge a hundred years prior. Chief Joe's goals are also mirrored in Chief Kim Baird's words in 2009:

Historically, a complex socio-economic system played an important role within our community and in cooperation with neighbouring tribes. Accumulation of wealth was attributed to spirit powers. Wealth was important for subsistence, trade, gifts and to *qe'wet (pay for services)*. In the past, practices to re-distribute wealth were based on traditional sharing principles and collective responsibility to ensure all the People thrived. These principles are re-erected in the Economic Development Act, the Financial Administration Act and the Property Taxation Act. (Chief Kim Baird, et al., 2009)

Baird is clearly linking the wealth acquisition and sharing traditions of TFN to the modern agreements between TFN and the Canadian government, highlighting the continuances and consistencies between the goals of TFN in 2009 and those of Chief Harry Joe a hundred years prior.

Second, in addition to coinciding with the goals of their ancestors, TFN economic development coexists with Coast Salish legal traditions. Although Coast Salish legal structures are complex and vastly differing, certain legal principles are more prominent and thus can be analyzed in the context of TFN. Anthropological legal scholar Bruce Miller discusses the role of Coast Salish legal traditions in modern treaty nations. Miller argues that colonialism removed the traditional economic pattern of the Coast Salish, thus threatening their legal structures and livelihoods (Miller, 2001: 3). He continues to discuss the revitalization of Indigenous legal traditions after the signing of treaties in the late 20th and early 21st centuries; however, he remains skeptical:

Coast Salish communities have historically used measures to restore community order that included sanctioned violent recriminations in addition to more pacifistic methods of feasting together with others to end disputes and difficulties. Today, in common with other communities, the Coast Salish communities face difficult problems in treating the contemporary issues of violent crime and inter-family conflict. These issues are not easily resolved by reference to reconciliation and restoration or by emphasis on community harmony. (Miller, 2001: 6)

Miller is speaking of the complex issues of how Indigenous nations manage conflict in the 21st century. Despite his scepticism, we can see through an analysis of TFN laws that Indigenous nations with treaties are attempting to use their own legal structure to limit conflict in their communities. The TFN *Community Safety Act*, in its Preamble, details how TFN is "committed to taking comprehensive measures to protect the Tsawwassen Lands, the health and safety of residents of Tsawwassen Lands and the peace and order of the TFN." The act also notes that "activity involving prohibited substances on Tsawwassen Lands poses a seri-

ous threat to the health and safety of residents of Tsawwassen Lands,” as the various detailed clauses of the act aim to address. Although Miller is skeptical about Indigenous nations using pacifistic legal structures, it is clear that TFN is taking measures to assert justice and peace into the legal structure of their community, including their constitution and affiliated acts. Although the efficacy of anti-drug legislation in TFN is unclear, Tsawwassen is attempting not to use reconciliation and restoration to repair the community, as Miller criticizes, but is using legal structures and economic development in order to diminish social tensions, possibly circumventing the issues Miller suggests and enabling them to build peace through prosperity both economically and culturally, as will be discussed later.

In addition to being in tune with their legal structures and historical goals the Tsawwassen First Nation’s treaty and economic development plan support TFN’s relationship with the natural environment. Many scholars criticize the effects of economic development on Indigenous connections to the natural environment, including water, trees, animals, fish, and subsurface resources. The treaty, and accompanying documents, suggest that TFN are ensuring the protection of their land and environmental resources.

The TFN treaty contains statements that aim to protect both the natural environment and culturally significant objects and artifacts from development on Tsawwassen land. Chapter 15 lays out TFN’s rights to

make laws applicable on Tsawwassen Lands to manage, protect, preserve and conserve the Environment including laws in respect of:

- a. the prevention, mitigation and remediation of pollution and the degradation of the Environment;
- b. waste management, including solid wastes and wastewater;
- c. protection of local air quality, but such laws will include standards that meet or exceed the standards set by the Greater Vancouver Regional District in bylaws in respect of the protection of local air quality; and
- d. response to an Environmental Emergency.

(*Tsawwassen First Nation Final Agreement Act*, S.C. 2008, c. 32, Chapter 15.1)

These provisions clearly outline Tsawwassen’s ability to regulate its own environmental restrictions, thus granting TFN control over the environment which they have inhabited since time immemorial. The Tsawwassen Final Agreement, under Chapters 3.5, 9.2, 10.2, also outlines TFN’s ability to regulate fish conservation (within the federal laws), protect culturally modified trees among other trees, and protect wildlife, within federal limitations. Although a great deal of these clauses include limitations set by the Federal and Provincial governments, it is important to note that these limitations simply state that TFN cannot violate Federal environmental laws, which, as is illustrated through the detrimental environmental effects of colonialism, have vastly lower standards than those of TFN.

The economic development of TFN is not resource based, thus allowing it to be a unique case that is often outside of critical historiography; moreover, TFN promotes its connection to the natural environment through the use of funds from the TFN Economic Development Corporation towards environmental protection programs. As Grand Chief Ronald Derrickson discusses, after Indigenous nations have full power of their land their “revenue, finally, will come from the wealth of the land” (Manuel & Grand Chief Derrickson, 2015: 232). For Grand Chief Derrickson, Indigenous nations must have full control over their environment and resources in order to enter into economic negotiations with other governments and corporations, thus enabling them to regain control of their economic, and thus cultural, sovereignty (Manuel & Grand Chief Derrickson, 2015: 233). Arthur Manuel also promotes

Indigenous economic development, for “as long as development respects the integrity of the land and minimizes its impacts, [Indigenous peoples] must take advantage of opportunities to build diversified economies” (Manuel & Grand Chief Derrickson, 2015: 51). To revisit Jeff Corntassel’s work, he argues that “in order for indigenous self-determination to be meaningful, it should be economically, environmentally, and culturally viable and inextricably linked to indigenous relationships to the natural world” (Corntassel, 2008: 108). TFN economic development projects are not linked to resources in the same way as other Indigenous nations’ projects; moreover, through ensuring that their policies and laws protect their land while also protecting their capital interests they are linking all fields, as Corntassel recommends. TFN has land that is incredibly valuable to colonial society, thus allowing TFN to understand and exploit the needs of the Delta Port and other corporations. The leases made by TFN Economic Development Corporation are opportunistic and intelligent for TFN, for they exclude all subsurface resources (TFN, *Economic Development Act*, 2009, Clause 12). This not only illustrates that TFN intelligently limits the rights of those leasing their land, it simultaneously protects the potential ancestral sites and burial grounds that are found in the subsurface, thus protecting cultural connections to the environment.

The Tsawwassen First Nation uses economic development not only to connect with the environment and reinforce Coast Salish traditions, but also to revitalize Tsawwassen culture and the Hun’qum’i’num language. The TFN constitution illustrates their implementation of laws that promote economic development while supporting their community’s well-being. Three primary aims of the of TFN are highlighted in their constitution. First, TFN government, as is outlined in the constitution, Clause 2.3, strives to “keep the Tsawwassen people together as a people”. Second, under the same clause, TFN and their constitution aim “to protect the lands, waters and resources”, a principle that is developed in further detail later in the document. Third, TFN’s constitution aims to “protect and develop the language, culture and traditions of the Tsawwassen First Nation” (Clause 2.3). Another document, the TFN *Economic Development Act*, Clause 4.0, states that “the purpose of TFN economic development is to transact business of a commercial nature in a responsible manner with the goal of creating long term wealth for the benefit of Tsawwassen First Nation and Tsawwassen Members.” When these two documents are examined in association with each other, it is clear that they have the same goals: to promote the wealth of TFN. Although the *Economic Development Act* speaks of wealth in the sense of money, when read in association with the constitution it is possible to see that the monetary gains made through economic development will thus be put towards three goals of the constitution; therefore, through economic development TFN can and does promote cultural programs for TFN members and future generations. The Tsawwassen Economic Development Corporation, created after the Final Agreement to oversee the use of the economic development funds allocated during the treaty and to build projects for TFN profits, has a vision for TFN that coincides with the importance of Indigenous connection to nature and culture. This corporation is owned and operated by TFN; however, the majority of the business it conducts is with non-Indigenous corporations, thus bringing in criticism from scholars. The TFN Economic Development Corporation’s mandate is to “actively seek partners to create developments that will generate short and long-term lease revenue, build member capacity by providing training and employment, and respect the values of the TFN Community.” This mandate, when read in association with the constitutional values of the TFN community, illustrates that this corporation seeks to protect culture, language, and traditions through economic stability. The TFN’s mandate, as displayed on their website, aims to make “Tsawwassen First

Nation a successful and sustainable economy, and an ideal location to raise a family. As a community, [they] will feel safe on Tsawwassen Lands, [they] will be healthy, and [they] will have every opportunity to achieve [their] dreams. [TFN] will honour [their] culture and practice [their] language. [Their] Government will help [TFN] achieve [their] goals by communicating, being respectful, and taking full advantage of [their] Treaty powers.” Read in association with each other, the mandate of TFN and the mandate of the TFN Economic Development Corporation have overlapping goals: to grow economically in order to benefit the cultural, educational, and communitarian values of TFN.

The economic and cultural needs of TFN do merge after the Final Agreement in 2009, allowing TFN to thrive as a sovereign nation that aims to achieve reconciliation. Chief Kim Baird, on October 15, 2007, gave a speech to the B.C. legislature before the treaty debates would begin. The dense and detailed importance of this speech requires that it be quoted at length:

Today, true reconciliation also means access to financial resources and economic opportunities which will be used for economic development and infrastructure development. True reconciliation will also provide services and programs for Tsawwassen members ... The treaty is a legal document, of course. A framework that ensures we can enter the economic and political mainstream of Canada.... Our treaty is the right fit for our nation.... We now have the tools to operate as a self-governing nation, for the first time in 131 years since the first *Indian Act* was introduced. The Tsawwassen treaty, clause by clause, emphasizes self-reliance, personal responsibility and modern education. It allows us to pursue meaningful employment from the resources of our own territory for our own people. Or in other words, a quality of life comparable to other British Columbians. To everyone, it provides economic and legal certainty and gives us a fighting chance to establish legitimate economic independence — to prosper in common with our non-aboriginal neighbours in a new and proud Canada.

Chief Baird’s speech outlines various key goals and aspirations of TFN after the signing of their treaty in 2007. It is through economic development that Chief Baird believes reconciliation will be achieved for TFN. Prosperity and independence, as Baird argues, will allow TFN to practise self-reliance, personal responsibility, and higher education, as is outlined in the treaty. Personal responsibility is often highlighted by scholars as foundational for Indigenous sovereignty. Greg Poelzer’s *From Treaty Peoples to Treaty Nation* discusses the development of Canada’s third government: Indigenous nations. Poelzer argues that until Indigenous nations are free from the cycle of the welfare system they will be unable to self-govern (Poelzer & Coates, 2015). Poelzer, however, does offer a solution:

One is to eliminate welfare, with its “shame” foundations, and replace it with community-based responsibility. At present, funding is fragmented into a variety of programs and dispersed to individuals. That funding could instead be allocated, as block grants, to regional or local Aboriginal governments. It could then be earmarked for community building ... These jobs could include repairing roads, clearing brush, and helping with community development projects. They could also include cutting wood for elders, gathering country food, collecting elders’ stories, working as cultural resource people in schools, taking lessons from elders in traditional cultural or harvesting practices, and providing cultural or social services to the community. (Poelzer & Coates, 2015: 240)

By removing the cycle of the welfare system Poelzer believes that Indigenous nations can thrive off their own community-based economic programs. What is key here is that the funding for these programs must be managed by the nations themselves, rather than the federal or provincial government. The TFN Final Agreement allocates \$1,055,000 for the establish-

ment of an Economic Development Capital Fund (*First Nation Final Agreement Act*, S.C. 2008, c. 32, Chapter 4, Clause 107). This money will be administered by TFN in order to promote economic development in their community, and as Kim Baird declared, this money would then be invested in the cultural, educational, and infrastructural integrity of TFN, thus being in accordance with Poelzer's recommendations. Arthur Manuel, however, disagrees with Poelzer and critiques Tsawwassen acceptance of a 'land for cash agreement.' Manuel challenges the BC Treaty Commission process as being a tool of the government to extinguish Aboriginal title. Manuel believes that Tsawwassen had been given 400 hectares of land and \$16 million in exchange for the extinguishment of their Aboriginal rights under Section 35 (Manuel & Grand Chief Derrickson, 2015: 200). Manuel, among others who criticize the BCTC process, highlights the vastly diminished territory of TFN after the treaty. Despite Manuel's criticism, it is clear through Baird's speech and the overwhelming majority of TFN members that voted for the treaty that Tsawwassen believes that the value of their land is enough to sustain TFN for generations to come while funding programs of cultural revitalization, working towards achieving reconciliation.

Tsawwassen First Nation controversially signed a BCTC treaty in 2007, becoming the first British Columbian nation to successfully navigate the lengthy process. As Arthur Manuel argues, a great many of BCTC agreements signed after Tsawwassen were problematic, for they gave large amounts of money in return for the loss of Aboriginal title (Manuel & Grand Chief Derrickson, 2015: 199). Although the BCTC process is largely criticized, even Manuel himself agrees that economic development is a viable way in which Indigenous nations can assert their sovereignty, as was discussed earlier. Tsawwassen's success, however, is partly due to their location and economic opportunities. Other, more rural nations would not have the same corporate and developmental opportunities as TFN, thus forcing them to undergo resource development and potentially damaging their environment, as many critical scholars note. Despite the advantageous location of TFN, the brilliance of the TFN Economic Development Corporation cannot be underestimated, as it works towards gaining self-sustaining long-term income for TFN in order to support cultural programs and uplift the overall living standard of TFN members. TFN and all Coast Salish peoples have hunted, fished, traded and negotiated with each other for thousands of years, and the TFN economic development of the 21st century must be seen not as an extinguishment of these relationships but as a continuation, emphasizing the ability of Indigenous nations to adapt while remaining always in tune with their cultural traditions and sovereignty.

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*Insurgent Economics:  
Reflections on Community-Based Research and  
First Nations–Settler Entity Economic  
Relationships*

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## INTRODUCTION

Last year *JAED* published a paper I wrote (Sommers, 2017) in which I made use of Kevin Bruyneel’s (2007) work on the “third space of sovereignty” to examine how Athabasca Chipewyan First Nation manages to both participate in capitalism (in Bruyneel’s words, “demand rights and resources from the liberal-democratic state”) and assert its sovereignty (“challenge the imposition of colonial rule”). I had written the paper in late 2015 for a class at the University of Alberta, and, four months later, in early 2016, a Community Service Learning (CSL) project prompted me to think further about the potential of Indigenous economic activity to advance Indigenous sovereignty and challenge the imposition of colonial rule.

In this article, I will borrow from Adam Gaudry’s principles of “insurgent research” (2011: 36), which I studied while completing my CSL project, to present my argument that

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<sup>1</sup> My Native Studies education has taught me that transparency regarding “positionality” is important and, accordingly, here are the facts about who I am that are relevant to readers of this article: I am a white settler, born and raised in Canada; I am a designated accountant working for what-is-now-known-as Indigenous Services Canada; besides accounting, my academic background includes two religious studies programs (Bachelor of Arts, Taylor University College; Master of Arts, McGill University) both of which focused heavily on the role of worldviews in Ancient Near Eastern society and extant texts. Since 2015 I have been a part-time Master of Arts student at the Faculty of Native Studies, University of Alberta. My interactions with First Nations in Alberta through my work, my understanding of the importance of worldview through my prior academic study, and my economic awareness as an accountant, have made me interested in how economic and fiscal relationships between First Nations and settler entities (e.g., corporations, governments) can evolve in such a way that they further decolonization and Indigenous sovereignty.

First Nation–settler entity economic relationships<sup>2</sup> can become “insurgent economic relationships” — relationships that are mutually beneficial economically to First Nations and settler entities, but also serve to further Indigenous sovereignty and challenge the imposition of colonial rule. In the context of this paper, I will imagine the “insurgent” aspect of these insurgent economic relationships in terms of Shalene Jobin’s discussion of the Plains Cree nation; in other words, I will assume that the First Nation’s “aspirations” within an insurgent FNSEER are to fight “for space within colonial structures while re-establishing their own governing processes” (Jobin, 2013: 601–602). The purpose of this article is not necessarily to outline how a FNSEER should actually be negotiated in the “real world”, but rather to imagine hypothetically how a FNSEER might be used to further Indigenous sovereignty. I will conclude the paper with some comments regarding why settler corporations might be amenable to an insurgent FNSEER.

## COMMUNITY SERVICE LEARNING PROJECT AND COMMUNITY BASED RESEARCH

Since my CSL project and studying community based research were the impetus for my thinking about insurgent FNSEERs, I will briefly discuss this background to the extent it is relevant.

My CSL project involved research in the area of Indigenous entrepreneurship. Among other things, I was exposed to Indigenous youth who were thinking and learning about entrepreneurship, and were positive about its potential to better themselves, their families, and their communities. I learned a lot from these youth and from the project in general, but I came away disappointed in two respects: (1) the extent to which Indigenous entrepreneurship as it was being framed would contribute to Indigenous sovereignty and decolonization; and (2) the extent to which I felt I had been able to “give back” to the “community” I was supposed to be contributing to.

On the first point, I want to be careful. Entrepreneurship, as generally understood, helps people achieve “personal economic independence” (Abele, 2005: 224); no doubt this is a worthy goal, and entrepreneurship in Indigenous communities is surely as beneficial to Indigenous people as entrepreneurship is to settlers in settler communities — maybe more so, given employment challenges in many Indigenous communities. In other words, I am sensitive to the fact that “the need for jobs and income is enormous” (Cornell & Kalt, 2005: 4) within Indigenous communities, and having individuals starting small businesses can be a way to address this need. Where my disappointment came in was that this is “all” entrepreneurship typically does. Again, providing economic independence is important and can be transformative, but entrepreneurship, at least as I was thinking about it, lacks *direct* political or decolonial ambition.<sup>3</sup> It is not this paper’s intention to further discuss entrepreneurship,

<sup>2</sup> Since I will be using the term often, from here on out I will use the admittedly awkward acronym “FNSEERs” to refer to First Nations–settler entity relationships.

<sup>3</sup> Of course, I can imagine that a thriving culture of Indigenous-owned small business may in fact *indirectly* have significant political and decolonial impacts; on the other hand, I can also imagine how it could do the opposite: economic “development has the potential to either advance or disrupt the process of decolonization” (Abele, 2005: 225). Although thinking this through interests me, I am bracketing this question for now.

but it was this disappointment that prompted me to further think about economic activity's decolonial potential.

As to the second point, I need to provide some more background. The CSL course I took in the winter 2016 semester was my first opportunity to do CSL in a formal way. My only exposure to community based research concepts before the class was through Joan Ryan's *Doing Things the Right Way: Dene Traditional Justice in Lac La Martre, N.W.T.* (1995), which I studied in an undergraduate Athabasca University Indigenous Studies course. Ryan conducted participatory action research in the Dene community of Lac La Martre as a way to document traditional justice. The research involved community members in a significant way, including serving as "Community Advisory Committee" members (1995: 6), coming up with interview questions (1995: 15), transcribing and translating interviews (1995: 13–14), and so on. The book also includes seven pages translated into Dogrib, the traditional language of Lac La Martre.<sup>4</sup> While Ryan's book was certainly interesting, and I can clearly see how in some ways the research benefited the community,<sup>5</sup> ultimately the research came across to me as more "extractive"<sup>6</sup> than "insurgent," to borrow phrasing from Adam Gaudry (2011: 114, 117). And "extractive" is how my own CSL project felt as well. While I think/hope I avoided the most egregious colonial/elitist stereotyping and assumptions, it would be ludicrous to describe my work as insurgent or "emancipatory" (Grant, Nelson, & Mitchell, 2008: 589).

For Gaudry, insurgent research "embodies four key principles" (2011: 117):

1. Research is grounded in, respects, and ultimately seeks to validate Indigenous worldviews.
2. Research output is geared toward use by Indigenous peoples and in Indigenous communities.
3. Research processes and final products are ultimately responsible to Indigenous communities, meaning that Indigenous communities are the final judges of the validity and effectiveness of insurgent research.
4. Research is action oriented and works as a motivating factor for practical and direct action among Indigenous peoples and in Indigenous communities.

In a similar vein, Eric Sheffield suggests "radicalizing" CSL (2015, 46–47) and Jill Grant, Geoffrey Nelson, and Terry Mitchell talk about research that has as its goals "emancipation, empowerment ... and the illumination of social problems" (2008: 589). All of this sounded wonderful to me as I wrapped up my own CSL project that lacked any radical implications whatsoever, but I remain skeptical that research coming out of academic institutions — community based or otherwise — has as much potential to contribute to decolonization, emancipation, insurgency, and so on, as these authors suggest. The very idea of researchers thinking

<sup>4</sup> Use of bilingual texts "in all the stages in the research process" is advised as a way to "decolonize research methodologies," according to Bagele Chilisa (2012: 156); of course, I should point out that *Doing Things the Right Way* is 140 plus pages long, so seven pages represents less than 5 percent.

<sup>5</sup> For example, there were (limited) skills training and employment opportunities created (Ryan, 1995: 6, 13–15).

<sup>6</sup> Ryan convinced me that the research had potential to contribute to a "taking back of Dene justice" (1995: 110), but I do not see how the research project in itself did much more than provide information useful to researchers. To be fair, I have not looked into what lasting impact the project may have had in the community over the more than two decades since the book's publication.

of themselves in these terms (i.e., “emancipators,” “empower-ers,” and “insurgents”) strikes me as remarkably arrogant, even delusional.

As I think about how academic institutions have historically had significant social impact, I think about, first, radical student movements, which, if anything, tend to be in opposition to the academic institutions they come out of; and, second, a much slower process of ideas being nurtured and massaged within academia before slowly gaining purchase within a large enough segment of lay society that change occurred. I may be right or wrong in this analysis (and, in any case, even if this is how it worked historically, it does not necessarily mean it has to continue this way), but, regardless, it indicates my cynicism regarding the idea of professors and graduate students simply employing a nicely termed method that suddenly transforms them from mere researchers into agents of radical change.<sup>7</sup>

As I reflected on this pattern that I see in Indigenous research (i.e., researchers continuing a pattern of “extracting” more than “emancipating” or “empowering,” even as they label their research “participatory action research” or “community service learning”), it interested me that the word “extractive” also happens to be very applicable to many FNSEERs. Of course, settler corporations and governments are rarely intent on accessing traditional Indigenous knowledge or having original research published in peer reviewed periodicals, and certainly they are not worried about securing a tenured career; they often are, however, interested in *extracting* natural resources from land or water over which First Nations have some level of sovereignty. Gaudry suggests that researcher–researched relationships should be less extractive and more insurgent; can it also make sense to talk about FNSEERs in this way? In fact, do FNSEERs have potential to be even more decolonial, insurgent, emancipatory, radical, and empowering than university research?

## INSURGENT ECONOMIC RELATIONSHIPS

If we look again at Gaudry’s principles, adapting where applicable, I suggest principles of insurgent economic relationships could be as follows. In my mind these principles could be applied to any FNSEERs, but I will outline them to specifically fit the context of an economic relationship between a relatively large settler corporation interested in extraction of natural resources and a Plains Cree First Nation that has adhered to Treaty 6.

1. *Insurgent FNSEERs are grounded in, respect, and ultimately seek to validate both settler and Indigenous worldviews.*

Since most FNSEERs operate within contexts in which settler worldviews are assumed/taken for granted, an insurgent FNSEER would require explicit respect/validation of Indigenous worldviews. Ultimately, however, the idea would be that the FNSEER demonstrates awareness of differences in worldview and particular awareness of where there might be worldview conflicts. This principle would represent a marked change in most FNSEERs. In my experience, there is typically very little (if any) acknowledgement of differences in

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<sup>7</sup> My tone here may be overly bitter and cynical; I should emphasize that I do appreciate the attempts in academia to make research less extractive, less colonial, less elitist, more relevant and accountable to communities, more immediately beneficial (e.g., offering employment and skills training) to communities and community members, and, ultimately, more self-aware and reflective.

worldview, let alone any attempt to ground the relationship in, or respect or validate, Indigenous worldviews.

2. *Economic benefit is geared toward both the settler entity/ies and the Indigenous community/ies.*

This principle is more typical of how FNSEERs work currently. Impact benefit agreements, joint ventures, etc., generally attempt to ensure First Nations receive economic benefits for participating in the relationship, and obviously no settler corporation enters a relationship without an expectation of economic benefit. Nonetheless, it is also true that FNSEERs frequently do not provide First Nations with as much economic benefit as is initially promised; and clearly, within the context of insurgent economic relationships, there would need to be a better assurance of significant economic benefit to the Indigenous community.

3. *Economic processes and final products are ultimately responsible to both the settler entity/ies and Indigenous community/ies.*
4. *Both the settler entity/ies and Indigenous community/ies are the final judges of the validity and effectiveness of the relationship.*

For Gaudry this was a single principle, but I have split it into two to emphasize two different points. First, the economic activity itself (e.g., natural resource extraction process) and the final products of the economic activity (e.g., the natural resources) should be acceptable, respectful, beneficial, and responsive to both parties of the relationship. For example, if the First Nation sees ceremony as an important part of extracting resources from the land,<sup>8</sup> then that should be part of the process. Obviously, this principle goes hand in hand with respect for worldviews.

Second, there need to be opportunities for the relationship to be reviewed and renegotiated if the relationship is not considered effective by either party. Again, my observation is that FNSEERs do not always benefit First Nations to the extent they have been led to expect, so the ability to renegotiate the relationship when it is not effective is a must.

5. *An insurgent FNSEER works as a motivating factor for practical and direct action among Indigenous peoples and the Indigenous community/ies.*

This principle encompasses what I see as the main goal of an insurgent FNSEER. The insurgent FNSEER will result in economic benefit to the First Nation, which in and of itself will provide resources allowing for assertions of sovereignty and challenges to colonialism.<sup>9</sup> But insurgent FNSEERs need to do more than simply provide economic benefits. To be truly insurgent, the FNSEER has to contribute in more direct ways to decolonization. This contri-

<sup>8</sup> Jobin deduces that “the type of protocol or ceremony around trade depended on the material being traded” (2013: 619). I do not pretend to know what protocol or ceremony is appropriate (if any) to, say, the extraction of natural resources such as bitumen, but this is simply an example of how an insurgent FNSEER could involve processes more reflective of Indigenous practices/worldview than is typically the case in FNSEERs.

<sup>9</sup> It does, after all, take money to fight the federal government in court, pay for communications staff, deliver services to the community, etc.

bution to decolonization need not come at a great cost to the settler entity, but it must be of benefit to the First Nation and, possibly, to the general cause of decolonization in Canada.

Putting it all together, imagine the following (necessarily simplistic) scenario that adheres to the insurgent economic relationship principles I have outlined:

The large settler energy corporation is interested in oil extraction in the Cold Lake oil sands.<sup>10</sup> This corporation negotiates a relationship with the six to seven Plains Cree First Nations in the area.<sup>11</sup> In a way, there is an “insurgent” element to the very fact that these negotiations are taking place: the act of engaging “in trade and diplomacy [is] one method ... nations ... [use to] exercise their authority and jurisdiction (Jobin, 2013: 604).

Principle 1:<sup>12</sup> The negotiations are conducted and the agreement is drawn up in a way that Plains Cree worldviews are acknowledged and validated. For example, the negotiation meetings are opened with smudging by an Elder, and the written agreement is translated into Cree.<sup>13</sup>

Principle 2: The agreement includes training, employment, contracting, and other economic benefits typical to FNSEERs as they are often negotiated. But because this FNSEER is insurgent, it also includes direct payments to the First Nations described in terms such as “taxes,” or “tariffs,” or “duties.” Collection of such payments is consistent with how the Cree nation historically “exerted jurisdiction over a defined territory and ... expected payment for using the resources of their land” (Jobin, 2013: 621). An example of an additional economic benefit consistent with the idea of combatting disruption of features of peoplehood could be sponsorship of Cree language classes at First Nations schools.

Principles 3 and 4: A committee is formed with representatives from both parties (perhaps including corporation management, labour union representation, Cree Elders, Cree politicians, and Cree youth), to allow for regular evaluation of how the economic activity is being conducted; what the final products of the economic activity are; and whether or not the relationship is operating as negotiated. The agreement includes options for renegotiating or terminating the agreement if one party so desires.

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<sup>10</sup> Located roughly in the traditional territory of the Plains Cree First Nations in what is now eastern Alberta and western Saskatchewan who adhered to Treaty 6.

<sup>11</sup> This could be done individually (i.e., each First Nation could negotiate individual relationships) or collectively (i.e., all six to seven First Nations could negotiate with the corporation together), or a combination of individual and collective agreements could be created. I will assume one agreement has been negotiated in my imagined scenario, although I am well aware that the current realities are such that this would be unlikely to be successful.

<sup>12</sup> Obviously, the principles are interrelated, and in ensuring a single principle is fulfilled the FNSEER may fulfil others.

<sup>13</sup> This is once again in line with Chilisa’s argument about decolonized research, including bilingual texts (2012: 156). It is also consistent with the need to counter colonialism’s disruption of the Cree language — language being one of the four features of peoplehood (Jobin, 2013: 606). The need to translate the agreement will also provide a contract to a (presumably Cree) translator and generally contribute to encouragement of Cree language skills.

Principle 5: Finally, to make the FNSEER explicitly insurgent, the agreement includes provisions for a Cree environmental officer or team of environmental officers to monitor the activity of the settler corporation.<sup>14</sup> This provision contributes to the First Nations, in Jobin’s words, “re-establishing their own governance processes,” as it builds environmental monitoring capacity; it also contributes to the First Nations “fighting for space within colonial structures” (2013: 601), as it provides an opportunity to assert jurisdiction over what is generally understood within Canada to be the jurisdiction of provincial governments. To further aid in re-establishing Cree governance over the land, the agreement could include an annual scholarship provided to a First Nations member to pursue environmental science education at a post-secondary institution.<sup>15</sup>

## WHY WOULD A SETTLER ENTITY ENTER SUCH A RELATIONSHIP?

Presumably it is apparent that an insurgent FNSEER may be beneficial from a First Nation’s perspective. Less obvious is why a settler entity would see the “insurgent” piece of the insurgent FNSEER as desirable. Of course, a successful insurgent FNSEER requires both parties to be cooperative and motivated, and I admit that “insurgent” is a word that corporate Canada is not likely to be attracted to. However, while my proposal above is not necessarily meant to be a template for how such an idea would be presented to a corporation’s board, management, or negotiators, I do think a relationship that follows the principles could be palatable to a settler corporation given the right conditions.

The goal of every capitalist corporation comes down to one single proposition: “creating shareholder value.” In order to persuade a corporation to do something, it must in some way contribute to this goal. An insurgent FNSEER could be sold to a corporation as a way to create shareholder value in at least two different ways.

First, in cases in which the negotiating position of the First Nation is particularly strong, the First Nation’s negotiators could simply demand that the corporation meet the principles (whether explicitly outlined or not). In this case, the corporation would be persuaded that this partnership with the First Nation will create shareholder value to the extent that it is worth entering into the relationship on insurgent terms. The insurgent principles do not, for the most part, necessarily come at a significant economic cost, so a corporation motivated to negotiate should have little problem with most of them. Nonetheless, the reality is that for many or most corporations, the ideas present in the principles — the very concept of “worldview”, for example — might be so far away from their comfort zone that they walk away from a relationship framed in this way. Unless a First Nation is in a strong enough position to hold out for these terms, this option may not succeed.

<sup>14</sup> The extent to which this work would “have teeth” would need to be determined and could be contentious. But the very existence of First Nations environmental officers monitoring the work of a settler corporation — with or without teeth — should be understood as “insurgent”.

<sup>15</sup> The cost of this provision would be minimal (~\$20,000–\$30,000 annually) to the corporation, and all the more so since the scholarship can be tax-deductible. The scholarship could be further designed to benefit the corporation if the scholarship recipient is asked to become a part-time employee or commit to a year’s service upon graduation.

A second, perhaps more likely, scenario in which a settler corporation sees an insurgent FNSEER as an attractive way to create shareholder value relies on the concept of “corporate social responsibility” (CSR). CSR is the term used to describe corporate initiatives designed to be of social or environmental benefit. Originally thought of “as a ‘donation’ from shareholders to stakeholders that reduces profits” (Flammer, 2015: 2554), CSR is better thought of as contributing to creating value for shareholders. Not all initiatives that are socially or environmentally responsible automatically create value for shareholders, but CSR has the potential to “significantly increase shareholder value” according to recent research in the area (Flammer, 2015: 2550). There could be numerous reasons for this, but one important element is simply that a corporation engaging in CSR is building a brand that is of greater appeal to stakeholders, especially clients. In the current political and social context of the Truth and Reconciliation Commission’s *Final Report*, the United Nations Declaration on the Rights of Indigenous Peoples, and rhetoric such as “nation-to-nation” and “reconciliation”, the climate could be ideal for pitching the idea of an insurgent FNSEER as a CSR initiative. A corporation able to promote itself as contributing to reconciliation has potential to attract more clients, with more loyalty, and also possibly to draw investment from shareholders or creditors willing to be compensated at a lower rate of return. An insurgent FNSEER could be framed as doing just this. It would take some initial bravery, but a corporation willing to take this risk on could find itself in an enviable competitive position.

## CONCLUSION

In this article, inspired by reflections on community based research and in particular a Community Service Learning project I completed, I adapted Gaudry’s principles of insurgent research to think through how economic relationships between First Nations and settler entities might become “insurgent.” Borrowing from Jobin’s presentation of Cree peoplehood, and the idea of “Indigenous peoples in Canada ... continually ... fighting for space within colonial structures while re-establishing their own governing processes” (2013: 601), I outlined what an insurgent FNSEER might look like. I concluded by discussing two reasons a settler corporation might be persuaded to become party to an insurgent FNSEER.

As disappointed as I was with the lack of “insurgence” in my CSL project, and as cynical as I am about the “emancipatory” and “radical” potential of community based research, I am in fact optimistic in the potential for Indigenous peoples in Canada to assert their sovereignty in the context of economic relationships. I am not, however, naïve; the principles I have outlined in this paper are unlikely to be of little practical use when it comes to “real life” negotiations between a First Nation and a settler entity. The very idea of “worldview” would probably scare off most corporate negotiators. But, thinking through the possibilities of how economic relationships can be of increasing benefit to First Nations interested in “fighting for space within colonial structures while re-establishing their own governing processes” is an important first step.

Ultimately I do think there will be more and more room for First Nations to make demands of settler entities that contribute to the decolonial cause — particularly in cases in which meeting the demands comes at minimal financial cost. I see two particular future research questions coming out of this article:



1. What might be the lowest cost, least risky ways FNSEERs can contribute to decolonization (since these are more likely to achieve buy-in from settler corporations)?
2. How can opportunities for a settler corporation to contribute to Indigenous sovereignty be framed in CSR terms, and has this been done or attempted in any contexts already?

Most of all, I look forward to seeing how these types of ideas might be tested and experimented with within the context of real, not hypothetical, economic relationships.

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## Introduction

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David Newhouse

In this Lessons from Research, we examine four important issues in economic development: self-government agreements, property values, e-commerce, and cultural tourism.

Nicholas J. Wilson in *Reconciling the North: Transit Pipelines and the Pursuit of Self-sufficient Self-Government in the Yukon* challenges our ideas about the nature of self-government agreements in the Yukon and their potential for economic development. Using UNDRIP and modern border theory, he argues that the Yukon First Nations, in partnership with transnational energy companies, create Special Economic Zones at the sub-state level to attract investment and generate economic growth.

Steven Rogers et al. in *Price of the Soil: Property Values of Leaseholds and Certificates of Possession* examines the question of property values on First Nations Reserves. A short history of property rights on reserve serves as the backdrop for their analysis. Using data on leaseholds and Certificates of Possession (CP), they analyze 149 leaseholds across 20 reserves, 79 CP transfers across 14 Reserves and 338 fee simple / freehold parcels across 34 off-Reserve communities. They found that the vast majority of leaseholds (60%) and CPs (88%) had market values less than those in non-Indigenous communities. Analysis of the reasons for this result suggests that further work is needed in order to develop property rights systems that support economic development and are reflective of traditional Indigenous property systems.

Alexander E. Buchan in *E-Commerce on Reserve: Opportunities, Challenges, and Taxation* analyzes the emerging e-commerce system and whether Indigenous businesses have a competitive advantage under the *Indian Act* and the *Income Tax Act*. He finds that there are clear opportunities for Indigenous communities and individuals to benefit from e-commerce free of taxation. For communities considering businesses such as

data centres, he finds that issues such as access to power, transportation, and fast Internet connections pose challenges requiring governments to provide the needed infrastructure.

Patrick T. Maher et al. in *Sustainability, Ethics, and Authenticity in Indigenous Tourism: The Case of Eskasoni Cultural Journeys on Goat Island* examines whether the blending of community-led approach with the premises of sustainability tourism can lead to an attraction that is both ethical and economically viable. Particular attention was paid to the issue of cultural authenticity and community well-being. The development and operation of the tourism site represents an emerging best practice for Indigenous cultural tourism. Two aspects of the practice are highlighted: the necessity of community leadership and participation as well as the continued involvement of Elders and traditional people to guide the presentation of culture.

# *Reconciling the North: Transit Pipelines and the Pursuit of Self-Sufficient Self-Government in the Yukon*

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## **ABSTRACT**

The research investigates how the responsibilities of Self-Governing Yukon First Nations (SGYFNs) regarding Settlement Land under the Umbrella Final Agreement, 1993, can be used to advance pipeline projects on Indigenous land title. In doing so, it challenges the contemporary notion of the Westphalian state system that has come to define the modern nation-state entity. Accordingly, the investigation employs contemporary border theory to examine how the responsibilities and obligations of SGYFNs, the Government of Yukon, and the Government of Canada can solve Aboriginal boundary issues to develop a sustainable Arctic economy in the 21st century, which is on the verge of unprecedented opportunity. As such, it takes transnational pipeline projects in developing countries as the basis of a trans-territorial model within the Canadian context, before concluding that it is equitable, lawful, and fair to provide incentives to reluctant Yukon First Nations to consent to pipeline development projects on Settlement Land.

## **INTRODUCTION**

The U.S. Geological Survey has assessed that 22% of the world's undiscovered petroleum resources currently reside underneath the Arctic (U.S. Department of the Interior, 2008). The industrialization of northern Canada will therefore intensify. Canada's northern regions, adjacent to the vast and untapped material wealth residing underneath Arctic sea ice, present Canada with lucrative industrial and commercial opportunities for future economic growth; specifically, as sea ice retreats in and around the Northwest Passage (NWP). As the Arctic Council member states (Canada, U.S.A., Russia, Denmark, Finland, Norway, Iceland, and Sweden), among other interested actors, vie for claims to extraction entitlements, land adju-

dication on the domestic front will also increasingly become a national security concern in the near future. Primarily, this concern is in regard to Canada's energy security priorities conflicting with land agreements negotiated with the Indigenous communities residing in Canada's north. As Arctic sea ice melts, Canada will steadfastly invest in energy resource development on territory surrounding the Northwest Passage. The Yukon Territory, sitting at the crux of Canada's oil and gas frontier, will play a leading role in northern economic development, as it is the most heavily populated area in the north and marks the entrance to the Northwest Passage on Canadian territory. As a result, the intensifying Arctic energy market poses a potential source of conflict between transnational energy companies/corporations (TNCs) on behalf of the Government of Canada and the Indigenous communities residing in the Yukon. Self-Governing Yukon First Nations, or SGYFNs, who are setting the precedent for Indigenous self-governance across the world, will play a crucial role when frontiers necessitate borders.

In response to mounting disputes over pipeline projects between Indigenous peoples and environmentalists against "Big Oil", the Royal Canadian Mounted Police (RCMP) has labelled these demonstrations the "anti-petroleum movement" and has implied that it represents a "growing and violent threat to Canada's security" (McCarthy, 2015). Additionally, Canadian defence scholars have raised concerns about the possibility of an Indigenous insurrection against energy development projects taking place across Canada. In view of the present tensions surrounding this polarized and highly passionate debate in North America, this policy paper develops a solution to the inevitable opposition pipeline development projects will face in the Yukon and Canada's north. In particular, some Yukon First Nations self-governments may be fiercely supported by environmentalist activists on behalf of Non-Governmental Organizations (NGOs), which continues to make headlines in North America. In response, the policy solution attempts to proactively carve out solutions to an enduring problem that has framed an aspect of Canadian society according to an "us versus them" mentality. This mentality has disintegrated the borderlands between Canada and First Nations communities, which has largely fostered tensions rather than cooperative flows that ease border hostilities. In response, the policy solution seeks to integrate borderlands by drawing upon recent literature concerning the evolving nature of borders within an increasingly globalized world. It then utilizes these findings to rectify the contemporary opposition to pipelines under the umbrella of negotiated Aboriginal land agreements in the Yukon. The solution emphasizes Canada's economic dependence on pipelines and natural resource development while formulating a legitimate avenue for Yukon First Nations to opportunistically enjoy unsanctioned autonomy by entering into concessionary agreements with TNCs. This avenue uniquely extrapolates international models of border porosity in developing countries in Central Asia and northern Africa to the Canadian context. As a result, the application of foreign concessionary agreement models manifests as a primary debate that forms the core of this investigation's reconciliatory efforts; and as such, the solution employs the tenets of the Umbrella Final Agreement (UFA)/Yukon Final Agreements to propose an incentive model. Through the manipulation of SGYFN revenue, this mechanism legally compels pipeline opposed Yukon First Nations to negotiate an equitable reduction in their federal transfer payments if they steadfastly refuse to pursue profitable revenue generating agreements with TNCs. This reduction is hypothesized to positively affect the pipeline decision-making outcome through the creation of porosity along SGYFN and Canadian borderlands. In forecasting the frictional problems related to the incentive model, the investigation seeks to answer the following question definitively:

*Are there legal rights and responsibilities in the Umbrella Final Agreement (UFA) that could compel pipeline opposed SGYFNs to act on incentives and permit pipeline construction on Settlement Land?*

The policy paper will argue that the Final Agreements, through their negotiation, possess inherent economic incentives for SGYFNs to consent to pipeline construction on Settlement Land — incentives that create border porosity that will ultimately lead to their success in forging truly *self-sufficient self-governments*. This proposition builds on the assumption that SGYFNs distinctively share crucial features of the modern “nation-state” entity. Accordingly, the policy paper will first draw upon theoretical models concerning the changing nature of borders in a world marked by globalization. It uses contemporary border theory to apply concessionary models of resource taxation in developing countries to the Canadian-SGYFN context. The investigation then concludes that it is lawful, fair, and just to incentivize Yukon First Nations to ease their borders and permit pipeline construction on Settlement Land.

## CHALLENGING THE WESTPHALIAN “STATE” SYSTEM

### The Colonial Context

Disputes over land rights unremittingly define the steadfast opposition to pipeline projects by Indigenous peoples in Canada. Historically, the colonization of what is now the Canadian nation-state began in the 1600s, effectively appropriated the land of prehistoric Indigenous Americans, and carried out what can only be properly referred to as a “cultural genocide” (Truth and Reconciliation Commission [TRC], 2015: 1). Over two centuries, this land was parcelled and negotiated through the signing of treaties with the Government of Canada on behalf of the British monarch. At present, these treaties have largely been recognized through the “assertion of Crown sovereignty” and are enforced by the Minister of Aboriginal Affairs and Northern Development Canada (AANDC) and Indian Affairs and Northern Development Canada (INAC). Correspondingly, the enforcement of these treaties falls under the dominion of the Eurocentric Westphalian state system that has come to define the modern “nation-state” entity. Under this umbrella, the 11 Numbered Treaties (1871–1921) “recognized Canadian sovereignty”, where “Indians were styled as subjects” who surrendered the land on the basis of “powerlessness” (Flanagan, 2008: 145).

Scholar Tom Flanagan has justified the colonial takeover of Indigenous peoples in Canada throughout the 1600s onwards by employing the protracted “Doctrine of Discovery” and *terra nullius* (no man’s land) (TRC, 2015: 46) — a “legal and moral justification for colonial dispossession of sovereign Indigenous Nations” (Assembly of First Nations [AFN], 2018: 2). As such, Flanagan deduces that Indigenous societies do not properly deserve the title of “First Nations” because they do not possess the features of properly defined “statehood” and “nationhood”. He argues, tenably, that Aboriginal societies cannot properly possess “sovereignty” — the core feature of a state — because their societies “were not organized into civil societies” and did not practise agriculture; they only possessed an “uncertain occupancy” that “did not amount to sovereign possession” (Flanagan, 2008: 55). To make this argument, Flanagan employs the 16th-century tenets of philosopher John Locke’s writings on property, where “civil society — the chief end whereof is the preservation of property” (Locke, 1632–

1704: Sec. 85) — was created to protect private property. Private property was understood to be a function of mixing one’s labour with the natural environment, where Locke’s proposition asserts that “Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*” (Locke, 1632–1704: Sec. 26). The establishment of the “State”, therefore, is justified on the concept that mixing one’s labour with the natural environment legally makes it their property; and since the “Doctrine of Discovery” concludes that “[t]hese tribes cannot take to themselves more land than they have a need of or can inhabit and cultivate. [...] [T]he Nations of Europe, which are too confined at home, come upon lands which the savages have no special need of and are making no present and continuous use of, they [Europeans] may lawfully take possession of them and establish colonies on them” as agricultural or “civilized” societies (Flanagan, 2008: 55).

### **Borders: A Reconceptualization**

In breaking with convention to embed this investigation within contemporary border theory, the correlation Flanagan makes is entirely valid — that is — from a 16th-century justified belief set. In this way, Flanagan’s reasoning is anachronistic; it is not a truth claim<sup>1</sup> to knowledge about the nature of modern “sovereignty”, which makes its application flawed. The condition of Indigenous civilizations prior to being integrated into European society is undoubtedly distinguished by the absence of large-scale agricultural practices and a centralized governing authority. However, when this lack of “statehood” is disparaged by the notion that “there is only one political community at the highest level”, where subordinate communities and ethnic “groups cannot be nations” (Flanagan, 2008: 7), it trivializes the evolution of bordering practices among human societies over millennia. Today, proximity, not distance, marks the world, and while Flanagan criticizes the notion of “nation to nation” diplomacy between Canada and First Nations, such that Aboriginal societies cannot be “states” with concomitant nationhood, this reasoning overlooks the contemporary fact that non-state actors are increasingly influencing political relationships on the international stage. Moreover, in theory, although self-governing Yukon First Nations share similarities with non-state actors, such as operating independently of a higher (state) authority, they coincidentally emulate features of Westphalian sovereignty and possess a defined territory with a population and [self]-government. This novel form of human organization (the SGYFN) is therefore sufficient within the contemporary field of international relations to be functionally significant. By and large, the meanings of the terms “nation” and “state” are becoming diluted due to “the multitude of flows and interactions produced by globalization that cut across nation-state boundaries” and “destabilize the paradigm of sovereignty” (Scott et al., 2015: 210).

Recent literature on borders has pointed to a re-conceptualization of the traditional understanding of the terms “border” and “state” within an increasingly globalized world. These concepts are being redefined through institutional conduits. Although colonialism and

<sup>1</sup> Way back in an undergraduate epistemology class I studied “truth-claims” as statements or propositions that come from a “justified true belief” (JTB). I use this specific term “truth-claim” to convey to readers how Flanagan’s reasoning is not a claim about knowledge but rather the opposite. In other words, as to my understanding, just because Flanagan believes the claim is true and is justified in believing it is true (from 16th century reasoning) doesn’t mean it is true (the claim has to be true in the first place, which time has shown it is not).



land treaties have physically (and socially) divided First Nations from the rest of Canada, borders, in general, are increasingly becoming more porous due to contemporary market forces and trade flows, among other factors (Brunet-Jailly, 2007: 355). Modern border theory has argued that as governments “pursue institutional arrangements to establish and recognize formal borders” for regulating activities across them, individuals will “consider their own interests in determining whether or not to act in accordance with the intent of such regulations”, whereby their decisions “reflect the strength of the incentives leading to market transactions” (Brunet-Jailly, 2007: 351). In acknowledging the influence incentives have on individuals’ or non-government groups’ decisions, Dr. Emmanuel Brunet-Jailly at the University of Victoria argues that borders are defined by the *expression of “agent power within institutional structures”*, and that *it is the human agency behind the incentives*, interplay, and interdependence of governments and market forces that is critical to understanding the porosity of modern borders era (Brunet-Jailly, 2007: 354). In this investigation, the term “agency” is defined as the capacity to act on self-interest in a political relationship and relates to the United Nation’s (UN’s) *Declaration on the Rights of Indigenous Peoples*; specifically, the “right of self-determination” (TRC, 2015: 187). The sparse literature on the topic of borders has largely focused on international bordering processes and the increasing porosity of borderlands between countries. Consequently, there is a research void concerning the process of bordering within colonial states; specifically, quasi-sovereign “sub-state” Indigenous self-governments with a latent capacity for agency.

### **Borders in the Northern Context**

Regarding the role of human agency in bordering processes, the concept of Indigenous “Self-Governance” in the Yukon emphasizes “building sound governance and institutional capacity that allow Aboriginal communities to contribute to, and participate in, the decisions that affect their lives” (AANDC, 2015). Earlier literature on Yukon self-governance criticized the strength of the agency of SGYFNs by arguing that “self-government” can only achieve the corresponding degree of agent power “to the extent that it can be funded” (Dacks, 2004: 688). This statement remains relevant today because a strong degree of self-determination to achieve self-government will require adequate economic resources. Conveniently, however, it has been suggested that lands and resources under the control of Indigenous self-governments may attract investors and facilitate “partnerships between Aboriginal governments, other governments, and *the private sector*” (AANDC, 2015). Therefore, Aboriginal studies scholar Robert Anderson has argued that mutually beneficial alliances between Aboriginal and non-Aboriginal peoples in Canada and their institutions can play a role in the economic development process within “the context of an increasingly flexible global capitalist economic system” (Anderson, 1999: 2). In other words, “Corporate Aboriginal Alliances” (Anderson, 1999: 97) can be forged in the recognition of Aboriginal land title. This idea would suggest that Settlement Land agreements in the Yukon reasonably constitute institutional structures that could bolster Aboriginal agency, where the UFA and individual SGYFN Final Agreements may possess features that incentivize SGYFNs to enter into partnerships with the private sector as a function of liberal market forces. This is not to say that the principles behind self-government and control over traditional lands can be exploited to serve outside interests. It means that Aboriginal development can be viewed as a self-perpetuating circle where improvements in “Self-Government” can lead to gains in “Control of Resources” that can increase “Self-Reliance” (Anderson, 1999: 12).

The literature on the growing prevalence of transnational energy corporations, or TNCs, especially those conducting operations in Central Asia and northern Africa, has argued that transit pipelines “became the central part of a framework for economic development and conflict resolution” and were essential in boosting the legitimacy of “cash-starved central governments” (Hill, 2004: 4). These models, however, have not yet seen rigorous applications to quasi-sovereign “sub-state” governments existing within colonial states. In relation to bordering processes, transit pipelines have been shown to empower weak governments to gain legitimacy and are viewed as a function of agent power within institutional structures interacting with market forces. Accordingly, the decision to permit Canadian energy development projects on Yukon Settlement Land will likely reflect what border theory identifies as the strength of economic incentives that lead to “market transactions and trade flows, as well as to movements of people, capital, and currencies (Brunet-Jailly, 2007: 351). Similar to the international level, the growth of TNCs has compelled some states to create new “sub-state borderings” that facilitate economic networks and spur prosperity and international cooperation (Diener and Hagen, 2012: 73). The void in the literature relating to bordering processes and supranational energy development projects has not yet acknowledged this application to quasi-sovereign governments existing within colonial states. Accordingly, the innovative concept of the SGYFN presents a blank canvas upon which to embed the contemporary literature on bordering processes, and the porosity of borders in a world transformed by the forces of globalization. Accordingly, the research undertaken for this project suggests that Yukon First Nations could partner with transnational energy companies to create “sub-state” porous Special Economic Zones (SEZs) to attract “foreign” investment and generate economic growth, all while fostering cooperation between First Nations communities and the Canadian nation-state (Diener and Hagen, 2012: 73).

## THE INCENTIVE MODEL: FINDING A WAY

Necessary pipelines and other energy infrastructure will likely traverse some of the eleven SGYFN territories when Arctic oil and gas deposits are tapped by the end of the 21st century. In appealing to the intent of land regulations, there are conflicting ideologies among First Nations communities in Canada regarding the prospect of energy development projects taking place on Indigenous land. At the core of this debate is the fact that some First Nations will exercise their right to permit pipeline construction on Settlement Land while others will strictly oppose it by exercising their right of ownership over the surface and subsurface. In referencing a current Canadian case study regarding these conflicting views among First Nations peoples, we can look to an ongoing dispute concerning pipeline construction in British Columbia’s interior as a point of reference for potential conflicts in the Yukon. Eleven proposed pipelines passing through BC’s interior (including the Enbridge Northern Gateway project that has since been rejected by the Trudeau government) has caused tense standoffs between First Nations clans and environmentalist activists occupying Wet’suwet’en traditional territory. As a result, energy companies in Canada have pre-emptively responded to “the rise of pipeline activism” or the “anti-petroleum movement” by meeting with the RCMP about their security concerns before the next pipeline might be approved in BC (Bakx, 2016). Although the standoffs on Wet’suwet’en territory have been largely peaceful, they have garnered international attention as a symbol of resistance to the corporate domination of marginalised Indigenous groups by “Big Oil”. Complicating matters is the fact that

although Wet'suwet'en bands are bound by ancestral ties, they remain divided over the prospect of natural resource and energy development on Wet'suwet'en territory. Of particular importance is that some bands actively support pipeline development projects in BC because energy projects will enable more individuals in their communities to participate in the wider economy:

We have the choice to either maintain the status quo in our community, keep things as they are, keep the social issues and people on high rates of income assistance, or we could look at this as an opportunity to move our nation forward. — Chief Karen Ogen, Broman Lake Indian Band, Wet'suwet'en. (Pablo, 2014)

In exercising their agency, pro-pipeline bands are appealing to the economic prospects that a partnership with a TNC or a consortium of energy companies would bring to their community. On the contrary, however, other Wet'suwet'en bands, such as the Unist'ot'en clan, have disputed the territory belonging to pro-pipeline clans and have claimed that the land belongs to them. Typically, pipeline opposed Indigenous groups such as the Unist'ot'en cite environmental hazards as the greatest concern relating to pipeline construction on Indigenous territory. As such, the Unist'ot'en have argued that proposed pipelines will primarily impact water quality, fish habitats, and wildlife abundance and that the potential risk of a rupture outweighs the suggested benefits (Office of the Wet'suwet'en, 2011). Members have also argued that it threatens their way of life, culture, and future, and have made conservationist statements arguing that “we cannot teach the history as it used to be; without the land, we cannot continue to live as we do today” (Office of the Wet'suwet'en, 2011). Although these justifiable objections are not rooted in formalized scientific risk assessments, they appeal to the notion that land rights and concern for the welfare of the land are the leading factors driving grievances with pipelines traversing Indigenous territory.

### **The Practice of Bordering**

The objections above underlie the fact that the Wet'suwet'en conflict embodies what is referred to as “the practice of bordering” that concerns how human beings organize space. This process of territorialisation involves the division of land between social entities and assigning specific symbolic meanings to those resulting spaces (Diener & Hagen, 2012: 59). In contrast with the jurisdictional conflicts between Wet'suwet'en First Nation clans in BC, Self-Governing Yukon First Nation communities have successfully established legal zones of territorial ownership, whereby these zones are enshrined in the Yukon Final agreements. However, it is likely in the Yukon, as with the Wet'suwet'en conflict in BC, that some SGYFNs will support pipeline development projects, while others will starkly oppose such projects taking place on Settlement Land. In essence, some Yukon First Nations will assign meanings to the land that value economic prosperity while others will assign meanings that value conservation of the land and the local environment. From a purely behavioural perspective, some will find economic incentives in Settlement Land agreements to permit pipeline construction, while others will find a basis in the aforementioned land regulations to oppose energy development projects.

Nevertheless, the original intent of the Yukon final agreements — to define the rights and responsibilities of SGYFNs in regard to the land — will remain steadfast. Consequently, these opposing views pose challenges for potential pipeline projects that will likely traverse

multiple SGYFN territories. This foreseeable duality in the Yukon will present the Government of Canada with an intensifying problem concerning the expeditious economic development of Canada's North as the Northwest Passage thaws, and northern energy development intensifies. At the core of the issue, pipeline opposed SGYFNs will create zones of severely inefficient project development, and hostilities or insurrections by aggrieved Indigenous clans could even threaten proposed or pre-existing pipeline infrastructure. As a result, pipeline decision-making processes "may be both lengthy and costly" due to a number of factors including "uncertainty with respect to Aboriginal rights and title claims" (Hinte, Gunton, and Day, 2007: 131). Thus, Indigenous land claims under the UFA will likely hinder expedient solutions to transfer energy resources from Canada's North for export to foreign markets, specifically to the lucrative and growing economies of Asia. Consequently, staunch opposition to proposed pipelines will necessitate redirecting projects around pipeline opposed territories that could cost unprecedented amounts in additional material and construction expenses. In most cases, redirection around entire territories would be time-consuming and severely cost inefficient.

This efficiency dilemma presents challenges to the Government of Canada for effectively regulating the delivery of public goods (fossil fuels) because natural resources are common goods (impure public goods), and according to the National Energy Board (NEB) of Canada, the delivery of public goods via pipelines is in the public interest and relates to a concept called "energy security", which will be discussed in detail in a forthcoming section. The NEB is an independent regulatory agency created by the Government of Canada in 1959 to "oversee international and interprovincial aspects of the oil, gas and electric utility industries" (National Energy Board website). The agency states "it is the responsibility of the National Energy Board to consider all aspects of the project in order to determine if the pipeline project is in the public interest" (Van Hinte, Gunton, & Day, 2007: 131). As a result, the development of pipeline projects by private companies is regulated by the Government of Canada in accordance with what the NEB determines is in the public interest. In considering all aspects of the project, this policy solution holds that the NEB will acknowledge that borders can reflect "the strength of incentives" to individuals that lead to market transactions and the movement of capital (Brunet-Jailly, 2007: 351). Pipelines can mutually benefit SGYFNs and Canada's public interest due to the fact that economic incentives have been argued to create porosity within borderland communities, and that Canada relies heavily on the industrialization of natural resources for international trade. Accordingly, the very nature of borders between SGYFN territory, the Yukon, and Canada — as artificial barriers to the achievements and goals of human beings — possess the vital capacity for accommodating porosity. In overcoming the hurdle of conflicting values among Yukon First Nations, it is essential to emphasize the practicality of economic incentives — specifically, those contained within land agreements under the Yukon's UFA — and how pipeline construction can benefit SGYFN's endeavour towards becoming truly self-sufficient self-governments. As stated in the background to this policy solution, the UFA and respective Final Agreements represent institutional regulations that offer pathways for capitalizing on the market incentives offered by pipeline development projects traversing Indigenous borders in remote regions of Canada. In essence, the UFA mechanizes an economic incentive; it is the amalgamation of institutional and fiduciary regulations negotiated by the Government of Canada, the Yukon Government, and the eleven SGYFNs.

## The UFA and SGYFNs

As previously discussed, Indigenous territory in the Yukon is comprised of 11 recognized self-governments, termed “Self-Governing Yukon First Nations” or SGYFNs. Yukon land claims within SGYFN territory are enshrined by the UFA, which was signed by the Government of Canada, the Government of the Yukon, and the Council for Yukon Indians in 1993, where 11 out of 14 SGYFNs signed on (INAC, 2008). The UFA “forms the basis for the negotiation of each First Nation’s Final Agreement”, where the Final Agreement(s) provide for the negotiation of self-government agreements and allow SGYFNs to make decisions in relation to their lands, resources, governments, and programs (INAC, 2008: Introduction). In the Yukon, SGYFN territory has been negotiated through land claims, and those claims are enshrined by the Final Agreement(s) which entail the rights and responsibilities of various interested parties concerned with “Settlement Land.” The parties include the respective SGYFN, the Yukon provincial government, and the Government of Canada. “Settlement Land” is defined as land that does not belong to the Yukon province or Canada. The definition of “Settlement Land” came to fruition as a result of the landmark *Calder* decision, a federal policy that was adopted in 1973. It was a ruling that essentially stated that

[t]he Supreme Court of Canada in 1973 first recognized land rights based on Aboriginal title [and that] Aboriginal title is based on an Aboriginal group’s traditional use and occupancy of that land. (Anderson, 1999: 57)

As a result of the *Calder* decision, each Yukon First Nation is “owner of the Settlement Land” and has a series of powers regarding the land’s management (UFA, s. 5.5.0). Accordingly, Settlement Land falls under two designations in the Yukon and is defined in the UFA as “Category A Settlement Land, Category B Settlement Land or Fee Simple Land” (UFA, chap. 1). In relation to Rights of Access and Mineral Rights to the land, Category A acknowledges that the First Nation has ownership of surface and the subsurface, while Category B Settlement acknowledges that the First Nation has ownership of the surface but does not have ownership of Mines and Minerals nor the Right to Work Mines and Minerals. In distinguishing Category B Settlement Land from Category A, “The Government of Yukon retains administration and control of the subsurface” in Category B designations (Yukon Government, 2009: 2). In the Yukon, two-thirds of these lands are Category A Settlement Lands, and the remaining third are Category B Settlement Lands (Yukon Government, 2013). However, both designations of Settlement Land pose significant problems for northern development by private interests on behalf of the National Energy Board (NEB) and the Government of Canada. First, although Category B Settlement Land grants the Yukon Government “administration and control of the subsurface,” Section 18.6.0 of the UFA states that Access to Settlement Land for an Existing Mineral Right has a number of “Conditions of Access.” Primarily, the UFA establishes Rights of Access that are subject to the following conditions: there should be no significant damage to the Settlement Land or improvements on the Settlement Land (s. 18.6.1.1), and no permanent structures can be erected on the settlement land (s. 18.6.1.3). This requirement would conform to the Category B Settlement Land designation stating that the First Nation or SGYFN owns the surface land. As a result, any form of pipeline development without the proper/official consent of the SGYFN would be in direct violation of the UFA.

Consequently, if an SGYFN refuses pipeline construction, there are no explicit lawful avenues contained in the UFA/individual SGYFN Final Agreements to circumvent the legal restrictions regarding access to Settlement Land. Accordingly, solutions must appeal to the agreed-to principles contained in the UFA/self-government Final Agreements concerning Settlement Land and the rights and responsibilities of Yukon First Nation's self-government and their legislated relationship with the province of Yukon and the Canadian Federal Government. This investigation reveals that solutions can be found within the UFA and the Final Agreements of Yukon First Nation self-governments. These solutions constitute lawful courses of action to incentivize pipeline development on reluctant SGYFN Settlement Land by harnessing the rights and responsibilities of Yukon First Nations contained within the UFA. Notably, SGYFNs possess the rights to taxation.

## **THE INCENTIVE MODEL: FUNDING THE RIGHT OF SELF-DETERMINATION**

### **The Power to Levy Taxes: A Lawful Solution to an Enduring Problem**

Contained within the UFA and in the Final Agreements for individual SGYFNs is the power of these self-governments to tax Settlement Land. Self-governing Yukon First Nations share taxation powers with the Government of Yukon and the Government of Canada and can tax interests on Settlement Land (INAC, 2008: 15). According to the UFA, Yukon Indian Self-Government Settlement Land is "subject to the power of the Yukon First Nation to levy and collect fees for the use or occupation of Settlement Land, including property taxes" (s. 21.2.1). Importantly, the UFA and underlying Final Agreements also obligate SGYFNs to assume responsibility for the delivery of local government services (INAC, 2008: 13). Accordingly, SGYFNs receive financial assistance from the federal government and the Yukon provincial government to support the provision of these services to their respective communities. Financial assistance comes in the form of government transfer payments to help SGYFNs fulfill these responsibilities. As part of individual self-government Final Agreements, there are Programs and Services Transfer Agreements (PSTAs) and Self-Government Financial Agreements that structure Provincial and Federal financial assistance to SGYFNs.

PSTAs "enable self-governing Yukon First Nations to assume responsibility for federal or territorial program areas falling within the SGYFNs law-making authority" (INAC, 2008: 13). PSTAs effectively transfer and legislate the authority for providing services such as health, housing, and social services from the federal government to the SGYFN. In conjunction with PSTAs, Self-Government Financial Transfer Agreements provide the mechanism for funding the programs and services under the PSTA's legislative mandate. Self-Government Financial Transfer Agreements assume that financing for SGYFNs is a shared responsibility among federal, territorial, and self-governing Yukon First Nation Governments, where these agreements are the primary funding instrument between the Government of Canada and SGYFNs, and "provide the financial mechanism to flow funding to SGYFNs" (INAC, 2008: 12). The objective of self-government transfer agreements is to provide the SGYFN with resources to enable it to provide public services

for which it is responsible at levels “reasonably comparable to those offered elsewhere in the Yukon, at reasonably comparable levels of taxation” (INAC, 2008: 14). In 2014–2015, the Ministry of Indian Affairs and Northern Development Canada allocated \$12,489,992 in transfer payments from PSTAs to the 11 SGYFNs. A “transfer payment” was defined as a “grant, contribution or other payment made by the Government for which no goods or services are received” (Government of Canada website). Of particular significance is that “a self-government financial transfer agreement considers the revenue capacity of the SGYFN and reduces Government of Canada funding to the SGYFN according to an agreed-to formula” (INAC, 2008: 15). Notwithstanding Selkirk First Nation, who was granted \$9,212,530 in 2014–2015, on average a Yukon First Nation received approximately \$380,036 in federal transfer payments to fund programs and services previously managed by other governments.

### Historical Convention vs. Present Need

To assess the utility of this transfer funding, \$380,036 spread over a fiscal year would amount to \$31,669/month for previously administered INAC/AANDC programs in health, social services, and housing. When accounting for salaries, equipment, and administration costs, it becomes apparent that PSTAs and Financial Transfer Agreements provide a parsimonious bare minimum to assist Yukon First Nations in maintaining even mediocre programs and services that are essential to sustain their respective communities. Unfortunately, the rationale behind the Government of Canada’s decision to parsimoniously allocate funding is based on historical convention rather than present need. The historical approach to SGYFN funding “assumes that programs and services for Yukon First Nations were adequately funded to meet their needs when they were under the *Indian Act*,” legislation denounced as an exercise in colonial control that takes the form of civilized oppression. For the Government of Canada, however, it would follow that Yukon First Nations receive the same amount they received under the Indian Act (adjusted for inflation and population shifts) and thus, “INAC will not allow the transfer of programs and services to be an occasion for what it terms *program enrichment*” (INAC, 2008: 15). On the contrary, however, Yukon First Nations have rejected this rationale by stating that the appropriate level of funding is not being met to achieve reasonable goals in each program and service area and “that historical levels of funding do not provide for this” (INAC, 2008: 15). Other modes of revenue generation to enrich social programs and services, therefore, would present an opportunity to greatly increase the ability of Yukon First Nations to solve problems related to health, housing, and other social issues that are markedly worse and cause them to suffer disproportionately higher rates of destitution than non-native communities in Canada.

Essentially, in moving towards self-sufficient self-governance, Yukon First Nations and other Indigenous self-governments in Canada can only enjoy the right to self-determination inasmuch as *there are the means to fund it*. Accordingly, the historical limits placed on government funding present a compelling case for economic development (Dacks, 2004: 688). It is true that the fiscal capacity of Yukon First Nations “is directly related to their tax base” and is a critical determinant of their level of self-determination (Dacks, 2004: 688). Economic self-sufficiency, thus, is viewed as being critically important to self government. This sentiment is echoed by former Grand Chief Ovide Mercredi’s statement that “If we gain [political] power for the community but we don’t get the economy, we have power that cannot exercise itself” (Anderson, 1999: 11). Therefore, exercising the right to levy taxes on

Settlement Land unlocks the potential for economic growth and autonomy when pipeline taxation becomes the basis for economic development. In addition, revenue generated from taxation would assist SGYFNs in meeting their mandated fiduciary obligations outlined in the UFA.

Since financing self-government is a shared responsibility among the federal, territorial, and self-governing Yukon First Nation Governments (INAC, 2008: 13), the Self-Government Financial Transfer Agreements are the primary funding instrument between the Government of Canada and SGYFNs and provide the financial mechanism to flow funding to SGYFNs. The mechanism assists land claim implementation funding: funding provided toward the cost of operating self-government institutions, and the allocation of direct and indirect costs to SGYFNs for programs and services previously managed, administered, or delivered by other governments (INAC, 2008: 13). According to these agreements, “the objective of self-government financial transfer agreements is to provide the SGYFN with resources to enable it to provide public services for which it is responsible at levels reasonably comparable to those offered elsewhere in the Yukon, at reasonably comparable levels of taxation” (INAC, 2008: 13). Therefore, in ensuring the most efficient and effective use of those transferred financial resources from Canadian taxpayers the Government of Canada believes that “wherever feasible, Aboriginal governments and institutions should develop their own sources of revenue in order to reduce reliance, over time, on transfers from other governments” (INAC, 2010). Thus, self-government financial transfer agreements incorporate a principle of SGYFN fiscal responsibility and cost-sharing. Of significant importance to the incentive model comprising the core of this policy solution is that the Self-Government Financial Transfer Agreement has a built-in mechanism that considers the revenue capacity of the SGYFN and *reduces the Government of Canada’s funding to the SGYFN according to an agreed-to formula* (INAC, 2008: 15). Accordingly, a Yukon First Nation is legally obliged to take opportunities “wherever feasible” to generate revenue towards becoming less reliant on provincial and federal transfer payments; and when failing to utilize the capacity to do so, has agreed to have its funding adjusted accordingly. In pursuing innovative avenues for revenue generation, Yukon First Nations could exercise their legal right to tax Settlement Land and apply that to “foreign” entities seeking to conduct activities on that land. The taxation of foreign interests is inherently a revenue generating activity; it is the logical extension of being in close proximity to a multi-billion dollar industry. Private pipeline routes in the North, therefore, represent a fiscal opportunity to meet this mandated responsibility effectively.

### **Transit Fees: A Model from Developing Countries**

The practice of charging fees or taxes on “foreign” energy companies’ activities on the sovereign territory is a well-established method for spurring economic growth in developing countries. In particular, this arrangement has been an ongoing phenomenon in the transit of natural resources throughout Central Asia and Northern Africa. In the regions surrounding the Caspian Sea, transit pipelines “became the central part of a framework for economic development, and conflict resolution in the Caucasus [where energy] revenues and transit fees were essential in boosting the coffers and legitimacy of cash-starved [...] central governments” (Hill, 2004: 4). Additionally, local communities were argued to reap the [contested] “trickle-down” economic benefits that created energy related service sector jobs and overall foreign investment (Hill, 2004: 20). Transit “fees” exacted on foreign pipeline infrastructure



were defined as “a reward to the transit country for sacrificing its sovereignty” (Omonbude, 2013: 6). These rewards came in the form of diverse contract formats regulating various transit fee arrangements. Various forms include “Fee per Barrel” contracts (a toll based on physical production); production-sharing contracts, in which the host country receives a reward in the form of the physical oil produced (as seen in the country of Georgia); and royalty contracts, in which the foreign company “receives a title to the property (resource) and pays a stipulated percentage of the value of production to the host country (Blitzer et al., 1985: 300).

Since weak First Nation self-governments may not possess the technology, funding and human capital to harvest the financial rewards from pipelines traversing Settlement Land, investment from “foreign” energy companies could be a gateway to self-sufficiency for many, if not all, financially dependent Yukon First Nations. The “ground-breaking” 1977 document, “Together Today for our Children Tomorrow”, spawned the negotiations for SGYFNs and acknowledged the limitations underlying economic development in the north. As such, the appeal implored the Canadian Government to consider outsourcing expertise by arguing:

Many successful companies and corporations are controlled by people who are not experts. They hire experts. Even the Government sometimes hires experts to advise them. The people in control have to separate good advice from bad advice, then make the right decisions. This we can do. (Yukon Indian People, 1977: 22)

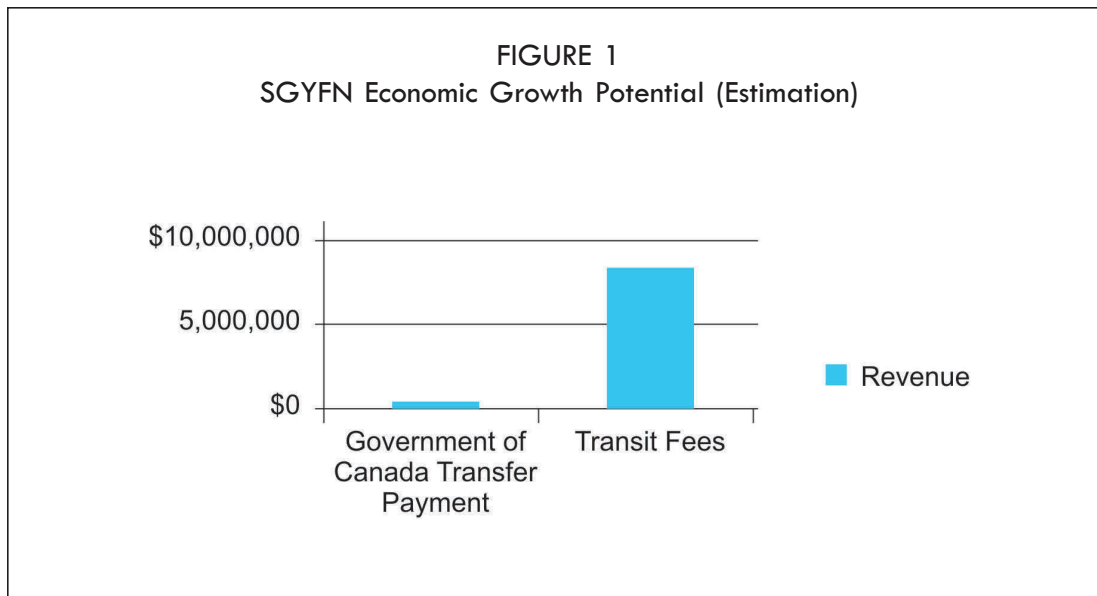
In regard to making the right decisions, for example, according to the aforementioned “Fee per Barrel” concessionary agreement, an SGYFN could grant an energy company the right to operate on the land if they pay a stipulated amount of the production revenue (% per barrel) to the self-government. Here, the company would assume all of the risks/returns for the transfer of raw energy while being taxed to assume those risks/returns (Blitzer et al., 1985: 302). Thus, a reluctant SGYFN could consent to “foreign” pipeline construction on Category A or Category B Settlement Land, which could then be used to levy transit fees/taxes on the production income from private pipeline companies’ extraction projects. The following section outlines a hypothetical growth projection if an SGYFN entered a “Fee per Barrel” concessionary agreement with a “foreign” energy company.

Take, for example, the Norman Wells Pipeline that runs from Norman Wells, Northwest Territories to Edmonton, Alberta. According to Enbridge Company, the subsurface pipeline has a capacity to produce 50,000 barrels per day. In making the simplifying assumption that the pipeline would pump at full capacity for 365 days, the Norman Wells Pipeline could produce 18,250,000 taxable barrels in a year. If a Yukon First Nation self-government were to negotiate US\$0.46 per barrel, then the transit revenue generated would amount to US\$8,395,000 per year. (Note: This is a rough approximation based on federal assistance alone.) When compared to the current income from federal transfer payments, there is a phenomenal increase in revenue.

Potential Percentage Growth Rate with Transit Fees

Potential Percentage Growth Rate (PR)

$$= \frac{\text{Total Potential Revenue} - \text{Total Revenue 2015}}{\text{Total Revenue 2015}} \times 100$$



$$= \frac{8,395,000 - 380,036}{380,036} \times 100$$

$$= 2,109\% \text{ increase in revenue (based on Federal assistance revenue alone)}$$

This enormous percentage increase (2,109 percent) in revenue would represent an approximately \$8 million increase from 2014–2015 levels (based on purely federal assistance alone). Revenue figures approximating this amount could theoretically solve the problem of underfunding from provincial and federal governments, and provide the much-needed levels of funding for “program enrichment” in order to far surpass reasonable goals for programs and services areas. In theory, this could increase the social well-being of Yukon First Nations communities, assuming the revenue is distributed efficaciously and without corruption. Additionally, this magnitude of revenue could enable SGYFNs to enjoy a level of self-determination liberated from the constraining conditions imposed by relying on underfunded federal and provincial transfer payments. Given that some pro-pipeline First Nation self-governments would accept such a contract, in referencing the Wet’suwet’en dispute in BC, those First Nations opposed to the pipeline are also legally obliged to take advantage of this economic opportunity towards becoming a self-sufficient self-government. Under the Umbrella Final Agreement, SGYFNs could use the revenue generated from transit taxes/fees to provide public services for their communities *at levels comparable to those offered elsewhere and at comparable levels of taxation* (INAC, 2008: 14). In other words, pipeline opposed SGYFNs would be incentivized to provide at similar levels as pro-pipeline Yukon First Nation communities. In accordance with the Government of Canada’s fiduciary position, this incentive would enable Indigenous self-governments to develop their own sources of revenue to reduce their reliance on transfer payments (e.g., PSTAs and Financial Transfer Agreements) from the Government of Canada and Government of Yukon. However, the question remains whether transit pipelines will be a welcomed source of revenue.

## CONCLUDING REMARKS

This policy paper has investigated Yukon land regulations and extrapolated contemporary border theory to a uniquely Canadian context. In the analysis, it was found that the Yukon Final Agreements contain incentives that would encourage SGYFNs to consent to pipeline construction on Settlement Land. In doing so, it was determined that the Final Agreements represent institutional regulations that enhance a number of social processes. These processes were argued to integrate the SGYFN-Canadian borderland through market forces, which include flows of capital, commodities and people. Likewise, the policy solution integrated concessionary revenue generation models from developing countries in Central Asia and northern Africa and applied them to the First Nations-Canadian context. It was thus determined that globalization and the effects TNCs have on border porosity in developing countries can also strengthen the agency of sub-state quasi-sovereign Indigenous self-governments in Canada. In essence, it was determined that transnational market forces incentivize positive agent action in response to energy development projects on sanctioned territory; specifically, by levying host governments' ability to tax foreign interests. As such, concessionary agreements signed with TNCs were found to be the keystone for creating border porosity in the northern Canadian context. Concessionary agreements ease border tensions by encouraging cooperative flows of capital between Canada and First Nations communities that spur shared economic prosperity. Overall, the broader contribution the investigation makes to border theory is that quasi-sovereign governments existing within established state entities can also be the primary objects of analysis for analyzing relations between human organizations. SGYFNs, by virtue of the Final Agreements, possess an inherent duality that the traditional paradigm of Westphalian sovereignty cannot incorporate. As a result, the investigation advocated that borders are no longer a wholly Westphalian enterprise; they are determined by human agency interacting within institutional structures rather than stagnant, isolated, and immutable conceptualizations of space organization.

Of particular importance is the fact that the incentive model for revenue generation is crucial for transcending traditional views of space organization due to the ultimate goal of self-sufficient Self-Government for Yukon First Nations. While much of the negative rhetoric on pipelines has unfairly lambasted them as being the antithesis to First Nations' capacity for agency, the opposite, in fact, was found to be true. Pipeline development projects instead offer enormous economic benefits for funding self-governments in making the transition from being primarily dependent on federal assistance to being truly liberated from constraining and historically oppressive levels of funding for community programs and services. Accordingly, the investigation supports the creation of a homogenous, cross-borderland region that is defined by a shared interest in the generation of revenue flows to maintain Canada's energy security priorities, and lift Yukon First Nations onto a bona fide level of self-determination within the globalized liberal economy.

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# *Price of the Soil<sup>1</sup>: 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

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<sup>1</sup> 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).<sup>2</sup>
- 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

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<sup>2</sup> 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”,<sup>3</sup> 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”.<sup>4</sup> 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).

<sup>3</sup> 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.

<sup>4</sup> 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*.<sup>5</sup> 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

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<sup>5</sup> 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.<sup>6</sup> 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

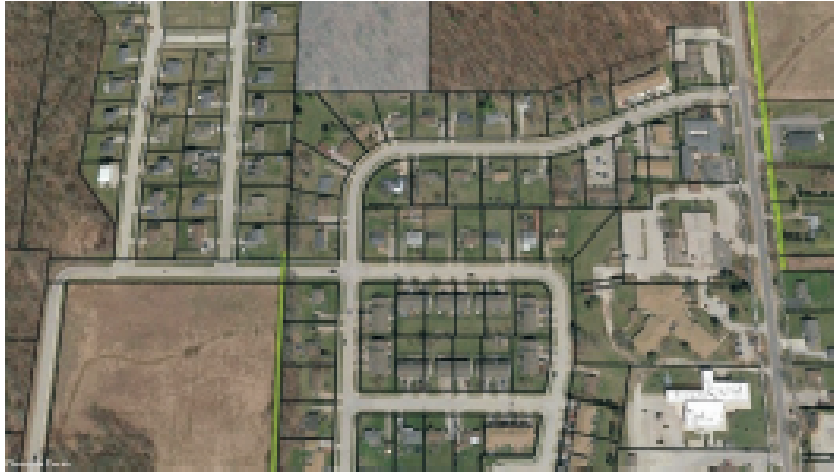
To this day, the most common legal interest under the *Indian Act* in Indigenous communities in Canada is a CP. It is generally considered the strongest form of property right that a First Nation member can hold in an Indian Reserve: it can be subdivided, sold (to another First Nation member), leased 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).

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<sup>6</sup> 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.<sup>7</sup> 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

<sup>7</sup> 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).<sup>8</sup> 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.<sup>9</sup>
- 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).

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

<sup>9</sup> 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, Housing<sup>10</sup> 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.

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<sup>10</sup> 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 <sup>†</sup>	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.<sup>11</sup> 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).<sup>12</sup>

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<sup>11</sup> 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).

<sup>12</sup> 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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# E-Commerce on Reserve: Opportunities, Challenges, and Taxation

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## ABSTRACT

This paper provides an overview of the law relating to the taxation of income stemming from e-commerce<sup>2</sup> on Indian<sup>3</sup> reserves. The paper seeks to identify the opportunities and limitations for e-commerce on reserve, including the specific tax implications<sup>4</sup> for bands, corporations, and individuals, and the practical barriers for Indigenous communities that wish to engage in e-commerce, such as infrastructure and capacity gaps.

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Special thanks to Jason M. Clayards at Kanuka Thuringer LLP, who provided guidance, commentary, and insight throughout writing the paper.

This paper does not represent the views of Kanuka Thuringer LLP or the University of Ottawa, nor is it intended to serve as legal advice. The paper merely aims to present a coherent legal theory for the intersection of E-Commerce and Aboriginal Business Law.

<sup>2</sup> This paper often refers to e-commerce. E-commerce can be a nebulous term, with a broad or narrow definition depending on the context. For the purposes of this paper, e-commerce refers to commerce conducted over the Internet. Examples of this commerce include online shopping, data storage, and online marketing. The discussion of e-commerce in this article does not include electronic banking, currency exchanges, or using cryptocurrencies such as Bitcoin. While these topics are ripe for discussion and may have potential for a nuanced interaction with Indigenous communities in Canada, they have their own potentials and peculiarities that are beyond the current scope of this paper.

<sup>3</sup> This paper frequently uses the term “Indian.” This term is used because it has legal meaning in the statutes and constitution of Canada. It is important to recognize that many Indigenous peoples, nations, and organizations do not use this term, and many find it offensive. In all other instances, this paper will implement the terms used by the source material. See Chelsea Vowel, *Indigenous Writes* (Winnipeg: High Water Press 2016) at chapter 1.

<sup>4</sup> This paper will focus on income tax and avoid a discussion of sales tax. While sales tax is an important concern for e-commerce on reserve and has significant potential for discussion, this paper avoids an overly broad approach by focusing on income taxes.

## INTRODUCTION

The past decade has seen a resurgence in Indigenous political identity and a broader awareness of the economic and institutional structures that prevent lasting economic growth for Canadian Indigenous communities. Simultaneously, e-commerce has become a consistently greater share of the global marketplace, and Canada in particular has proved to be fertile ground for e-commerce businesses. Numerous businesses have cropped up in Canada's major cities, offering graphics design, online retail platforms, and more. These businesses have global clout, and Canada is building a reputation for supplying skilled labour to the tech industry, as well as providing a reliable supply of innovative talent. As these business opportunities grow and become a larger part of the Canadian economy, there is significant room for Indigenous communities to join the digital marketplace. This paper seeks to explore whether Indigenous businesses have a competitive advantage through tax exemptions available under subsection 2(1) of the *Indian Act* and section 2 of the *Income Tax Act*, as well as providing a general overview of the practical benefits and obstructions that may face Indigenous businesses looking for opportunities in the e-commerce sector.

The paper begins by defining the scope of the discussion and the opportunities for e-commerce to benefit Indigenous communities. These are followed by a short discussion of how the federal and provincial governments regulate the Internet and tax e-commerce, and an overview of the potential taxation exemptions available to Indigenous persons, bands, and corporations under the *Indian Act*, the *Charter of Rights and Freedoms* (s. 35), and the *Income Tax Act*. The paper then turns to a practical discussion of how those tax exemptions might be applied to e-commerce taking place on reserve and what barriers exist that may prevent Indigenous communities from taking full advantage of e-commerce. The paper concludes with a summarizing discussion.

## THE POTENTIAL OF E-COMMERCE

The economic frustrations of Indigenous communities across Canada have received considerable attention in recent years as Indigenous groups continue to challenge the institutional failures that have led to poverty and systemic disadvantage in their communities. Many of these discussions have focused on the economic aspirations of Indigenous communities, noting the loss of traditional economies (Natcher, 2016), the opportunities and pitfalls of band-owned businesses (Anderson, Dana, & Dana, 2006), and the relationship between Indigenous communities and resource extraction (Durnik, 2008). Many initiatives focus on the special constitutional and legislative character of Canadian Indian Reserves, looking to replicate the success of Indigenous groups in the United States that have developed casinos, resorts, and other tourist attractions that would not be otherwise possible under state law (Hawk, 2015).

However, not all Indigenous groups can benefit from these initiatives, as many are highly situational, requiring access to tourist hotspots, low market saturation, and ease of transportation. Other opportunities, such as real estate and infrastructure development (Bickis, 2018), golf courses (Dakota Dune Golf Links), and resource extraction (Papillon & Rodon, 2017) are similarly situational, and often at the whim of large investors (Parlee, 2015). With many bands constrained by geographical location and low interest from investors, what options are available to bring sustained economic prosperity?

E-commerce offers a scalable alternative with limited initial capital requirements and fewer geographical requirements. On a small scale, e-commerce offers the opportunity for individuals to sell consumer goods, taking advantage of Canada's ever-more sophisticated transportation network and innovation in online retail. For example, using an online platform such as Shopify, an Inuit clothing designer can sell her products across Canada and abroad with fewer overheads and more exposure than she might receive with a traditional brick-and-mortar store (e.g., Victoria's Arctic Fashion). Similarly, a retailer like Native Northwest Canada that carries merchandise featuring art by First Nations and Native American artists can access markets across the globe. Many Indigenous individuals already operate online retail businesses, and the sector is growing (Van Der Linde, 2017).

At the furthest end of the scale, there may even be opportunities for contracting and subcontracting data storage. All Internet-based companies need safe and reliable data storage at competitive prices. The world's largest corporations pour billions of dollars into these services, with business analysts estimating that US \$18.2 billion was spent on data centres in 2017 (CRBE Group, 2017). Many Canadian companies, including Crown corporations such as SaskTel, offer these services to Canadian businesses (SaskTel, 2017), and there is a belief that Canadian data privacy laws offer more protection against corporate and government surveillance than their American counterparts (Bennett, Parsons, & Molnar, 2014). Because of concerns over data privacy, British Columbia requires that public sector data must be stored in Canada (*Freedom of Information and Protection of Privacy Act*, s. 30.1), creating a market for the safe and secure storage of public information.

## TAXATION OF E-COMMERCE

The federal government taxes income stemming from e-commerce wherever the recipient of that income is located, whether they are an individual or a corporation. This is the foundational principle of the *Income Tax Act* (s. 2) and is similarly applied at the provincial level — that is, if a business or individual carrying on e-commerce is registered or resident in Saskatchewan, they will pay income tax in Saskatchewan.

### Taxation of Indigenous Persons

The *Indian Act* is the central source of tax exemption for Status Indians, and contains the most important exemptions for the purposes of this paper. Specifically, these are sections 87(1), 89(1), and 90(1), which read:

**87(1)** 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.

**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.

**90(1)** For the purposes of sections 87 and 89, personal property that was

- (a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or

(b) given to Indians or to a band under a treaty or agreement between a band and Her Majesty,  
shall be deemed always to be situated on a reserve.

These sections have been interpreted to grant a tax exemption for property and income located on reserve, subject to a number of geographical and contextual factors. These factors were noted in the foundational case of *Williams v. Canada*, where the Supreme Court of Canada ruled that unemployment insurance benefits stemming from on-reserve employment could not be taxed. Because unemployment insurance benefits do not have a physical location, the Court found that it needed an analysis of where that income is located, otherwise known as a *situ* analysis, to determine where there is a connection between non-tangible property and a reserve.

In *Mitchell v. Peguis Indian Band* (hereinafter, *Mitchell*), Justice LaForest reflected on the purpose and justification of the *Indian Act* exemptions, noting that the exemption is not meant as an economic remedy but rather as a way to prevent alienation of that land by government or civil liability. This stems from the government's commitment to protect Indigenous peoples and has a basis in the Honour of the Crown (*Mitchell* at 133). Justice LaForest noted that while this may, in some circumstances, provide an economic benefit to Indigenous persons and communities, an economic benefit is not the direct intention of the provisions and should not be characterized as such (*Mitchell* at 133).

Subsequent cases have made a distinction between debtor and creditors, holding that the purpose of the act only protects against seizure from creditors and does not extend to creditors. In *Taylor's Towing v. Intact Insurance Company*, the Ontario Court of Appeal found that exemptions under section 89(1) did not protect a towing agency located on reserve from returning vehicles that had been ordered released in Small Claims Court. Similarly, in *Mohawk Council of Akwesasne v. Toews*, the Federal Court found that the section 89(1) exemptions did not prevent the seizure of vehicles under section 135 of the *Customs Act* (s. 135). These cases further highlight the purpose of the *Indian Act* exemptions as a method to prevent erosion of reserve property through taxation and lending, and not as armour against other legal mechanisms.

The test in *Williams* acknowledges that these highly contextual issues would need to be resolved on a case-by-case basis. Justice Gonthier identified a two-step process to identify the *situ* of the property. The first step is to determine all connecting factors that may be relevant. The second step is to analyze those factors and determine how each should be weighed in light of three considerations — the purpose of the *Indian Act*, the type of property in question, and the nature of the taxation of that property. When testing these factors and applying weight to them, the question for the Court to ask is, “whether to tax that form of property in that manner would amount to the erosion of the entitlement of the Indian *qua* Indian on a reserve.” In conclusion, the Court found that because the employment activity took place on reserve and the insurance benefits were received on reserve, the benefits were exempt from taxation.

Subsequent cases sought to clarify the importance of this test and how to balance it, with special emphasis on the location of the income and the individual. In *Recalma v. Canada* (hereinafter, *Recalma*), the Canadian Tax Court found that investment income from investments situated off the reserve in the broader Canadian economy was subject to taxation, even if the individual benefiting from that income was living on the reserve. The justification for this ruling was that the commercial mainstream nature of investments was not



adequately relevant to the Indigenous way of life on the reserve, and a number of subsequent cases followed this analysis.<sup>5</sup>

This analysis changed in *Bastien Estate v. Canada* (hereinafter, “*Bastien*”), where the Supreme Court directed the case law away from *Recalma* and upheld the factors outlined in *Williams* by providing additional interpretation for how the factors must be weighed against one another. The Supreme Court reiterated that while it was important to uphold the purpose of the exemption (as outlined in *Mitchell*), an overly purposive approach should not be ignorant of the express language of the provision (para. 27). The Court noted that focusing on the “commercial mainstream” as a method of weighing the factors is often inappropriate, as it may set up a false opposition between commercial activities on and off reserve (para. 56). The Court underlined that the nature of the economic activity should not outweigh the connection between those activities and the reserve, and found that investment income connected with a reserve is exempt from taxation (para. 63).

Released concurrently with *Bastien Estate* was *Dubé v. Canada* (hereinafter, *Dubé*), providing the Supreme Court with the opportunity to apply and comment on their analysis in *Bastien* and *Williams*. In *Dubé*, the Supreme Court was tasked with determining the location of income for the purposes of taxation, though in this scenario the income came from a series of contracts formed on the reserve for transportation services delivered off the reserve. Income from these contracts was invested through term deposits in a financial institution located on the reserve; however, the funds were not spent on the reserve, and Mr. Dubé did not live on the reserve.

Surveying previous case law, the Supreme Court noted that the location of the individual collecting income is of minimal importance to the analysis, and that the connection between an income and a reserve does not require that the individual belong to that particular reserve (para. 18). Recalling the analysis developed in *Bastien Estate* to determine if the appellant’s property was situated on a reserve, the Court strongly emphasized the context of the investments. The Court noted that because of the nature of financial investments, and the fact that Mr. Dubé’s own reserve did not have an institution where Mr. Dubé could invest his income, less emphasis should be placed on the connection between the place of Mr. Dubé’s residence and the place of his financial investments (para. 21).

In regard to the importance of how Mr. Dubé earned the money he invested, the Supreme Court noted a number of important differences between the investment income earned by Mr. Dubé and the unemployment insurance benefits at issue in *Williams*. First, the income generated by Mr. Dubé was created through contracts and services provided, fundamentally different than the unemployment insurance benefits in *Williams*. Secondly, the Court noted that there should be no connection between how income is generated and how that income is used for further income afterwards, as it could open the door to exempting the tax of any and all investment income previously earned on reserve, no matter where it is invested. Third, the Court also noted that focusing on how the money was made and where it was spent was blinding the Court to the key issues — where the contract of investment was entered into (on the reserve), where that investment was made (on the reserve), and where the financial institute was located (on reserve) (paras. 28–30). Finally, the Court noted that where the income is spent should have no relevance to its taxation (para. 31).

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<sup>5</sup> *Canada v. Folster*, 1997 CanLII 6344 (FCA), [1997] 3 F.C. 269; *Mitchell*; *Southwind v. Canada*, 1998 CanLII 7300 (FCA), 156 D.L.R. (4th) 87, 1998 CanLII 7621 (FCA) [*Southwind*].

With these issues in mind, the Court found a strong connection between the investment income and the reserve it was situated on, ruling that the appellant could benefit from the tax exemption (para. 32).

### **Taxation of Indian Bands**

Alongside Indigenous individuals, Indian Bands are also exempt from income taxes. This exemption comes both from the *Indian Act* and from the principle that an Indian Band is analogous to a municipality, and therefore cannot be taxed under the *Income Tax Act*.

The language of sections 87, 89, and 90 of the *Indian Act* all specifically include Bands alongside individuals in their text, affording Bands all the same exemptions and restrictions that the law applies to individuals.

Under section 149(1)(c) of the *Income Tax Act*, Bands are considered municipalities and are exempt from income taxes. This had been implied by the Supreme Court of Canada (*Musqueam*, para. 48), and has been confirmed as policy by the Canada Revenue Agency in a 2016 letter, noting that because the *Indian Act* permits Bands to levy taxes and create bylaws, they are considered to be public bodies performing a function of government and therefore exempt from taxation. This applies to all bands created under the *Indian Act* (Merrigan, 2016), but it is uncertain that it applies to bands that are not administered by the *Indian Act*, and it is doubtful that it applies to broader entities of self-governance, such as tribal associations. A full list of all Bands and Indigenous political entities that are tax exempt and performing a function of government is publicly listed on the Canada Revenue Agency website (hereinafter, “Revenue Canada List”).

While the 149(1)(c) exemption may be unnecessary in light of the exemptions found under the *Indian Act*, they may come into play in situations when determining if a band-owned corporation is exempt from taxation under section 149(1)(d.5) of the *Income Tax Act* (as described below), in situations where a band has waived its *Indian Act* exemption through an agreement with the federal government (*Nisga’a Final Agreement Act*, s. 16), or situations where a Band is not governed by the *Indian Act* but is nonetheless recognized by Revenue Canada as performing a function of government (see *Revenue Canada List* of municipalities, which includes a number of Métis settlements, such as the Buffalo Lake Métis settlement).

### **TAXATION OF CORPORATIONS ON RESERVE**

Under very specific circumstances, corporations based on reserve may gain a tax exemption. This exemption does not stem from the *Indian Act* and is instead drawn from the Band’s status as a municipality under the *Income Tax Act*.

A business incorporated by an Indigenous person does not become an Indigenous person — the corporation gains no special rights and is not exempt from income taxes.<sup>6</sup> Similarly, a corporation created by a Band does not gain the benefits of the band’s tax exemption under the *Indian Act*. In *R. v. Kinookimaw Beach Associations* (hereinafter, *Kinookimaw*

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<sup>6</sup> Reference re: *Constitutional Questions Act*, 1981 ABCA 316 (CanLII) at para. 48, 130 DLR (3d) 636; [1982] 1 WWR 302; 35 AR 412; *British Columbia (Assessor Of Area #25 Northwest/Prince Rupert) v. N & V Johnson Services Ltd.*, 1990 CanLII 240 (BC CA), 73 DLR (4th) 170; [1991] 1 WWR 527.

*Beach*), a group of seven First Nations collaborated to form a corporation for the purposes of developing a portion of Indian Reservation 80A. When the corporation purchased assets, the Government of Saskatchewan levied a tax under the *Education and Health Tax Act*. The Bands refused to pay, arguing that they were exempt under section 87 of the *Indian Act*. Though the Bands were successful at the Court of Queen's Bench in *Kinookimaw Beach Association v. Board of Review Commissioners*, the Saskatchewan Court of Appeal found that a corporation incorporated by a group of seven Indian Bands still had to pay provincial taxes associated with purchasing reserve property for the development of a resort. The Court of Appeal wrote:

To grant to the association the exemption from taxation provided for in s. 87 of the *Indian Act* would be to destroy the legal obligations of the association as an independent corporate entity and to determine its obligations by the character of its shareholders. (*Kinookimaw Beach*, para. 12)

However, though a Band-owned corporation is unable to gain a tax exemption through the *Indian Act*, a corporation wholly owned by the Band or owned in partnership with the Crown may be exempt from taxation through section 149(1)(d.5) of the *Income Tax Act*, which provides a tax exemption for corporations owned by public bodies performing the function of government. The section states that:

(d.5) subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90 per cent of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10 per cent of its income for the period;

When placed in the context of an Indian Band, it appears that so long as the band maintains ownership of more than 90 per cent of the corporation, and constrains its income-generating activities to the boundaries of the reserve, it would be exempt from taxation. Sections 149(1.2) and (1.3) provide specificity to this provision regarding the income generating activity and the ownership and control of the corporation.

Put in the context of e-commerce, it would appear that section 149(1)(d.5) allows a Band-owned corporation to gain a tax exemption from e-commerce so long as the band's activities are constrained to the reserve. This would seem to be similar or analogous to the *Indian Act* exemptions provided to Bands themselves, and would rely on the income generating activities taking place on reserve. For many e-commerce ventures, where business does not need to move beyond the boundaries of the reserve, and where the staff, offices, servers, and other equipment do not need to leave the reserve, it would appear that the exemption would apply.

To determine whether the income generating activities take place within the specified boundary of a paragraph (d.5) exemption, the Tax Court of Canada has focused on the purpose of the exemption. Cases such as *Sakitawak Development Corporation v. The Queen* show that granting municipalities and analogous entities performing the function of government the ability to raise revenue through profitable ventures is an acceptable public purpose, and not contrary to the purpose of the *Act* (paras. 48 and 49). That being said, publications available from Revenue Canada and referenced by the Court in *Sakitawak* show that the intention of limiting municipal corporations to earning 90 per cent or more of their income

within a specific geographical area is intended to stop such corporations from taking unfair advantage of this tax exemption and gaining an unfair advantage over competitors in the broader marketplace (para. 39). In the case of e-commerce, where the diminished importance of geographical boundaries is a prominent feature of the industry, the Court may be more reluctant to find that the exemption applies.

## **BEYOND THE *INDIAN ACT* AND *INCOME TAX ACT***

A number of Treaty Nations have asserted that oral assurances made alongside Treaty negotiations include a general freedom from taxation.<sup>7</sup> So far, Canadian Courts have been unwilling to accept this interpretation. None of Canada's numbered treaties refer directly to taxation in their text, and the Courts have been unwilling to infer a tax exemption from other clauses. The case of *Benoit v. The Queen* found that oral assurances by the Treaty Commissioners when negotiating Treaty 8 towards a freedom from taxation refer only to taxation on reserve, and are covered adequately by the relevant sections of the *Indian Act*.

Similarly, cases such as *R v. Johnston* have found that the textual clauses in treaties may not be broadly interpreted to include taxation of future services. Specifically, references to a free medicine chest on each reserve for use by any Indian at the discretion of the Indian agent did not translate into a modern exemption from taxation for health purposes (para. 16).

Tax exemptions have also been claimed under section 35 of the *Canadian Charter of Rights and Freedoms*, which affirms existing and treaty rights held by the Aboriginal peoples of Canada. In *Mitchell v. MNR*, the Supreme Court of Canada noted that it may be possible for a tax exemption to exist as a component of a recognized Aboriginal or treaty right, but did not find one in the case at hand (para. 172).

### **Application of Tax Exemptions to E-Commerce on Reserve**

Do the tax exemptions under sections 87 to 90 of the *Indian Act* apply to e-commerce income located on reserve? The Courts have stressed that the application of tax exemptions under the *Indian Act* should be considered on a case-by-case basis, focusing on the factors connecting the income to the reserve. Since the reduction of the commercial mainstream component in *Bastien* and *Dubé*, the connecting factors test focuses on the two-step test discussed in *Dubé*, namely that the Court must first determine the relevant factors, and then weigh those factors in accordance with the purpose of the exemption, the type of property being exempted, and the nature of the taxation (*Bastien*, para. 2).

Determining the relevant factors concerning income derived from e-commerce is a vital step in assessing whether a tax exemption applies. While these factors must be identified on a case-by-case basis, it is worthwhile to predict what factors may feature prominently in the Court's analysis. Cases regarding other economic sectors such as *Dickie v. The Queen* (para. 29) have followed the list of factors identified in *Southwind* (para. 36), narrowing

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<sup>7</sup> Treaty Nations are Bands or other Indigenous political units that have signed a modern or historical treaty with the Crown.

their analysis to a select list. However, more recent jurisprudence from the Federal Court of Appeal, in *Kelly v. Canada* (hereinafter, *Kelly*), has discouraged this approach, finding that the practice of “listing factors in the abstract can no longer stand” (para. 45). Instead, the Federal Court of Appeal encouraged an approach that emphasizes *Bastien’s* focus on the nature of the property itself (para. 31, citing *Bastien* at para. 16).

In the absence of jurisprudence in the context of e-commerce, these factors cannot yet be determined with certainty. However, noting similarities between characteristics of e-commerce and other industries may shed light on the Court’s possible disposition. For example, the customers of e-commerce are likely to be located off the reserve, with the proprietor of that Internet business only managing contracts and storing or distributing goods. Analogously in *Dickie*, where the appellant ran slashing crews for oil and gas exploration, the Court found that though all the work was taking place off the reserve, the income was derived from contracts formed and managed on the reserve. The income from these contracts was therefore exempt from taxation (*Dickie*, para. 72). Similarly, in *Dubé*, though the income from the appellant’s investments was invested on reserve, the income from those investments was earned in the broader market located off the reserve. An Internet based business might similarly manage and distribute advertisements or websites that would be designed and published from the reserve, but would circulate in a broader global marketplace. It would therefore be reasonable to raise the place of business and the management of that business as factors, as well as location of customers, the location of employees, and the location of assets and equipment (see *Pilfold Estate v. Canada*).

Conceivably, other factors could be raised and discussed by the Court, such as the business’s connection with the reserve. Factors such as the “benefit to the reserve” were dismissed as inappropriate for consideration in *Dickie* (para. 69), yet may return if the Band itself is operating the business.

Overlaying the *Bastien* and *Dubé* analysis is the Court’s stated preference for interpreting statutory uncertainties in favour of Indigenous applicants. Courts have repeatedly stated that the statutes of Canada should be interpreted generously when they concern the treatment of Indigenous persons. At paragraph 25 of *Nowegijick v. The Queen*, the Supreme Court wrote that:

If the statute contains language which can reasonably be construed to confer tax exemption, that construction, in my view, is to be favoured over a more technical construction which might be available to deny exemption.

It only seems reasonable then that if there is some uncertainty about the location of income generated by e-commerce, the Court should lean towards permitting the exemption. Cases such as *Robertson v. The Queen* affirm that this approach, and perhaps the Supreme Court’s permissive approach to the taxation of investment income in *Dubé*, are strong indications that any uncertainties should be resolved in favour of an exemption.

Exemptions under paragraph 149(1)(d.5) of the *Income Tax Act* are more speculative. Similar to the *Indian Act* exemption, any business that is wholly owned by the Band or in partnership with one or more government entities and wishes to take advantage of a paragraph 149(1)(d.5) exemption under the *Income Tax Act* will need to prove that its income is being generated within the boundaries of the reserve. However, unlike the *Indian Act* exemption, this exemption is solely focused on geographic location and so far has received little treatment from the Court.

In *Sakitawak*, the only case that has dealt with a 149(1)(d.5) exemption, the Court did not consider the paragraph in the context of an *Indian Band*, did not consider it in the context of e-commerce, and made a decision based on other reasons. However, *Sakitawak* does point to the importance of geographical location, and the Court did emphasize the nature of the statute's purpose, which was to encourage and permit economic development in remote locations. This analysis may change when Indigenous issues are at play, but the statute's emphasis on geographical location and the Court's stated preference for a generous approach to statutory interpretation in *Nowegijick* could be favourable for Indigenous litigants.

### **Barriers to E-Commerce on Reserve**

Despite the opportunities for Indigenous communities who wish to foster e-commerce on their reserves, there are many challenges to overcome in realizing that goal. The largest challenges come from a lack of accessible education and a lack of reliable infrastructure, often brought on by the remote location of many reserves. For this reason, while some e-commerce opportunities, such as online retail or graphics design, may be available to the vast majority of reserves, opportunities with great infrastructure needs, such as data centres, may be more difficult to take advantage of.

Canada's digital divide has been noticed and studied for more than a decade now, and while the gap of Internet availability is closing due to its modern utility and ubiquity, it still stratifies Canadian society. Indigenous communities suffer this gap disproportionately, as many are located in rural or remote locations (McMahon et al., 2011: 4).

The quality of service provided by the infrastructure is critical to its ability to be utilized. While merely having access to the utility may provide participation and communication, slow Internet speeds may make e-commerce impossible (Carpenter, Gibson, Kakekaspan, & O'Donnell, 2013: 93). Specifically, the creation of broadband Internet infrastructure is key to providing economic opportunity, and has a noted link with rural economic development, creating new jobs and making existing jobs more efficient (Hudson, 2013: 46). This gap in Internet access not only prevents Indigenous people from accessing digital communications and participating in the online marketplace, it also greatly increases costs. Studies have found that the cost of broadband Internet services in Nunavut are between three and five times higher than in urban areas, with a much more limited download capacity (McMahon et al., 2011: 5).

The Government of Canada has been alive to these issues, and in 2016 the Canadian Radio-Television and Telecommunications Commission (CRTC) released a policy statement affirming broadband Internet as vital to a modern economy, and proposed strategies and targets for bringing broadband Internet speeds to remote areas. Key among these targets is that Internet service providers in rural and remote areas work towards providing download speeds in excess of 50 Mbps and unlimited data options for fixed broadband services. Alongside these targets, the CRTC began setting up a fund of \$750 million over the next five years, with a mandate of focusing on underserved areas. The development of this fund is still ongoing (CRTC, 2017).

Building the capacity of community members to effectively realize the potential of e-commerce is also necessary. For older individuals this may require classes or other formal training. Some communities already offer these courses (Carpenter, Gibson, Kakekaspan, &

O'Donnell, 2013: 93). For younger generations who grow up with some degree of Internet connectivity, e-commerce opportunities may be more intuitive.

### **Addressing the Infrastructure Gap**

Despite these barriers, some communities have had success by tackling the infrastructure gap directly using the OCAP theory (Ownership, Control, Access, and Possession). Initially developed for health research, OCAP theory is an approach to community building and self-determination through research, capacity building, and independent ownership of infrastructure and utilities (McMahon et al., 2011: 6).

In the realm of telecommunications, local ownership of access and distribution of telecommunications is vital to self-determination and community resilience (McMahon et al., 2011). This is especially important to small and rural communities that are often marginalised by large corporate infrastructure that focuses on established urban markets (Beaton & Campbell, 2014). While provincial and federal funds are often earmarked for rural development and providing services to Indigenous communities, there is a palpable lack of accountability and a dismaying lack of interaction with those communities (Beaton, Burnard, Linden, & O'Donnell, 2015).

One example of these self-determination initiatives is K-NET, a non-profit corporation bringing telecommunications to northern Ontario. Operated by the Keewaytinook Okimakanak Council, a tribal council serving six Oji-Cree nations in North-West Ontario, K-NET is operated from Sioux Outlook and includes cellular service, broadband connections, and more.

In 2007, K-NET undertook a project to bring mobile service to remote communities using grants from the provincial and federal governments. Forming a strategic partnership with DMTS, a regional telephone company, K-NET created a pilot project focused on expanding the coverage to provide reliable service to people working on the land, with the goal of improving safety and economic opportunities (Beaton, Burnard, Linden, & O'Donnell, 2015). The pilot was successful, and by 2012 the network was providing service to 20 remote communities. At this stage, K-Mobile, K-NET's mobile division, took over DMTS and began to operate as a fully licensed and independent telecommunications carrier.

While the infrastructure now exists in northern Ontario, it is not the end of the battle. Many users still experience dial-up speeds, and data costs are still exorbitant for many. In 2013, the high speeds and reliable connections needed for e-commerce were not yet present for everyone using K-NET, preventing individuals from using services as basic as online banking, much less operating a website (Carpenter, Gibson, Kakekaspan, & O'Donnell, 2013: 93). However, with the basic infrastructure in place, there is ample opportunity for K-NET to continue increasing bandwidth and providing new services. Already K-NET is making traditional economic activity on the land safer and more effective (Beaton, Burnard, Linden, & O'Donnell, 2015). The jump to e-commerce may be the next step.

Examples such as K-NET show that Indigenous communities do not need to wait for service to arrive, and are more than capable of developing and maintaining their own services when the need arises. As these services become more widespread, the economic opportunities created by Internet access will become more prevalent, and entrepreneurs will begin to invest.

## DISCUSSION: A LEGAL THEORY TOWARDS TAXATION OF E-COMMERCE ON RESERVE

Given the Court's disposition towards income generated in relation to a reserve and the general consensus regarding the placement and taxation of e-commerce, there is a clear opportunity for Indigenous communities to benefit from online business free from taxation.

On a practical level, Indigenous individuals can be confident that personal income derived from online businesses based on a reserve is likely free from taxation. Cases such as *Bastien Estate* and *Dubé* show that for the purposes of section 87 of the *Indian Act*, income is property. When determining if section 87 applies, it is no longer necessary to find a connection between how the income was generated and a traditional way of life. Similarly, there are no restrictions on income derived from the "commercial mainstream". All that is necessary is that the person claiming the tax exemption is an Indian, and that there be a contextually strong connection between that income and an Indian reserve.

For example, should an individual wish to sell or resell goods from the reserve using an online platform, their property and income would be situated on the reserve. Any contracts they formed would occur on the reserve, their website would be hosted from the reserve, and their management of the business would take place on reserve. This would leave that individual free from personal income taxes and free to pursue their venture.

Similarly, for online businesses operated by an Indian Band or a corporation formed by an Indian Band, the law suggests that income derived from online economic activity would be free from taxation. Bands derive their tax exemption from the same section of the *Indian Act* as individuals, and it only follows that the law should treat both similarly. Furthermore, Indian Bands also have the benefit of being a municipal government, and are therefore free from taxation under section 149 of the *Income Tax Act*. Corporations formed by an Indian Band also benefit from this advantage, being corporations managed by a municipality under section 149 of the *Income Tax Act*.

For e-commerce businesses requiring significant infrastructure, such as a data centre, the issues become even clearer. Income from a data centre would again be entirely placed on the reserve, as the infrastructure and the work to protect and maintain it would be physically located on the reserve. E-commerce businesses and investments of this type would be more analogous to operating a storage unit than a business such as online advertising or gaming that may take place entirely online.

These forms of business are not without their challenges. Many Indigenous communities struggle with finding educational opportunities for their youth, which may limit that community's ability to develop or attract the technical expertise needed to start and maintain these businesses. Access to reliable and effective power sources, transportation infrastructure, and fast Internet connections may also limit many communities who are otherwise prepared to do business online. While examples such as K-NET prove that these barriers are not insurmountable, the digital divide in Canada is well-studied and disproportionately impacts Indigenous communities, especially communities that are in remote locations. Overcoming these barriers may be a matter of time for some communities, but may require initiatives and co-ordination with the provincial or federal government to provide the training and infrastructure that the community requires.

Despite these challenges, there is significant opportunity for many communities to generate income through e-commerce, aided by the competitive advantage of a tax exemption. The Internet allows individuals and organizations to overcome geographical limitations, lev-



elling the playing field for businesses that would otherwise find it difficult to build brand awareness and compete against larger businesses. In particular, there may be especially great potential for urban reserves that are already in close proximity to the necessary infrastructure and educational opportunities for building up an online business.

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# *Sustainability, Ethics, and Authenticity in Indigenous Tourism: The Case of Eskasoni Cultural Journeys on Goat Island*

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## **ABSTRACT**

Cape Breton Island (Nova Scotia, Canada) is well known as an island tourism destination, recognized for its rich natural beauty, as well as cultural and heritage products. Eskasoni First Nation is the largest of the five Mi'kmaw communities located on Unama'ki (Cape Breton Island), and until recently Mi'kmaw communities were not recognized as a significant part of the Cape Breton tourism product mix. Tourism as a means of encouraging economic development is not uncommon internationally, and while tourism growth has been significant on the island, questions remain regarding its ethics and authenticity in relation to community economic development. This paper explores the development of an Indigenous (Mi'kmaw) cultural heritage ecotourism product through a community-led approach. Using Eskasoni Cultural Journeys as a case study, the research presented in this paper questions sustainability through the lens of triple bottom line (TBL) accounting, which looks at economic, social, and environmental aspects of development, as well as ethical business practices, such as authenticity and community well-being.

## **INTRODUCTION**

Eskasoni First Nation is the largest Mi'kmaq-speaking community in the world, with a population of more than 4300. It is one of five Mi'kmaw communities located on Unama'ki (Cape Breton Island), Nova Scotia, Canada. Cape Breton Island (CBI) is well known as an

island tourism destination, recognized for its rich natural beauty, as well as cultural and heritage products. This is largely due to focused strategic investment in the development of the local tourism infrastructure, such as the Cabot Trail driving route, the Fortress of Louisbourg National Historic Site, and events around Celtic culture. The effort to develop a diversified economy has followed a drastic downturn in the industrial development of coal and ore, and was mainly driven by the Federal Government through the 1980s and 1990s (Brown, 1998; 2009). Until recently Mi'kmaw communities were not recognized as a significant part of the CBI tourism product mix.

Tourism as a means of encouraging economic development is not uncommon internationally. Since the 1980s, the market share of emerging economies in the tourism industry grew from 35% to 45% and is expected to continue. In 2010, the direct revenue from tourism spending in Nova Scotia was \$2.02 billion, of which the CBI region made up 12% (Nova Scotia Visitor Economy Fact Sheet, 2013). Spending on Indigenous tourism products in particular has been increasing as well, but the metrics have been inconsistently captured. In a report recently released by the Aboriginal Tourism Association of Canada (ATAC, 2015), the direct impact was estimated to be \$2.65 billion in 2014, a growth of 16% since 2002. In the same report, Aboriginal tourism products from the Atlantic region represented 8.2% of all Aboriginal tourism products in Canada.

While the growth has been significant in the region and in the specific sector, the discussion and debate around tourism policy and the implications of tourism have also increased. Can tourism products create economic and social benefit? Is there a right way to do tourism development? Can tourism be sustainable? Questions of ethics are common as well, especially when considering Indigenous tourism product development. What is authentic in Indigenous products? Are these products taking advantage of disadvantaged communities, or are they helping to create capacity and opportunities to teach others and revive cultures?

This paper explores the development of an Indigenous (Mi'kmaw) cultural heritage ecotourism product through a community-led approach. Eskasoni Cultural Journeys (ECJ), now an established tourism product, received an award for product development of the year from Destination Cape Breton (Cape Breton Post, 2014). More recently, in 2016, ECJ was one of three finalists for the ATAC National Aboriginal Cultural Tourism Award.<sup>1</sup> In this paper, questions of sustainability are considered through the lens of triple bottom line (TBL) accounting, which looks at economic, social, and environmental aspects of development, and ethical business practices (authenticity and community well-being). The study investigates whether the blending of the community-led approach with the prime components of sustainable tourism may ultimately lead to continued growth of an attraction that is both ethical and economically viable.

## LOCAL CONTEXT

In the 1980s, the Canadian government invested heavily in CBI. In response to the rapid downturn in the extractive industry sectors, issues of poverty were of great concern to the provincial and federal governments. After multiple investments in the coal and steel indus-

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<sup>1</sup> See Tourism Industry Association of Canada (TIAC), "2016 Canadian Tourism Award Winners & Finalists", [http://tiac.travel/2016\\_Finalists.html](http://tiac.travel/2016_Finalists.html)

tries, it was clear that these industries were no longer economically feasible; however, the communities of CBI were heavily dependent on these industries. At its peak, the coal and steel industry represented 80% of the CBI economy. Therefore, the federal government decided to strategically invest in projects intended to diversify the economies of the island. The creation of a tourism sector was one significant component of the diversification strategy. Governments had always invested in maintaining the scenic driving route along the Cabot Trail, but in just a few years there was a rapid increase in tourism products throughout CBI, including the development of golf resorts, heritage centres and museums, national parks, provincial heritage sites, and the Celtic Colours festival (Brown, 1998). A Tourism Cape Breton agency was also created with the sole purpose of marketing CBI as an international tourist destination. Although Eskasoni is situated in the central area of the island, on the shores of the Bras d'Or Lake, this area has few tourism products or services available. Culture and heritage tourism was a central theme of the development strategy, but the local Mi'kmaw communities did not play a central role in the development projects; rather, development was heavily focused on Celtic and, to a lesser extent, Acadian culture. Mi'kmaw stories and culture were not featured; instead, the region became known for its Celtic heritage, as well as for being the site of some of the earliest European settlements in Canada at St. Peter's, Baddeck, Louisbourg, and Cheticamp, for example.

Prior to developing ECJ, the community of Eskasoni tried many times to participate in the formal tourism strategy, with varying degrees of success (discussed below). A new approach was employed in the development of ECJ — one that focused on the community while creating an experiential and sustainable product, community-based tourism (CBT). In 2009, almost 30 years after the initial federal investment in CBI tourism, ECJ started at a grassroots level, with Elder buy-in and initial Elder training in tourism and customer service. Consultants worked with the Elders, the community, the proximal tourism industry, and various levels of government to lay the fundamental product development groundwork with the Elders' participation and overall community support. Today, ECJ offers boat tours on the Bras d'Or Lake (the centre of the Bras d'Or Lake Biosphere Reserve) and interpretive programming along the trails of Goat Island, with sights clearly set on sustainable future development.

### **Eskasoni Cultural Journeys**

The traditional territory of the Mi'kmaq, which encompasses Nova Scotia, Prince Edward Island, and parts of New Brunswick, Newfoundland, and Quebec in Canada, as well as northern Maine in the United States, is referred to as Mi'kma'ki. Eskasoni, the largest Mi'kmaw community, is located on Cape Breton Island. Its name is derived from the Mi'kmaw word *We'kwistoqnik*, which means "where the fir trees are plentiful." Eskasoni was first surveyed in 1832, and two years later officially became a reserve covering approximately 2800 acres of land. Census numbers indicate that in 1871 there were only 125 inhabitants. Today, the population of Eskasoni First Nation is 4359, with 3704 living on reserve (AANDC, 2015). In 1958, the Eskasoni Band Council was formed, and today that leadership structure oversees a young, culturally proud population. The community has a world-renowned First Nation health centre, a thriving band-owned fishery, and an emerging tourism presence (Eskasoni First Nation, 2017). It also operates its own school system, from kindergarten to grade 12. In fall of 2015, a Mi'kmaw immersion school for levels kindergarten

through grade 5 was opened. ECJ is the primary component of the community-based, cultural tourism infrastructure.

ECJ is located on Goat Island. The vision to develop this island for tourism emerged more than 50 years ago, when the current Chief's grandfather had a dream of tourism development on the land. As a result, the island was designated for tourism development via a band council resolution in 1964 (Denny, personal communication, May 27, 2015). Over the years, particularly in the 1960s and 1970s, community members became involved in various cultural revitalization initiatives, which could have been mobilized as tourism products, but were not. For example, a performance troupe dedicated to Mi'kmaw traditional songs and dances was established, and the group travelled to festivals and other events, but an Eskasoni-based attraction around that group was not developed. This may be because such cultural initiatives were more concerned with cultural revitalization within the community during this time period, rather than being more outwardly motivated. By the mid-2000s, the economic development officer in Eskasoni, Tracy Menge, began investigating different options for tourism development in the community, bolstered by the interest and support of Maureen Carroll, who had identified the need for Aboriginal tourism products in Cape Breton during her tenure as the director of marketing for Atlantic Canada Opportunities Agency (ACOA) in the late 1990s. The two had collaborated on initiatives to bring Aboriginal artisans to a trade show in 1997 and train youth in hospitality in 2003 (Carroll, personal communication, March 23, 2015). There was an attempt within the community to provide a tour experience as part of a cruise ship bus package. The tourists were greeted by community members at the powwow grounds, but the community was not adequately prepared to meet their needs in the long term. It was not until 2009 that the vision specifically for ECJ emerged and was initiated. This vision was for a cultural tourism experience that would tie together the shared stories of Mi'kmaq and Gaels in Cape Breton (Menge, personal communication, May 1, 2015).

While the vision was big, the initial steps towards achieving it were small. Those involved wanted to create an experience for tourists without immediately investing capital in the development of a building or other costly infrastructure (Menge, personal communication, May 1, 2015). Working with Maureen Carroll as a consultant, a four-phase plan to develop Goat Island was established, and community consultation sessions were held to initiate it (Denny, personal communication, May 27, 2015). They focused on training interpreters first, since Mi'kmaw knowledge holders were considered central to the success of any tourism offering. The first attempt at training was with a younger group who would be prepared to eventually work in the tourism industry, but the participants at that time had different priorities. Then they came across a program called Targeted Initiative for Older Workers, where they saw the opportunity to train some community members to be interpreters. Initially 20 community members participated in the training, and subsequently 10 identified themselves as interested in being a core group who could share Mi'kmaw traditional practices and culture with tourists (Elders, personal communications, April 8, 2015). ECJ partnered with the Highland Village Museum in Iona, also located along the Bras d'Or Lake, to mentor staff and gain first-hand experience working at a living oral history site. The value of the partnership and its cross-cultural exchange was felt by both parties, and they continue to work together on the development of a tourism package and the marketing of their two, intertwined stories (Chaisson, personal communication, April 22, 2015).

Under the leadership of Chief Charlie Joe Dennis, the walking trail was cut (Denny, personal communication, May 27, 2015). Regalia and other equipment required to provide

tours was purchased. The first full year of operations was in 2012, with group school tours, other tours, special events, and individual tours (Carroll, personal communication, March 23, 2015). Over the next three years, the team working on ECJ obtained financial support to outfit boats and complete upgrades to the island, which included creating a parking lot, developing five “villages” for interpretation, and installing a visitor kiosk (MacDonald, personal communication, March 25, 2015). For example, boats that were too big for lobster fishing and too small to meet shrimp fishing standards were refitted with funding from the Department of Fisheries and Oceans so that they could carry 75–100 people on the Bras d’Or Lake as part of a larger tour (Denny, personal communication, May 27, 2015). The planned, gradual nature of this tourism development has been key to its success, instilling pride in the community and increasing community support for the initiative with each achievement (MacDonald, personal communication, March 25, 2015; Menge, personal communication, May 1, 2015).

Tourists access Goat Island via a causeway. The walking trail, a 2.2km loop around the small island, forms the basis of the tourist experience, but is also used by community members. At various points along the trail, there are interpretive nodes, referred to as “villages”, which include structures (such as a wigwam and a sweat lodge) and interpretive panels. Each node provides a unique vantage point from which to view the lake and surrounding environment. At the nodes, cultural demonstrations and interpretation by heritage animators also occur. These demonstrations vary depending on the availability of Elders on any given day. For example, during a tour in early July 2015, a beading workshop was set up during which participants could make a pair of earrings. During an October 2015 tour, participants learned the basics of basket weaving by making a bookmark out of Ash splints and sinew. Other performances and demonstrations include storytelling and music. Indeed, the current chief, Leroy Denny, often welcomes tourists to his community, greeting them with a traditional Mi’kmaw song (Denny, personal communication, May 27, 2015). Expanded tours are also available and may incorporate a guided tour of the Bras d’Or Lake, a feast with traditional Mi’kmaw food, or a multi-cultural tour package that also visits the Highland Village Museum in Iona.

ECJ has also attracted the interest of the cruise ship industry. Cruise passengers visiting the Port of Sydney have the option of being bused to Eskasoni (approximately 40km away) and experiencing Mi’kmaw culture through ECJ. In 2015, there were 54 cruise ship tours scheduled. Additional new developments in 2016 and 2017 have included infrastructure, such as a stage and enhanced entranceway, an expanded gift shop with more local inventory, and connection to the Trans-Canada Trail.

## **SUSTAINABLE TOURISM**

Sustainable tourism is a widely recognized phenomenon, yet it is also complicated and somewhat contested. Although many focus on the environmental or “green” side of sustainability, according to the UNWTO (n.d.), sustainable tourism “takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities.” Industry standards and certification programs have been established to help practitioners consistently apply the various complicated issues (see Global Sustainable Tourism Council, 2015). At the same time, global NGOs have created additional diverse metrics and campaigns that might appeal to



responsible consumers (see STI, 2015). Sustainable tourism is still a broad and diverse area of study; thus, in this paper we have endeavoured to consider multiple facets by focusing on topics commonly considered, including economic, social, and environmental aspects. By drawing on a triple bottom line (TBL) framework (ff. Stoddard, Pollard, & Evans, 2012), we aim to provide some simple, yet nuanced insights into the discussion. The UNWTO (n.d.) encourage principles for sustainable tourism that complement the TBL approach, stating that sustainable tourism should:

1. Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity.
2. Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.
3. Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.

Cultural authenticity is an additional ethical consideration because it is common in discussions about sustainable Aboriginal tourism (see Ryan & Aicken, 2005; Zeppel, 2006; Weaver, 2010). While it is not typically included in the TBL framework, although it is closely related to the social dimension, we have chosen to discuss it separately.

### **Ethics and Cultural Authenticity**

Although the word Indigenous is commonly used internationally, in the Canadian context Aboriginal has been used more frequently because it is a term recognized in the constitution as being inclusive of First Nations, Métis, and Inuit. Lemelin and Blangy (2009) articulate the debate quite well and settle on the use of Aboriginal, given the legal use of the term, also pointing to its prevalence in the Canadian context. As such, Aboriginal tourism, as a subset of cultural tourism, “refers to tourism in which Aboriginal people are directly involved in the provision of the attraction, either through control and/or by having their culture serve as the essence of the attraction” (Hinch & Butler, 1996: 9). In the context of this paper, the Aboriginal community involved in the project self-identify as Mi’kmaw or L’nu’k. The community of Eskasoni is one of 25 federally recognized Aboriginal communities in Atlantic Canada.

Development of community based tourism products can create new sources of employment and income, help to diversify economies, increase awareness of valuable local resources, and increase opportunities to learn about and from local cultures and histories. In referencing Colton and Harris’ (2007) work, Lynch, Duinker, Sheehan, and Chute (2010: 540) state that “in the context of Mi’kmaw cultural tourism, properly developed community based tourism that allows community members to be directly involved in decision-making is essential to its success and sustainability.” It is this point that launched the current study; it also represents a shift away from an approach that is solely focused on job creation to one that fosters nation-building and the sustainability of the community. Although sometimes thought of as inherently sustainable, community based tourism is not necessarily a sustain-

able solution. There are risks when dealing with cultural tourism and community-based tourism other than economic viability, ecological impacts, and the social impacts to participants directly involved in the activity. The model of community ownership and the extent to which consultation is reflective of community desires must also be considered thoroughly in order to encourage long term social support (Rozemeijer, 2001: 15).

### **Triple Bottom Line Dimension: Social**

Indigenous tourism is a growing market segment within the tourism sector worldwide (Notzke, 2006). Indigenous cultures have become a powerful attraction at many levels: for tourists themselves, entrepreneurs, government agencies, and academia (Butler & Hinch, 2007). In equal measure, cultural tourism, particularly CBT, is popular because it can also play an important role in community social development for Indigenous communities. As identified by the United Nations World Tourism Organization (2001) and also academic scholars (see Manyara & Jones, 2007), CBT when grounded in culture can substantially empower communities and make tremendous headway in the areas of development and poverty reduction.

MacDonald (2000) recognizes social values as central to successful community-based development projects. These values are embedded in such concepts as cooperation, unity, democracy, the family, the circle, and oral tradition. She showcases such in relation to the Bear River Medicine Trail in mainland Nova Scotia. Similarly, Bell (1999, 2000) has outlined a 4 Cs model, consisting of community economic development, community empowerment, community wellness, and community learning. Bell's (1999) explanations highlight the centrality of the social or community element where empowerment includes aspects such as governance and community control that are similar to those values related to democracy and consensus. Wellness includes health across physical, mental, social, and spiritual planes, and it also refers to someone's ability to develop a sense of identity through engagement with traditional cultures. Learning refers to both the land as a classroom and acquiring wisdom from elders and others. For the purpose of our analysis, Bell's schematic is useful in that it also refers to community economic development, including job development and partnerships, which complement the triple bottom line approach. It has also been used by Colton and Harris (2007) to examine development in the Mi'kmaw community of Lennox Island. They concluded that community economic development through tourism development activities can offer communities a position for success and capacity in the future, important drivers within sustainability.

### **Triple Bottom Line Dimension: Environment**

Some Aboriginal communities consider themselves to be environmental stewards of the land (ATAC, 2015: 135). Tourists expect an Aboriginal tourism experience to provide an interpretation of nature and landscape from an Indigenous point of view (Carr, 2004), and Zorilla Martinez (2003) posits that tourists participating in Aboriginal tourism activities are seeking experiences that offer a way to connect with nature through Aboriginal people. Consequently, some may also draw the conclusion that Aboriginal tourism products are more environmentally friendly than competitors, and they may be right to do so. Lynch et al. (2010) identify Mi'kmaw cultural tourism, using a community-based approach, as contingent on certain belief systems, notably the Mi'kmaw worldview of interconnectedness; the

Mi'kmaw perception of land, time, and space; and the Mi'kmaw concept of *Netukulimk* (which can be thought of as environmental sustainability).<sup>2</sup> However, because of the interconnectedness, we cannot discuss one dimension of tourism development without considering the relationships to other dimensions.

As stated earlier, when people think about sustainable tourism they often think of the “green” tourism or the environmental impact of tourism first. Therefore, within the tourism industry there are a wide array of standards and certifications that appear to measure environmental impact, but they are not easily comparable with one another (Strick & Fenich, 2014). Many tourism products are promoted as environmentally friendly and charge a premium because they are deemed to be more environmentally friendly than others. However, in reviewing Mi'kmaw tourism products, it does not appear that any of them have chosen to apply for recognition from industry groups that offer standard certification.

### **Triple Bottom Line Dimension: Economic**

Lynch et al. (2011: 978) indicate that an “inventory of existing Mi'kmaw cultural tourism activities points to the sector's infancy.” Mi'kmaw heritage and cultural interpretation centres, largely funded by government sources, are the primary means through which Mi'kmaw culture is shared with tourists in the province. They make note of three such centres: the Bear River Heritage and Cultural Centre (established in 2003) in Bear River First Nation; the Glooscap Heritage Centre (established in 2006), located near Truro and run by the Millbrook First Nation; and the Wagmatcook Heritage and Cultural Centre (established in 2001) in Wagmatcook First Nation on CBI. Another, the Membertou Heritage Park (established in 2012), has since opened in Membertou, CBI (see Doucette, 2008; Membertou Heritage Park, 2015). These centres present valuable information on past and present aspects of Mi'kmaw life. Many of these centres offer hands-on experiential workshops, such as drum making, to showcase and offer a unique experience to visitors and enhance their understanding of Mi'kmaw culture. There are fewer opportunities for visitors or non-Mi'kmaw locals to “get out on the land” or to holistically interact with the Elders. In the example of Membertou, the Elders were very enthusiastic about developing a cultural heritage site, but many were concerned it would become an economic drain to the community rather than an economic driver (Doucette, 2008).

Tourists (and non-Mi'kmaw locals) may also experience Mi'kmaw culture through events such as Treaty Day, in October, or at gatherings and feasts, known as *mawio'mi*. In the summer months, a powwow trail exists, offering many opportunities to visit community after community throughout the Maritimes (Lynch et al., 2011). There are a few Mi'kmaw ecotourism experiences in Kejimikujik National Park and National Historic Site (Lynch et al., 2011), which assist with showcasing Mi'kmaw culture “on the land.” All of this additional activity directly creates employment opportunities for community members, through increased demand for specialized tours, tour packages, and craft products. It also creates spin-off effects for other industry sectors, such as transportation and food and beverage. The economic impacts of the cultural tourism industry were the very reason that CBI invested in

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<sup>2</sup> Unama'ki Institute of Natural Resources (UINR) website, “At the soul of everything we do at UINR is Netukulimk”, <http://www.uinr.ca/programs/netukulimk/>

the development of cultural tourism products in the early 1980s. However, the environmental impact of this increased activity has yet to be formally studied or measured.

## **RESEARCH DESIGN AND DATA COLLECTION**

To better understand the development of ECJ, it was determined that semi-structured qualitative interviews with key participants who had been involved in the project would provide insight into how and why decisions were made and what factors were considered. The research team devised a list of research participant categories based upon those who might be able to provide valuable data regarding the development of ECJ. It was publicly known that the ECJ project had received funding and support for development, so the partners were easily identified through news releases and advertising material. Further, as this research was a collaborative initiative with the community, a key player in the development of ECJ — Tracy Menge — was a member of the research team and provided input on key informants for the study. This initial list included a number of stakeholders: Elders, employees (past and present), officials at various levels of government, consultants involved in the development and marketing of the product over time, and other partner agencies. The identified individuals were invited to participate in the research project, with eight interviews conducted over a 3-month period in 2015. This approach was key for our research purposes, as we wanted to investigate the decisions made in the development of ECJ and how these might impact its sustainability as a community economic development initiative over time. It was not the purpose of this study to engage in random sampling of tourists who visit the site in order to interrogate their experiences or perceptions (though this would make for a valuable follow-up study).

Although all research participants were asked the same suite of questions, which addressed their role in the development, the challenges and successes they perceived, the timeline of development, and their hopes for the future, participants were also free to speak on any tangential lines of thought. This approach was used to avoid leading the discussion in certain directions and, instead, to let the discussion naturally emerge through dialogue. Additional directed questions were asked of partner organizations and past/present employees. Interviews typically lasted between 40 and 60 minutes and (with consent) were recorded so that they could be later deposited in the Mi'kmaq Resource Centre at Cape Breton University. As part of the participant consent process, the research was explained to interviewees. Community ethical protocols encourage researchers to show respect for community held knowledge by acknowledging Elders and sharing community stories. Respecting individual rights, participants were given the option to choose whether and how they would be identified in publication; anyone directly quoted has given explicit written permission to do so.

## **THE SUCCESSES AND CHALLENGES OF ECJ**

The research interviews revealed some common themes in the successes and challenges of establishing the ECJ tourism product. Depending on their role in the project, some research participants observed additional challenges that may not be immediately visible to everyone and at the same time were able to celebrate the ongoing successes. These are highlighted and discussed below.

## Ethics and Authenticity

The indicators of authenticity highlighted earlier included direct involvement of Aboriginal community members in ownership and/or delivery of a product (Williams & O’Neil, 2007; Lynch, 2010). From that perspective, ECJ is authentic because it is owned and operated by community members. A second indicator of authenticity was the extent to which the product was a community-driven initiative, reflective of the desires of the community as a whole (Rozemeijer, 2001). This emerged as a challenge through the research. There was recognition of the need to find a balance between an authentic cultural experience and the “staged” presentation of culture. As the consultant on the project noted, ECJ does not want to present “Hollywood Indians”, but real experiences based in community culture (Carroll, personal communication, March 23, 2015). Of course, there is significant debate within the community about what elements should or should not be featured as part of ECJ. For example, along the trail on Goat Island, one of the interpretive nodes features a Plains-style tipi. Some community members feel that it should be a *wi’kuom*, which is one of the traditional dwellings of the Mi’kmaq. Similarly, some interpreters and community members want signage to be in Mi’kmaq instead of English; but for practical reasons, English is necessary.

The Elders look at this project as more than an opportunity for jobs and revenue, but as an opportunity to teach the youth and leave a legacy of knowledge, culture, and history for future generations. Through their involvement in the project, they realized the wealth of knowledge they have and how important it is to share their knowledge with others, both community members and tourists. That realization has increased their desire to share their stories and history, and take more pride in their culture (Elders, personal communications, April 8, 2015). As Sandra MacDonald, one of the consultants working on the project, observed, the ECJ project highlights and showcases the culture and traditions of the Mi’kmaq people and “the pride in culture has inspired pride in others from the community” (personal communication, March 25, 2015). However, if the project is going to be ethically sustainable in the long term, future development will need to include individuals with tourism expertise and a desire to include mentoring in their roles and responsibilities. The human resources challenges, discussed by participants, of finding appropriately trained individuals who are both interested in working at ECJ in front-line positions and motivated to take on leadership roles may also be an indicator of whether or not the ECJ project is sufficiently reflective of community desires. In many cases, there is a lack of qualified and experienced individuals to take on important roles. However, it takes away from the authenticity of the Aboriginal tourism product to recruit from outside the Mi’kmaq community when the project is meant to showcase Mi’kmaq culture and be a community-led initiative.

Aside from encouraging school groups to visit ECJ, there is little evidence that the Elders are working on ways to engage community youth in the project and seeking ways to get them involved. Local youth are exposed to language, traditions, and culture in other ways in the community, but there are few specific initiatives building on youth engagement led by ECJ. Past efforts to train youth as heritage interpreters have not had the anticipated results (Carroll, personal communication, March 23, 2015). More recently, ECJ has begun pairing youth with Elders to be mentored in an apprentice-type relationship for traditional crafts; however, thus far only one youth has been mentored in this fashion. While the results of the initiative are not yet known, for ECJ to be sustainable the community’s youth will need to enhance their knowledge of traditional crafts, food, language, dance, and song, as well as heritage interpretation practices.

In addition, the Elders directly involved in the project and those in the community with a wealth of knowledge of Mi'kmaw culture, history, and traditions are an aging population. Given this, succession planning will be critical to ensure there are enthusiastic, knowledgeable and capable community members to take over the roles and responsibilities of the Elders moving forward. In the meantime, there may be an opportunity to recruit appropriately skilled employees of Mi'kmaw heritage from outside Eskasoni. Even that may be problematic if enough Eskasoni residents, including Elders involved in the ECJ project, feel that type of action is a threat to authenticity because there are cultural differences throughout Mi'kma'ki.

### **Triple Bottom Line: Social**

One of the critical success factors of a sustainable tourism project is ensuring the host community is involved with, supports, and benefits from the project in the short and long term. The various social benefits described in the literature included wellness (physical, mental, and spiritual) and empowerment through self-governance and community control (Bell, 1999). It was said that these social benefits would be more likely if values of cooperation, unity, democracy, family, and oral tradition were part of the process (MacDonald, 2000).

In the case of ECJ, some social successes are evident. The Elders who have been working on the project shared that they have learned critical professional skills, and gained confidence and self-esteem (Elders, personal communications, April 8, 2015). The external consultant working on the project, who has been a key contributor to the project's development, management, and training of staff, has witnessed first-hand this capacity building and enhancement in the Elders (Carroll, personal communication, March 23, 2015). The Elders also see social benefit in raising awareness about Mi'kmaw culture and history in the local community of Cape Breton. One of the hired coordinators, who is not from Eskasoni, shared that she is grateful for her own increased awareness about the Mi'kmaw community. She said she has developed a tremendous amount of respect for the Elders with whom she works (MacDonald, personal communication, March 25, 2015). There are some challenges with engaging the community to its fullest potential. At this time, there is little balance in community members taking full ownership and leadership of ECJ, thus forcing a disconnection between local residents and potential partnerships from outside the immediate community.

The desire to engage more community members in operations and administration was expressed as a possible threat to authentic product delivery. Social involvement and support from the community creates a similar level of concern. The walking trails at Goat Island are maintained and available for use by the community and general public. This contributes to the overall wellness of the community because it provides another activity in support of a healthy lifestyle at no cost to residents. Yet, there are also varying degrees of support among community members for the project. Complex social dynamics, related to close personal and family relationships, are common in small communities. One of the ECJ project consultants stated that working with the social dynamics of Eskasoni as such a "tight knit" community was tricky for her because she was not familiar with the history of personal and family relationships within the community and how they may or may not impact the ECJ project (MacDonald, personal communication, March 25, 2015). Some members do not support the project, but it is unclear whether that is due to political reasons, lack of interest, or a lack of

understanding of the value and impact a tourism initiative can have on the community from economic, social, cultural, and environmental perspectives.

### **Triple Bottom Line: Environmental**

Goat Island is located on the coastline of the Bras d'Or Lake, an estuary where fresh and salt waters mix and one of the world's 580 designated UNESCO Biosphere Reserves. The Mi'kmaq were the first to travel and live around the Bras d'Or Lake and called it *Petoo'bok*, which means "a long dish of salt water." The uniqueness of this body of water and the flora and fauna that live there was recognized by UNESCO and it was identified as "a special place where people live in harmony with nature" (DCBA, 2014). This designation and the Mi'kmaq people's respect for and spiritual connection to the land should instill the mindset that the environment in which ECJ operates should be preserved to its fullest; however, the environment and the need to protect and preserve it was not directly addressed by interview participants.

Other than relating that Goat Island is being used by community members, there was little discussion of environmental dimension of sustainability. Many organizations engaged in Aboriginal tourism development in Canada suggest that there are unique opportunities for products connected to the environment because Aboriginal people tend to self-identify as stewards of the land (ATAC, 2015). However, through the interviews we conducted, participants did not make reference to any kind of responsibility or stewardship of the land. It should be noted that during interviews, we asked broad questions about sustainability, allowing each participant to interpret sustainability for themselves. Without a prompt specifically related to the environmental dimension, there was no explicit discussion of it. Carr (2004) has suggested that environmental sustainability is connected to interpretation of the environment from an Indigenous point of view. It is possible that interviewees interpret sustainability differently and the concept of *Netukulimk*, interconnectedness of all things, was understood or implied, but not explicitly discussed.

That said, the environmental impact from the project appears to be low; when visitors arrive they walk the trail system, as do many of the interpreters. There is only one permanent structure on site, the trails are graded gravel, and seating along the trails are wooden picnic tables. There is the hope that this project will bring awareness of the need to protect Goat Island to ensure it is available for future generations. There is no evidence that a formal environmental impact study has been conducted in relation to the present development or future initiatives yet; however, as the popularity of ECJ grows and more and more tourists visit the site and the broader community, issues of environmental sustainability will need to be considered more thoroughly.

### **Triple Bottom Line: Economic**

The economic dimension of sustainability can be complex as well. The economic benefits of the project and the financial challenges were discussed in a number of interviews. The organizers saw an opportunity to develop tourism products that would complement other businesses in the region, fill a gap in the experiences visitors want, and be competitive in the industry. Eskasoni leadership saw the opportunity to train community members for new careers and create jobs. It appears that all of those goals have been met, and there is potential to continue to expand in the future.

Based on the research interviews and documentation, ECJ's primary revenue stream has been group tours (cruise ships, schools, and conferences). ECJ employs two full-time staff, ten full-time seasonal workers, and two part-time seasonal workers. There are also fifteen volunteers who contribute to various initiatives throughout the year (Menge, personal communication, July 20, 2015). This project, then, is a source of employment and revenue for the community. As a result of this initiative, there have been partnerships formed within the community, region, and province. The early indicators of ECJ's growth potential to date has spurred collaboration and partnership, resulting in the formation of the Unama'ki Tourism Association<sup>3</sup>, which has a mandate to develop and promote Mi'kmaw tourism products in Cape Breton (Carroll, personal communication, March 23, 2015). Those involved in the project, coordinators and staff, are proud of the success to date and feel there is significant opportunity to continue to further develop the offerings to meet the desires of tourists.

From the beginning, the desire to complement other CBI tourism products rather than compete with them was evident in the partnership with the Highland Village Museum. The executive director of Highland Village Museum explained that there needs to be additional tourism products and services in place to keep visitors in the area longer and spending more money. Chaisson spoke of the need to develop a "critical mass" of tourism products and services (personal communication, April 22, 2015). This demonstrates a desire to ensure economic benefits for the region, rather than only one community. The Highland Village Museum and ECJ can be viewed as "anchor tenants" (main reasons for visitors to visit Central Cape Breton); however, additional complementary services must continue to be developed.

The partnership and collaboration with the Highland Village Museum has been described as a "cross-cultural exchange that is mutually beneficial to both Highland Village and Eskasoni" (Chaisson, personal communication, April 22, 2015). The two sites showcase distinctly different cultures, but partner to show the relationship between the Gaels and Mi'kmaq. They are similar in that the type of experience they provide focuses on first-person interpretation, hands-on cultural workshops, stories of the past, and the relationship to place. At the same time, ECJ's model of land-based learning, which showcases Mi'kmaw culture in a multifaceted way, is quite a unique and a welcome addition to the cultural tourism stage. The model stands out because there is a lack of market-ready Aboriginal tourism products across Cape Breton, and in Canada. Developing this viable niche market would lead to direct and indirect economic benefits for the Mi'kmaw communities and all Cape Breton Island.

There have been discussions within the leadership of Eskasoni for future development of Goat Island and the ECJ experience. They are also optimistic that there will be future economic spinoffs, primarily through the creation of additional businesses and services, as community members see the success of ECJ (Denny, personal communication, May 27, 2015). Indeed, this has already started with the recent addition of the Goat Island View Café on Shore Road in Eskasoni. This optimism is supported by the multi-phase approach and the artistic renderings that were created to reflect the long term vision of what can be created. These artistic renderings, which were shared with funding partners as well as publicly at community gatherings, are intended to help others see there is a long term vision. One

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<sup>3</sup> As of 2018, the Unama'ki Tourism Association is no longer formally operational. However, the communities continue to work together informally.



showed the trails and fishing boats, now a reality, as well as other expansions, such as a visitors' centre, additional support for water activities, a seafood restaurant, and a lodge where guests can stay overnight (Elders, personal communications, April 8, 2015). Initially there were no bathrooms on site for guests, an identified weakness, but everyone knew they would be part of the next development phase, as would be the interpretation centre (Elders, personal communications, April 8, 2015).

With sustainable tourism-related businesses, it is critical to think past the economic benefits and factor in economic challenges together with the positive and negative social, environmental, and cultural impacts of the business. However, this research identified a number of economic concerns that should not be overlooked. During the first full year of operation, there wasn't a significant, stable source of leisure visitors, which tends to lead to an unsustainable "boom and bust" model for business. There also was no evidence of a strong system in place for tracking visitor statistics or formalized post-experience evaluations to collect feedback from and information on visitors. This type of system could be critical for establishing a quality assurance program that could strengthen applications for additional government funding for new programs, equipment, marketing, job creation, or operations. At the same time, there is an overdependence on government funding; indeed, the Chief stated that the project would cease to exist if government funding was omitted (Denny, personal communication, May 27, 2015). Dependency on government support is common in the heritage and culture industry as governments strategically invest in programs and infrastructure that drive other programs. However, a model that is economically self-sustaining would certainly be preferred by Eskasoni leadership, who may feel obligated to step in if other public funding were to decrease. This demonstrates that the business will have to work towards a more stable financial model that can be enhanced by government funding, rather than depending on it for operations and management.

## CONCLUSIONS

To date, ECJ has been the most successful attempt at tourism development in Eskasoni First Nation. Thanks to key partnerships and collaboration, support from Chief and Council, leadership and guidance from external consultants, and pride and enthusiasm from Elders, this project is beginning to realize some successes. ECJ demonstrates many promising practices when evaluated against the three dimensions of triple bottom line sustainability — economic, social, and environmental. Of equal or greater importance, the project leaders and Elders have been thinking about and discussing ethical issues and concerns around authenticity. Those discussions can be difficult, but the participants' willingness and desire to work through them together is evidence of a project that is grounded in shared values of cooperation and democracy, which were identified as critical social indicators of success (Bell 1999; MacDonald 2000). It has become very clear that there is significant enthusiasm around the future development of ECJ from all research participants. Those involved in ECJ have intentionally continued to improve and focus on the quality of its current product to ensure that both tourists and community members have a good experience. If that approach continues, it can be positioned to enjoy success and further development in the long term by addressing the challenges presented and taking future recommendations into account.

This case study also adds to the growing body of research on Aboriginal cultural tourism offerings in Canada. Further, the approach employed stands as a practical example of

CBT and the complexity inherent in the concept of sustainability. The ECJ model — which is grassroots in nature; engages Elders in decision-making and as interpreters/animators of the site; takes a phased, incremental approach to development; and establishes mutually beneficial partnerships to ensure community and regional benefits — is one that may be replicated in other communities and lead to similar success.

## Acknowledgements

The Purdy Crawford Chair in Aboriginal Business Studies at Cape Breton University provided in-kind support of this project. A specific thank you to Ken Medd, who helped with data collection. Thank you to the eight expert participants who provided such valuable insights.

## Note

This project upheld the ethical principles outlined by the Cape Breton University Research Ethics Board (File No: 1415-097) and Mi'kmaw Ethics Watch, the oversight board for any research conducted with and/or among Mi'kmaw people across Mi'kma'ki. Mi'kmaw Ethics Watch is run through Unama'ki College at Cape Breton University.

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## Introduction

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Robert Oppenheimer

The State of the Aboriginal Economy improved for Aboriginals as well as non-Aboriginals in 2017, when compared to 2016, as measured by employment, unemployment, and wage rates. In the following article, data is provided for these rates and the participation rates for 2007, 2010, 2013, 2016, and 2017. Aboriginal and non-Aboriginal rates are examined for Métis, First Nations, and Inuit and by gender, age, province, economic sector, and educational level. Historically, these rates have been better for Non-Aboriginal than for Aboriginals. However, employment and wage rates are similar for non-Aboriginals and Aboriginals when measured by the educational level completed. A reasonable conclusion is that increasing the educational levels of the Aboriginal population would improve the state of the Aboriginal economy.

# *Employment and Wages in 2017: A Good Year for Aboriginals and Non-Aboriginals in Canada*

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## **ABSTRACT**

Employment, unemployment and wage rates improved for Aboriginals and non-Aboriginals in Canada in 2017. Participation rates remained the same for Aboriginals and slightly increased for non-Aboriginals. All four of these rates, employment, unemployment, participation and wages, are currently and historically more favourable for non-Aboriginals than for Aboriginals. However, when examined by the educational level completed, wage and employment rates are similar. Measures of employment are examined by gender, age, province, economic sector, and education, and for Métis, First Nations and Inuit.

## **INTRODUCTION**

How well an economy is doing may be determined in different ways. One common method is to look at the gross domestic product or GDP. Another approach, and the one taken here, is to examine employment and wage data. This article provides the employment data for Aboriginals 15 years and older living off Reserves and for non-Aboriginals. The data presented is in three-year intervals from 2007 through 2016 and for 2017. It is provided to enable the reader to assess the changes over time. The focus is on the changes between 2017 from 2016. Some comparisons between 2017 and 2007 are also provided. The next section presents an overview of employment measures.

## **EMPLOYMENT, UNEMPLOYMENT AND PARTICIPATION RATES**

The employment rate is the percent of those working in the total population over the age of 15. The participation rate is the percent of those employed and those seeking to be employed

over the same total population over 15 years old. The higher these rates, in general, the better the economy is thought to be doing. In contrast the lower the unemployment rate, the better the economy is considered to be doing. The unemployment rate is the percent of those seeking employment over those employed and those seeking employment. The combination of those employed and those unemployed (that is, those seeking employment) is considered the labour force. Therefore, another way of defining the unemployment rate is the percent of those unemployed in the labour force. Similarly, another way of defining the participation rate is the percent of the labour force in the population. It may be helpful to note that the employment and unemployment rates are not directly related, as they are measured in different ways.

The unemployment rate for Aboriginals in 2017 was 11.3 versus 12.4 in 2016, which was an improvement (decrease) of 8.9%. The non-Aboriginal unemployment rate made a similar improvement, decreasing 8.8% for the same time period. However, their unemployment rate went from 6.8% to 6.2%. Aboriginals' unemployment rate was therefore 82.3% higher than non-Aboriginals' in 2017. This is similar to the gap of 81.4% which existed in 2007. Unfortunately, Aboriginals have consistently had a significantly higher rate of unemployment than non-Aboriginals. See Table 1.

The participation rate for Aboriginals and non-Aboriginals remained basically the same in both 2017 and 2016. Although the participation rate was 2.1% lower for Aboriginals than for non-Aboriginals in 2017, it is an improvement over the 3.7% difference in 2007.

	2007	2010	2013	2015	2017	2017/2016
<b>Aboriginals</b>						
Unemployment rate	10.7	14.1	11.7	12.4	11.3	<b>-8.9</b>
Participation rate	65.0	62.2	64.1	64.4	64.4	<b>0.0</b>
Employment rate	58.1	53.5	56.6	56.5	57.1	<b>1.1</b>
<b>Non-Aboriginals</b>						
Unemployment rate	5.9	7.9	6.9	6.8	6.2	<b>-8.8</b>
Participation rate	67.5	67.0	66.5	65.7	65.8	<b>0.2</b>
Employment rate	63.5	61.7	61.9	61.2	61.7	<b>0.8</b>
<b>Aboriginal Rates vs. non-Aboriginal Rates</b>						
	2007				2017	
Unemployment rate	<b>82.3%</b>				<b>81.4%</b>	
Participation rate	<b>-2.1%</b>				<b>-3.7%</b>	
Employment rate	<b>-7.5%</b>				<b>-8.5%</b>	

**Source:** Statistics Canada, Labour Force Survey, 4ctl\_abo\_main\_AN.ivt

The employment rate of 57.1% for Aboriginals increased by 1.1% in 2017. For non-Aboriginals it was 61.7%, which was 0.8% higher in 2017 than it was in 2016. This means that the employment rate was 7.5% lower for Aboriginals than for non-Aboriginals in 2017, which is an improvement from the 8.5% gap in 2007.

In summary, the employment and unemployment rates improved somewhat more for Aboriginals than non-Aboriginals in 2017; however, both of these rates, as well as the participation rate, have been consistently worse for Aboriginals.

## **COMPARING RATES FOR FIRST NATIONS, MÉTIS AND INUIT**

The rate of unemployment decreased for First Nations and Métis in 2017 by 10% and 9% respectively. However, in 2017 the unemployment rate for First Nations was 13.5%, which is 48.4% higher than the 9.1% rate for Métis. Métis have consistently had lower unemployment rates than First Nations.

Participation rates increased for First Nations in 2017, but declined for Métis and Inuits in 2017. Employment rates increased for First Nations and Métis but declined for Inuits in 2017. The Métis employment and participation rates have consistently been higher than for First Nations and in most years are higher than for Inuits. The participation rate was 67.1% for Métis, 62% for First Nations and 60.5% for Inuits in 2017. Thus the participation rates are 7.6% and 9.8% lower for First Nations and Inuits, respectively, when compared to Métis. The employment rate for Métis was 61% and was 53.6% for First Nations and 51.5% for Inuits in 2017. This is 12.1% lower for First Nations and 15.6% lower for Inuits than for Métis. See Table 2.

## **EMPLOYMENT RATES BY AGE AND GENDER**

Employment rates improved for almost all age groups for both Aboriginal and non-Aboriginal men and women. The exceptions to this were for Aboriginal men 55 over and Aboriginal women 15–24, which declined 8.3% and 0.6% respectively. The largest percentage increase in the employment rate in 2017 was 9.9% for Aboriginal women 55 and over.

The increase in employment rates for Aboriginal men aged 15–24 had the next largest percentage increase of 3.5%, followed by 2.4% for non-Aboriginal men in the same 15–24 age group. Non-Aboriginal men and women aged 25–54 had the highest employment rates at 86.3% and 79%, respectively. Aboriginal men and women in this same 25–54 category have the next highest employment rates of 73% and 67.8%, respectively.

For men and women in the 15–24 and the 25–54 age categories, the employment rate has been consistently lower for Aboriginals. The largest difference in employment rates for Aboriginals and non-Aboriginals is for males, aged 25–54, where it is 15.4% less than for non-Aboriginals. Some may argue that this is the most critical gender and age category, because of the large number of people in this category. For men and women 55 and over the employment rate varied, but since 2013 it has been consistently higher for Aboriginals. See Table 3.



**TABLE 2**  
**Employment, Participation and Unemployment Rates**  
**First Nations, Métis, Other\* and Inuits**  
**In Thousands, Except for Rates**

		2007	2010	2013	2016	2017	2017/2016 % Change
Non-Aboriginal	Population	25823.2	26833.6	27823.3	28675.5	28953	1.0
	Unemployment rate (%)	5.9	7.9	6.9	6.8	6.2	-8.8
	Participation rate (%)	67.5	67.0	66.5	65.7	65.8	0.2
	Employment rate (%)	63.5	61.7	61.9	61.2	61.7	0.8
Aboriginal	Population ('000)	638.3	740.5	824.3	911.7	949.0	4.1
	Unemployment rate (%)	10.7	14.1	11.7	12.4	11.3	-8.9
	Participation rate (%)	65.0	62.2	64.1	64.4	64.4	0.0
	Employment rate (%)	58.1	53.5	56.6	56.5	57.1	1.1
First Nations	Population	303.8	364.8	405.5	449.6	472	5.0
	Unemployment rate (%)	12.5	17.1	13.5	15	13.5	-10.0
	Participation rate (%)	62.4	58.3	60.9	61.7	62	0.5
	Employment rate (%)	54.6	48.3	52.6	52.4	53.6	2.3
Métis	Population	320.7	361.6	402.3	442.7	457.6	3.4
	Unemployment rate (%)	9.2	11.4	10.1	10.0	9.1	-9.0
	Participation rate (%)	67.3	66.2	67.3	67.4	67.1	-0.4
	Employment rate (%)	61.2	58.7	60.5	60.7	61.0	0.5
Other*	Population	13.8	14.1	16.6	19.4	19.4	
	Unemployment rate (%)	0.0	0.0	0.0	0.0	16.0	
	Participation rate (%)	69.8	61.4	68.0	61.1	57.9	-5.2
	Employment rate (%)	63.5	52.8	60.8	54.2	48.6	-10.3
Inuits	Population	12.0	12.1	13.9	16.5	15.1	
	Unemployment rate (%)	0.0	0.0	0.0	0.0	0.0	
	Participation rate (%)	71.0	64.6	69.6	61.0	60.5	-0.8
	Employment rate (%)	65.1	54.9	64.0	54.3	51.5	-5.2
<b>2017 %</b>							
<b>Métis vs.</b>		<b>FN</b>	<b>Other*</b>	<b>Inuits</b>			
Unemployment rate		48.4%	75.8%				
Participation rate		-7.6%	-13.7%	-9.8%			
Employment rate		-12.1%	-20.3%	-15.6%			

NOTE: Table cells showing 0.0 refer to estimates that are suppressed (cannot be published) because they are below the confidentiality threshold. The LFS estimates are based on a sample and are therefore subject to sampling variability. As a result, monthly estimates will show more variability than trends observed over longer time periods. Estimates for smaller geographic areas or industries also have more variability. For an explanation of sampling variability of estimates and how to use standard errors to assess this variability, consult the 'Estimates quality' section of the publication Labour Force Information (Catalogue number 71-001-X). The confidentiality threshold is 200 for Canada.

\* Other includes Inuits and multiple identities.

Source: Statistics Canada, Labour Force Survey, 4ctl\_abo\_main\_AN.ivt

**TABLE 3**  
**Employment Rates by Age and Gender**  
**Aboriginals and Non-Aboriginals**

			2007	2010	2013	2016	2017	2017/2016 % Change
Aboriginals	Both sexes	15 years and over	58.1	53.5	56.6	56.5	57.1	1.1
		15–24 years	49.8	45.2	49.2	49.2	49.9	1.4
		25–54 years	69.9	65.8	69.2	69.1	70.3	1.7
		55 years and over	32.5	29.8	33.2	35.4	35.4	0.0
	Men	15 years and over	62.9	55.4	59.2	58.5	58.7	0.3
		15–24 years	50.9	44.6	49.5	48.4	50.1	3.5
		25–54 years	75.5	69.5	72.8	71.8	73.0	1.7
		55 years and over	38.7	29.7	34.8	39.7	36.4	-8.3
	Women	15 years and over	53.7	51.7	54.3	54.5	55.6	2.0
		15–24 years	48.7	45.8	49.0	50.0	49.7	-0.6
		25–54 years	64.6	62.4	65.8	66.7	67.8	1.6
		55 years and over	27.3	29.9	31.7	31.3	34.4	9.9
Non-Aboriginals	Both sexes	15 years and over	63.5	61.7	61.9	61.2	61.7	0.8
		15–24 years	59.8	55.2	55.3	55.6	56.8	2.2
		25–54 years	82.5	80.9	82.0	81.7	82.7	1.2
		55 years and over	31.7	33.6	35.0	35.4	35.7	0.8
	Men	15 years and over	68.0	65.5	65.7	65.0	65.6	0.9
		15–24 years	59.4	53.4	54.3	54.3	55.6	2.4
		25–54 years	86.5	84.2	85.5	85.4	86.3	1.1
		55 years and over	38.1	39.4	40.4	40.6	40.9	0.7
	Women	15 years and over	59.1	58.0	58.2	57.5	57.9	0.7
		15–24 years	60.2	57.1	56.4	57.1	58.0	1.6
		25–54 years	78.5	77.5	78.5	78.1	79.0	1.2
		55 years and over	26.0	28.4	30.1	30.7	31.0	1.0

**2017 %**  
**Aboriginals vs. Non-Aboriginals**

Both sexes	15 years and over	-7.5%
	15–24 years	-12.1%
	25–54 years	-15.0%
	55 years and over	-0.8%
Men	15 years and over	-10.5%
	15–24 years	-9.9%
	25–54 years	-15.4%
	55 years and over	-11.0%
Women	15 years and over	-4.0%
	15–24 years	-14.3%
	25–54 years	-14.2%
	55 years and over	11.0%

**Source:** Statistics Canada, Labour Force Survey, custom tabulation 4ct1\_abo\_main\_AN.ivt

## UNEMPLOYMENT RATES BY AGE AND GENDER

Unemployment rates declined for men and women in all three age categories for both Aboriginals and non-Aboriginals in 2017, except for Aboriginal men 55 and over, which increased by 28%. Otherwise, unemployment rates for Aboriginals decreased from 6% for men 15–24 to as much as 19.3% for women 55 years and over. For non-Aboriginals, unemployment rates decreased by as little as 1.9% for women 55 years and older, and as much as 12.7% for men 25–54 years old.

The unemployment rates for Aboriginal men were twice as high (100%) as non-Aboriginal men and almost two-thirds (64.9%) higher for Aboriginal women in 2017. Significantly higher rates of unemployment for Aboriginal men and women in each of the three age groups have persisted since 2007, which is the time period for which the data is available. See Table 4.

## EMPLOYMENT RATES AND POPULATION BY PROVINCE OR REGION

The province with the highest Aboriginal and non-Aboriginal populations is Ontario. In Ontario the employment rate for Aboriginals was unchanged at 54.9% in 2017 and 2016. The provinces with the highest Aboriginal employment rates were British Columbia with a rate of 63.2%, followed by Alberta, with a rate of 60.5%. Quebec was the province with the lowest Aboriginal employment rate in 2017, at 51.5%, followed by the Atlantic region with a rate of 52.9%. Quebec Aboriginals had the greatest increase in its employment rate, by 4.5%, followed by the Atlantic region with an increase of 4.3%. The two provinces that experienced a decrease in their employment rates were Saskatchewan, with a decline of 2.2% and Alberta with a decrease of 0.2%.

Saskatchewan also had the largest decline in employment rates for non-Aboriginals, with a decrease of 0.9%. The Atlantic region was the only other area to experience a lower employment rate for non-Aboriginals, which was down by 0.7%. British Columbia was the province which had the largest increase in employment rates for non-Aboriginals, by 2.3%. The provinces with the highest employment rates for non-Aboriginals were Alberta, with a rate of 66.9%, Saskatchewan, with 65.8% and Manitoba with 64.4%. These are higher employment rates than the highest rate for Aboriginals, which was 63.2% in British Columbia. However, British Columbia is the only province in which the Aboriginal employment rate is greater than it is for non-Aboriginals in 2017. See Table 5.

## EMPLOYMENT BY INDUSTRIAL SECTOR

Industrial sectors are divided between goods-producing and services-producing sectors. The percent of Aboriginals employed in the goods-producing sectors was 22.9% and for non-Aboriginals it was 21% in 2017. Within each sector there are multiple categories and sub-categories. Examining these may provide insights into what areas offer greater employment opportunities. In the goods-producing sector in 2017, construction was where the greatest number of Aboriginals were employed, 57,600, or 10.6%. This was an increase of 5.5% over 2016.

**TABLE 4**  
**Unemployment Rates by Age and Gender**  
**Aboriginals and Non-Aboriginals**

			2007	2010	2013	2016	2017	2017/2016 % Change
Aboriginals	Both sexes	15 years and over	10.7	14.1	11.7	12.4	11.3	-8.9
		15-24 years	16.9	21.1	17.8	19.0	17.4	-8.4
		25-54 years	8.9	12.1	10.1	10.8	9.6	-11.1
		55 years and over	8.4	11.7	9.3	9.6	10.3	7.3
	Men	15 years and over	11.2	15.7	12.8	13.9	13.2	-5.0
		15-24 years	18.5	24.5	19.3	21.5	20.2	-6.0
		25-54 years	9.1	13.0	11.1	12.2	10.8	-11.5
		55 years and over	9.6	14.5	11.0	10.7	13.7	28.0
	Women	15 years and over	10.1	12.4	10.6	10.8	9.4	-13.0
		15-24 years	15.3	17.8	16.4	16.6	14.5	-12.7
		25-54 years	8.7	11.1	9.1	9.3	8.5	-8.6
		55 years and over	0.0	9.2	7.6	8.3	6.7	-19.3
Non-Aboriginals	Both sexes	15 years and over	5.9	7.9	6.9	6.8	6.2	-8.8
		15-24 years	11.0	14.7	13.6	12.9	11.4	-11.6
		25-54 years	5.0	6.8	5.8	5.8	5.3	-8.6
		55 years and over	4.8	6.2	5.9	6.0	5.6	-6.7
	Men	15 years and over	6.3	8.7	7.4	7.5	6.6	-12.0
		15-24 years	12.1	17.1	15.0	14.6	13.0	-11.0
		25-54 years	5.3	7.3	6.0	6.3	5.5	-12.7
		55 years and over	4.9	6.9	6.3	6.6	5.9	-10.6
	Women	15 years and over	5.6	7.1	6.5	6.1	5.7	-6.6
		15-24 years	9.9	12.4	12.0	11.1	9.7	-12.6
		25-54 years	4.7	6.3	5.5	5.3	5.1	-3.8
		55 years and over	4.7	5.4	5.4	5.2	5.1	-1.9

**2017 %**  
**Aboriginals vs. Non-Aboriginals**

Both sexes	15 years and over	82.3%
	15-24 years	52.6%
	25-54 years	81.1%
	55 years and over	83.9%
Men	15 years and over	100.0%
	15-24 years	55.4%
	25-54 years	96.4%
	55 years and over	132.2%
Women	15 years and over	64.9%
	15-24 years	49.5%
	25-54 years	66.7%
	55 years and over	31.4%

NOTE: Table cells showing 0.0 refer to estimates that are suppressed (cannot be published) because they are below the confidentiality threshold. The LFS estimates are based on a sample and are therefore subject to sampling variability. As a result, monthly estimates will show more variability than trends observed over longer time periods. Estimates for smaller geographic areas or industries also have more variability. For an explanation of sampling variability of estimates and how to use standard errors to assess this variability, consult the 'Estimates quality' section of the publication Labour Force Information (Catalogue number 71-001-X).

Source: Statistics Canada, Labour Force Survey, custom tabulation 4ctl\_abo\_main\_AN.ivt

**TABLE 5**  
**Employment Rates and Population by Province or Region**  
**Aboriginals and Non-Aboriginals**

		2007	2010	2013	2016	2017	2017/2016 % Change
<b>Aboriginals</b>							
CANADA	Population ('000)	638.3	740.5	824.3	911.7	949.0	4.1
	Employment rate (%)	58.1	53.5	56.6	56.5	57.1	1.1
Atlantic Region	Population ('000)	40.0	53.5	61.8	66.7	68.1	2.1
	Employment rate (%)	51.5	50.1	54.8	50.7	52.9	4.3
Quebec	Population ('000)	62.8	77.3	87.0	96.3	100.5	4.4
	Employment rate (%)	46.3	45.2	52.1	49.3	51.5	4.5
Ontario	Population ('000)	159.8	188.2	211.0	234.5	246.0	4.9
	Employment rate (%)	57.8	49.7	52.4	54.9	54.9	0.0
Manitoba	Population ('000)	87.0	95.1	103.8	113.8	117.0	2.8
	Employment rate (%)	59.6	58.6	57.8	56.4	57.2	1.4
Saskatchewan	Population ('000)	64.7	70.6	74.7	81.7	85.2	4.3
	Employment rate (%)	56.3	53.9	59.0	55.8	54.6	-2.2
Alberta	Population ('000)	111.8	125.3	140.4	159.8	168.0	5.1
	Employment rate (%)	66.9	61.0	65.6	60.6	60.5	-0.2
British Columbia	Population ('000)	112.2	130.5	145.6	158.9	164.4	3.5
	Employment rate (%)	58.4	54.0	55.5	61.7	63.2	2.4
<b>Non-Aboriginals</b>							
CANADA	Population ('000)	25823.2	26833.6	27823.3	28675.5	28953.0	1.0
	Employment rate (%)	63.5	61.7	61.9	61.2	61.7	0.8
Atlantic Region	Population ('000)	1870.5	1893.8	1907.5	1911.5	1918.4	0.4
	Employment rate (%)	57.2	56.8	57.2	55.9	55.5	-0.7
Quebec	Population ('000)	6239.9	6477.1	6668.4	6791.7	6831.5	0.6
	Employment rate (%)	61.0	60.2	60.2	60.1	61.0	1.5
Ontario	Population ('000)	10160.9	10524.5	10931.5	11289.0	11438.9	1.3
	Employment rate (%)	63.5	61.2	61.4	60.8	61.1	0.5
Manitoba	Population ('000)	812.0	833.3	860.5	885.2	896.4	1.3
	Employment rate (%)	66.4	66.3	65.9	64.3	64.4	0.2
Saskatchewan	Population ('000)	693.7	729.3	764.7	787.2	791.7	0.6
	Employment rate (%)	67.3	67.3	68.2	66.4	65.8	-0.9
Alberta	Population ('000)	2665.8	2842.6	3049.5	3239.1	3260.8	0.7
	Employment rate (%)	71.8	68.5	70.0	66.8	66.9	0.1
British Columbia	Population ('000)	3380.4	3533.0	3641.2	3771.8	3815.4	1.2
	Employment rate (%)	63.3	60.9	60.0	60.5	61.9	2.3
<b>2017 Employment Rate</b>							
<b>Aboriginals vs. Non-Aboriginals</b>							
CANADA						-7.5%	
Atlantic Region						-4.7%	
Quebec						-15.6%	
Ontario						-10.1%	
Manitoba						-11.2%	
Saskatchewan						-17.0%	
Alberta						-9.6%	
British Columbia						2.1%	
NOTE: Atlantic provinces are grouped together because of the relatively small populations in the four provinces.							
Source: Statistics Canada, Labour Force Survey, 4ct1_abo_educ_AN.ivt							

The services-producing sector was where 77.1% of Aboriginals were employed in 2017. The three largest areas were health care and social assistance, 76,100 employed or 14%, followed by retail trade, 67,700 employed or 12.5%, with accommodation and food services being next with 48,500 employed or 9%. All of these increased over 2016. The largest percentage increase was in educational services, which was 20.1% higher in 2017 than it was in 2016. The next highest percentage increases were in information, culture and recreation, 17.8%, followed by utilities with a gain of 14.6%. Two areas experienced declines. One was forestry and fishing, which decreased by 1,200, which was a decline of 24.5%. The other was management of companies and administration and other support, which decreased by 900, or 3.4%.

Non-Aboriginals also experienced a decline in the area of management of companies and administration and other support of 1.3% in 2017. In contrast to Aboriginals, who lost employment in forestry and fishing, non-Aboriginals gained 6% in this area. This was their largest percentage increase. Non-Aboriginals' largest areas of employment are health care and assistance, with 12.9% employed there, followed by retail trade with 11.6% employed. See Table 6.

## **EMPLOYMENT RATES BY EDUCATIONAL LEVEL**

The overall employment rate for Aboriginals was 7.5% lower than for non-Aboriginals in 2017. However, when employment rates are examined by educational level there is very little difference in the rates between Aboriginals and non-Aboriginals. Aboriginals who are high school graduates and those with a university degree had considerably higher rates of employment than non-Aboriginals, 5.2% and 6.3% higher, respectively. For those who did not graduate high school, those who had some post-secondary and those with a post-secondary certificate or diploma, the employment rates for Aboriginals were lower than for non-Aboriginals by 1.2%, 2.4% and 1.2% respectively.

The similarity of employment rates for Aboriginals and non-Aboriginals when examined by educational level is consistent for the 11 years for which the data is available. This is highly significant. It means that education is an important aspect in determining employment for both Aboriginals and non-Aboriginals. Further, the higher the level of "completed" education, the higher the employment rate. The reason "completed" is in quotes is that those who attended some post-secondary, but didn't complete it, often had lower employment rates than those who graduated from high school.

Aboriginals who completed high school had the largest percentage increase in employment rates at 5.3% in 2017. The largest decrease for Aboriginals was for those who did not complete high school, which declined by 3.6%. This contrasts with non-Aboriginals who didn't finish high school, who had an employment rate increased by 2.5%. See Table 7.

## **UNEMPLOYMENT RATE BY EDUCATIONAL LEVEL**

The unemployment rates decreased for Aboriginals and non-Aboriginals in 2017 for every educational level examined, with the one exception of Aboriginals with some post-secondary, which worsened by 13%. It went from 12.3% in 2016 to 13.9% in 2017. The highest rates of unemployment are for those with less than a high school graduation. For

**TABLE 6**  
**Employment by Industrial Sector**  
**Aboriginals and Non-Aboriginals**

	2007	2010	2013	2016	2017	2017/2016 # Change	2017/2016 % Change	2017 % Employment
<b>Aboriginals</b>								
<b>Total employed ('000)</b>	370.7	395.9	466.8	514.8	541.7	26.9	5.2	100.0%
<b>Goods-producing sector</b>	<b>97.1</b>	<b>92.2</b>	<b>115.6</b>	<b>119.7</b>	<b>124.1</b>	<b>4.4</b>	<b>3.7</b>	<b>22.9%</b>
Agriculture	4.8	4.5	5	4.7	4.7	0	0.0	0.9%
Forestry & fishing	4.8	4.3	5.6	4.9	3.7	-1.2	-24.5	0.7%
Mining & oil and gas extraction	12	14.2	18.2	16.2	17.4	1.2	7.4	3.2%
Utilities	3.4	3.4	4.7	4.8	5.5	0.7	14.6	1.0%
Construction	35.7	40.2	49.3	54.6	57.6	3	5.5	10.6%
Manufacturing	36.4	25.7	32.9	34.5	35.2	0.7	2.0	6.5%
<b>Services-producing sector</b>	<b>273.6</b>	<b>303.7</b>	<b>351.2</b>	<b>395.1</b>	<b>417.6</b>	<b>22.5</b>	<b>5.7</b>	<b>77.1%</b>
Educational services	20.1	23.1	28.4	30.4	36.5	6.1	20.1	6.7%
Health care & social assistance	46.3	52.7	61.2	75.3	76.1	0.8	1.1	14.0%
Public administration	25.3	34	32.1	33.2	34.6	1.4	4.2	6.4%
Wholesale trade	9.6	10.3	12.6	13.5	14.8	1.3	9.6	2.7%
Retail trade	46	46.5	53.7	64.3	67.7	3.4	5.3	12.5%
Transportation & warehousing	19.5	20.6	25.2	26.2	26.7	0.5	1.9	4.9%
Finance, insurance, real estate & leasing	12.3	16.8	18.7	17.2	19	1.8	10.5	3.5%
Professional, scientific & technical services	12	11.7	18.1	19.1	21.1	2	10.5	3.9%
Management of companies & administrative and other support services	18.3	19.3	23.2	26.2	25.3	-0.9	-3.4	4.7%
Information, culture & recreation	14.6	15.2	16.5	17.4	20.5	3.1	17.8	3.8%
Accommodation & food services	33.1	35.2	40.3	47	48.5	1.5	3.2	9.0%
Other services	16.4	18.3	21.1	25.2	26.9	1.7	6.7	5.0%
<b>Non-Aboriginals</b>								
<b>Total employed ('000)</b>	16390.5	16555.1	17219.9	17553.7	17864	310.3	1.8	100.0%
<b>Goods-producing sector</b>	<b>3871.3</b>	<b>3630.7</b>	<b>3793.5</b>	<b>3710.9</b>	<b>3749.2</b>	<b>38.3</b>	<b>1.0</b>	<b>21.0%</b>
Agriculture	329.6	301.3	308.4	282.9	273.9	-9	-3.2	1.5%
Forestry & fishing	78.7	68.3	62.6	58.2	61.7	3.5	6.0	0.3%
Mining & oil and gas extraction	247.2	237.9	282.5	247.5	246.8	-0.7	-0.3	1.4%
Utilities	134.2	137.9	130.1	132.2	127.5	-4.7	-3.6	0.7%
Construction	1092	1202.6	1320.3	1331.5	1352.1	20.6	1.5	7.6%
Manufacturing	1989.5	1682.7	1689.5	1658.6	1687.3	28.7	1.7	9.4%
<b>Services-producing sector</b>	<b>12519.1</b>	<b>12924.4</b>	<b>13426.4</b>	<b>13842.8</b>	<b>14114.7</b>	<b>271.9</b>	<b>2.0</b>	<b>79.0%</b>
Educational services	1152.1	1142.7	1197.4	1236.9	1247.6	10.7	0.9	7.0%
Health care & social assistance	1790.9	1986.5	2128.4	2262.9	2304.9	42	1.9	12.9%
Public administration	840.3	887.7	886.8	894.3	926.2	31.9	3.6	5.2%
Wholesale trade	610.4	614	592.3	664.2	658.4	-5.8	-0.9	3.7%
Retail trade	1997.1	2008.4	2050	2002	2068.1	66.1	3.3	11.6%
Transportation & warehousing	801.1	792.9	858	881.6	916.6	35	4.0	5.1%
Finance, insurance, real estate & leasing	1032.5	1055.9	1060.5	1107.8	1150.9	43.1	3.9	6.4%
Professional, scientific & technical services	1110.9	1202.1	1291.7	1371.6	1424.8	53.2	3.9	8.0%
Management of companies & administrative and other support services	677.6	672.4	717.8	741.7	732	-9.7	-1.3	4.1%
Information, culture & recreation	759.2	746.6	739.6	763.8	768.1	4.3	0.6	4.3%
Accommodation & food services	1039.3	1062.6	1129.3	1166.5	1162.7	-3.8	-0.3	6.5%
Other services	707.8	752.6	774.6	749.6	754.3	4.7	0.6	4.2%

**Source:** Statistics Canada, Labour Force Survey, 4ctl\_abo\_ind\_AN.ivt

**TABLE 7**  
**Employment Rates by Educational Level**  
**Aboriginals and Non-Aboriginals**

	2007	2010	2013	2015	2017	2017/2016
<b>Aboriginals</b>						
Total, all education levels	58.1	53.5	56.6	56.5	57.1	1.1
Less than high school	37.5	31.8	34.6	33.6	32.4	-3.6
High school graduate	69.1	59.9	62.2	58.1	61.2	5.3
Some post-secondary	58.7	58.3	59.3	56.9	57.5	1.1
Post-secondary certificate or diploma*	72.4	66.1	66.7	69.0	68.0	-1.4
University degree	79.6	77.6	80.6	78.1	79.1	1.3
<b>Non-Aboriginals</b>						
Total, all education levels	63.5	61.7	61.9	61.2	61.7	0.8
Less than high school	36.9	33.7	33.2	32.0	32.8	2.5
High school graduate	65.3	61.7	60.6	58.0	58.2	0.3
Some post-secondary	64.3	60.9	59.9	58.2	58.9	1.2
Post-secondary certificate or diploma*	72.8	70.9	70.7	69.2	68.8	-0.6
University degree	76.7	75.2	74.5	73.8	74.4	0.8
<b>2017 %</b>						
<b>Aboriginal Rates vs. Non-Aboriginal Rates</b>						
Total, all education levels						-7.5%
Less than high school						-1.2%
High school graduate						5.2%
Some post-secondary						-2.4%
Post-secondary certificate or diploma*						-1.2%
University degree						6.3%

\* Trade certificate or diploma from a vocational school or apprenticeship training, a non-university certificate or diploma from a community college, CEGEP or school of nursing, etc., or a University certificate below bachelor's level.

**Source:** Statistics Canada, Labour Force Survey, 4ctl\_abo\_educ\_AN.ivt

Aboriginals with less than high school graduation, their unemployment rate was 19.7% in 2017, while for non-Aboriginals it was 12.2%. The lowest rates of unemployment were for university graduates. Aboriginals had a rate of 5.6% and non-Aboriginals 4.4%. This is the smallest gap between Aboriginals and non-Aboriginals, although Aboriginals having a university degree had a 27.3% higher unemployment rate. The other differences in unemployment rates ranged from 61.5% for those with less than high school completion to 67.5% for those with some post-secondary education.

Unemployment rates for Aboriginals are substantially higher than for non-Aboriginals, regardless of educational level. The equalizing effect of education that applied for employment rates does not apply for unemployment rates. See Table 8.



**TABLE 8**  
**Unemployment Rates by Educational Level**  
**Aboriginals and Non-Aboriginals**

	2007	2010	2013	2015	2017	2017/2016
<b>Aboriginals</b>						
Total, all education levels	10.7	14.1	11.7	12.4	11.3	-8.9
Less than high school	17.0	24.0	19.6	22.4	19.7	-12.1
High school graduate	9.0	14.1	11.4	13.1	11.5	-12.2
Some post-secondary	10.6	12.7	12.2	12.3	13.9	13.0
Post-secondary certificate or diploma	8.5	10.6	9.8	9.0	8.8	-2.2
University degree	5.0	5.3	3.9	5.8	5.6	-3.4
<b>Non-Aboriginals</b>						
Total, all education levels	5.9	7.9	6.9	6.8	6.2	-8.8
Less than high school	11.9	15.6	14.3	13.4	12.2	-9.0
High school graduate	6.0	8.6	7.7	7.7	6.9	-10.4
Some post-secondary	7.0	9.9	9.2	9.3	8.3	-10.8
Post-secondary certificate or diploma	4.8	6.4	5.5	5.8	5.4	-6.9
University degree	3.7	5.3	4.7	4.9	4.4	-10.2
<b>2017 %</b>						
<b>Aboriginal Rates vs. non-Aboriginal Rates</b>						
Total, all education levels						<b>82.3%</b>
Less than high school						<b>61.5%</b>
High school graduate						<b>66.7%</b>
Some post-secondary						<b>67.5%</b>
Post-secondary certificate or diploma*						<b>63.0%</b>
University degree						<b>27.3%</b>

**Source:** Statistics Canada, Labour Force Survey, 4ctl\_abo\_educ\_AN.ivt

## AVERAGE WEEKLY WAGES BY EDUCATIONAL LEVEL

Wages increased by 3% for Aboriginals and by 1.6% for non-Aboriginals in 2017. However, Aboriginals' wages are still lower than for non-Aboriginals. The overall wages for Aboriginals were 8.3% lower than for non-Aboriginals in 2017, which is an improvement from the 11.7% gap that existed in 2007.

As education increases, wages increase for both Aboriginals and non-Aboriginals. When wage rates are examined by educational level we obtain further information. The average wage rate for Aboriginal high school graduates was 1.2% lower than for non-Aboriginals and 4.8% and 6.4% lower for those with a bachelor's degree and above, respectively. For others, Aboriginals' wage rates were higher than for non-Aboriginals by 9.4%, 6.4%, and 1.4% for those with less than high school completion, less than some post-secondary, and post-secondary with diploma or certificate, respectively. See Table 9.

**TABLE 9**  
Average Weekly Wages by Educational Level  
Aboriginals and Non-Aboriginals

	2007	2010	2013	2015	2017	2017/2016
	<b>Aboriginals</b>					<b>% Change</b>
<b>Total, all education levels</b>	665	743	816	855	881	<b>3.0</b>
Less than high school	522	571	609	622	661	<b>6.3</b>
High school graduate	623	672	737	772	769	<b>-0.5</b>
Post-secondary certificate / diploma without high school completion	705	802	915	847	946	<b>11.7</b>
Post-secondary certificate / diploma with high school completion	769	825	908	942	983	<b>4.4</b>
Bachelor's degree	874	1033	1060	1135	1109	<b>-2.3</b>
Above bachelor's degree	1178	1219	1195	1299	1285	<b>-1.1</b>
	<b>Non-Aboriginals</b>					
<b>Total, all education levels</b>	753	819	883	943	958	<b>1.6</b>
Less than high school	488	532	577	599	604	<b>0.8</b>
High school graduate	645	695	734	766	778	<b>1.6</b>
Post-secondary certificate / diploma without high school completion	747	787	866	885	888	<b>0.4</b>
Post-secondary certificate / diploma with high school completion	786	848	905	953	970	<b>1.8</b>
Bachelor's degree	959	1024	1084	1144	1164	<b>1.7</b>
Above bachelor's degree	1145	1208	1295	1371	1373	<b>0.2</b>
	<b>Aboriginal Rates vs. Non-Aboriginal Rates</b>					
	<b>2007</b>			<b>2017</b>		
<b>Total, all education levels</b>	<b>-11.7%</b>			<b>-8.1%</b>		
Less than high school	<b>6.9%</b>			<b>9.4%</b>		
High school graduate	<b>-3.5%</b>			<b>-1.2%</b>		
Post-secondary certificate / diploma without high school completion	<b>-5.5%</b>			<b>6.4%</b>		
Post-secondary certificate / diploma with high school completion	<b>-2.1%</b>			<b>1.4%</b>		
Bachelor's degree	<b>-8.9%</b>			<b>-4.8%</b>		
Above bachelor's degree	<b>2.9%</b>			<b>-6.4%</b>		

**Source:** Statistics Canada, Labour Force Survey, 4ctl\_abo\_educ\_AN.ivt

## SUMMARY AND CONCLUSIONS

The employment and unemployment rates improved for both Aboriginals and non-Aboriginals in 2017, while the participation rates remained about the same. However, all three rates have been consistently worse for Aboriginals.

Métis have consistently had lower unemployment rates and higher employment and participation rates than for First Nations. In most years Métis' participation rates were higher than for Inuits.

In 2017 unemployment and employment rates improved for non-Aboriginal men and women in each of the three age categories. For non-Aboriginals most categories improved.

The exceptions were that the employment rates for men 55 and older and for women 15–24 declined and the unemployment rate for men 55 and older increased.

The provinces with the highest Aboriginal employment rates were British Columbia followed by Alberta. Quebec was the province with the lowest Aboriginal employment rate, followed by the Atlantic region.

The services-producing sector was where 77.1% of Aboriginals were employed in 2017. The three largest in 2017 were health care and social assistance, followed by retail trade, with accommodation and food services being next, employing 14%, 12.5%, and 9%, respectively. In the goods-producing sector, construction was where the greatest percentage, 10.6%, of Aboriginals were employed.

Employment rates for Aboriginals and non-Aboriginals are very similar when examined by educational level. This is the case for the 11 years for which the data is available. This is highly significant. It means that education is an important aspect in determining employment for both Aboriginals and non-Aboriginals. Unemployment rates for Aboriginals are substantially higher than for non-Aboriginals, regardless of educational level.

Aboriginals' wages were 8.3% lower than for non-Aboriginals in 2017, which is an improvement from the 11.7% gap that existed in 2007.

As education increases, wages increase for both Aboriginals and non-Aboriginals.

Education is a key determinant of employment and wage rates. It is education that makes a significant contribution toward lessening and, in some cases, overcoming the historical gaps in the rates between Aboriginals and non-Aboriginals.

## REFERENCE

Statistics Canada, Labour Force Survey.



# *Journal of Aboriginal Economic Development*

## Call for Papers Volume 11, Issue 2

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Submission of a manuscript implies commitment to publish in the Journal. Submission to JAED also implies that the manuscript has not been published elsewhere, nor is it under consideration by another journal. Authors who are in doubt about what constitutes prior publication should consult the editor.

The Journal features academic articles, examples from economic practitioners, book reviews and the state of the Aboriginal economy.

**Learning from Experience** from practitioners, academics, consultants and executives include interpreted case studies, evaluation and commentary on popular and current approaches and tools of Aboriginal economic development, advocacy of particular approaches and solutions, successful or failed efforts, and the identification of important economic development problems that are in need of solutions.

**Lessons from Research** from academics features scholarly inquiry, debate and commentary on how we frame, perceive, interpret, research and contribute to the field of Aboriginal economic development.

**The State of the Aboriginal Economy** will feature current views on the evolving state of the Aboriginal economy and responses to changes in the global economy, corporate activity, and government policy — for example, the Federal Framework on Aboriginal Economic Development, or the social economy.

**Reviews of Current Books and Literature** features recent literature exploring aspects of economic development relevant to Aboriginal peoples and community development.

We believe such submissions will be particularly valuable, and it is our objective to publish as many as possible, if not in this issue then in subsequent issues of the JAED and/or in Cando *Connect* magazine. We want to know what people are doing, what is working, what is not working, and why.



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