

**A MODEL FOR THE DEVELOPMENT OF ENTREPRENEURSHIP ON  
FIRST NATION INDIAN RESERVES**

by

Adam Charles Munnings  
Bachelor of Law, University of British Columbia, 2005

PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF BUSINESS ADMINISTRATION

In the Aboriginal Business and Leadership Program  
of the  
Faculty  
of  
Business Administration

© Adam Charles Munnings 2015  
SIMON FRASER UNIVERSITY  
Term Spring 2015

All rights reserved. However, in accordance with the *Copyright Act of Canada*, this work may be reproduced, without authorization, under the conditions for *Fair Dealing*. Therefore, limited reproduction of this work for the purposes of private study, research, criticism, review and news reporting is likely to be in accordance with the law, particularly if cited appropriately.

# Approval

**Name:** Adam Munnings

**Degree:** Master of Business Administration

**Title of Project:** A Model for the Development of Entrepreneurship on  
First Nation Indian Reserves

**Supervisory Committee:**

---

**Bryan Gallagher**  
Senior Supervisor  
PhD Candidate, Beedie School of Business  
Simon Fraser University

---

**Dr. Mark Selman**  
Second Reader  
Director of the Executive MBA in Aboriginal Business and  
Leadership, Beedie School of Business  
Simon Fraser University

**Date Approved:** \_\_\_\_\_

## **Abstract**

Community well being for First Nations on Indian Reserves is significantly lower than the rest of Canada. Contributing factors are the lack of businesses, the distrust in capitalism from colonialism and the effort to assimilate First Nations, and a perceived belief that there is not a fit between entrepreneurship and First Nations culture. These factors and a lack of goods and service providers on Indian reserve lands have resulted in a loss of business to communities off Indian reserve lands. Entrepreneurship can create employment opportunities and can reduce leakage. In order to improve conditions on Indian reserve lands for entrepreneurship research has shown that stability of governance and institutions, and culture and traditions is important. This paper develops a model that will give First Nations direction for the steps that can be taken within the legal landscape of Canada to improve the conditions on Indian reserve lands for entrepreneurship

**Keywords:** First Nation: entrepreneur: indigenous knowledge: indigenous law: economic development: Indian reserve: aboriginal; indigenous; Canada.

## **Acknowledgements**

To my supervisors Bryan Gallagher and Mark Selman thank you for your enthusiastic support, guidance and involvement in my project.

To Cynthia Callison and Darwin Hanna, the partners of the law firm Callison and Hanna, where I am an associate lawyer, for your understanding and allowing me the time required to pursue my goals and for your support over the last three years while I worked towards my MBA in Aboriginal Business and Leadership.

To Chaslynn Gilanders and Rebecca Lockhart for being generous with their time and their support.

To all those involved in the MBA in Aboriginal Business and Leadership program and my fellow cohort, without all of you we would not have had this opportunity.

Finally, to my wife, Katherine Patricia Melville, thank you for your unconditional love, encouragement, support, keeping our lives together, and putting your own dreams on hold so that I could further my education. Without your love and support I would not be where I am today and this would not have been possible.

## Table of Contents

Approval.....	ii
Abstract .....	iii
Acknowledgements .....	iv
Table of Contents .....	v
List of Figures .....	vii
List of Tables.....	viii
<b>Introduction .....</b>	<b>1</b>
<b>First Nations’ Economies on Indian Reserves in Canada.....</b>	<b>4</b>
Leakage .....	9
Economics and Culture .....	11
<b>Indigenous Knowledge.....</b>	<b>16</b>
Indigenous Law .....	18
<b>Entrepreneurship on Indian Reserves.....</b>	<b>19</b>
Program Support for Entrepreneurs on Indian Reserves .....	21
<b><i>Indian Act</i> Land Issues .....</b>	<b>23</b>
Designated Land Leases .....	23
Certificate of Possession Leases.....	24
Buckshee Leases.....	25
Laws of General Application.....	25
Discussion .....	26
<b>Income Tax Exemption .....</b>	<b>27</b>
<b>Specific Considerations for Entrepreneurs on Indian Reserves .....</b>	<b>29</b>
Business Structure .....	29
Interest in Land.....	30
<b>Legal Tools to Improve Entrepreneurship on Indian Reserves .....</b>	<b>32</b>
Impact Benefit Agreement .....	32
Employment, Training, Business Opportunities, and Scholarship.....	33
Municipal Service Agreement.....	35
<i>Indian Act</i> .....	36
By-Laws .....	37
Election Code .....	38
<i>First Nation Land Management Act</i> .....	39
<i>First Nations Fiscal Management Act</i> – Property Tax Law.....	40

<b>Grouping of Issues and Tools .....</b>	<b>41</b>
Program Support.....	41
Land Regime .....	41
Governance Structure .....	41
Institutions and Services.....	41
<b>Application of Indigenous Knowledge.....</b>	<b>42</b>
Program Support.....	42
Land Regime .....	42
Governance Structure .....	43
Institutions and Services.....	43
<b>First Nation Entrepreneurship Development Model .....</b>	<b>44</b>
Indigenous Knowledge and Laws, and Culture and Traditions.....	45
Land Regime .....	45
Governance Structure .....	46
Institutions and Services.....	46
Program Support.....	47
Entrepreneurs.....	47
<b>First Nation Use of the Model.....</b>	<b>48</b>
<b>Conclusion.....</b>	<b>50</b>
<b>Bibliography.....</b>	<b>52</b>
Works Cited.....	52
Case Law .....	56
Legislation .....	56
Bylaws .....	57
Websites Cited.....	57

## List of Figures

Figure 1	Average CBW Scores Comparison Graph Between First Nations and Other Communities .....	5
Figure 2	CBW Scores Comparison Graph Between First Nations and Other Communities 1980 .....	7
Figure 3	CBW Scores Comparison Graph Between First Nations and Other Communities 2006 .....	8
Figure 4	First Nation Entrepreneurship Development Model .....	44
Figure 5	Entrepreneurship Progression Over Time .....	44

## List of Tables

Table 1	Comparison between CBW factors in 2001 and 2006. ....	8
---------	---	---



## Introduction

It is a well known fact that First Nations people<sup>1</sup> living on Indian Reserves in Canada live with lower “income, rate of employment, quality of housing, years of education, life expectancy, and other standards of living that can be objectively measured”<sup>2</sup> than the rest of Canada and other Aboriginal groups, including Métis and off-reserve First Nations people. These problems are exacerbated by the lack of businesses providing goods and services on Indian Reserves, a lack of jobs, as well as the leakage of money to other communities before it has a chance to circulate within an Indian Reserve. Entrepreneurship is an effective solution for creating jobs, mitigating leakage, and improving the standard of living on Indian Reserves.<sup>3</sup> Perhaps the most extensive works in these areas have been created by Cornell<sup>4</sup> and Miller<sup>5</sup> who have both looked at entrepreneurship in the United States and the challenges that Indian Tribal members living on reservations face with respect to community well being and economic development. Their work largely focuses on Indian Tribes; this paper takes the work of Cornell and Miller and explores how their work may apply to Canada’s Indian Reserves, specifically as this connects to the legal landscape of Canada’s First Nations.

The paper acknowledges that there are other opportunities available to support entrepreneurship on Indian Reserves, such as those identified by Weir,<sup>6</sup> including grants, funding, loans, and other support programs. These support programs require funding from First Nations, government, industry, non-profit societies, and other sources that may not be sustainable or available to all First Nations. Support programs are important and there are examples of long standing programs such as Nuu-chah-nulth Economic Development Corporation and Stolo Community Futures but this is not true of all programs. Programs can be supported in their goal

---

<sup>1</sup> Individuals with Indian status as defined by the *Indian Act*.

<sup>2</sup> Tom Flanagan and Katrine Beauregard, *The Wealth of First Nations, An Exploratory Study*, Center for Aboriginal Policy Studies, June 2013, p. 1.

<sup>3</sup> Robert J. Miller, *Reserve Capitalism – Economic Development in Indian Country*, University of Nebraska Press, 2013.

<sup>4</sup> *Ibid.*

<sup>5</sup> Steven Cornell, Miriam Jorgensen, Ian Wilson Record, and Joan Timeche, *Citizen Entrepreneurship: An Underutilized Development Resource*. In M. Jorgensen (Ed.), *Rebuilding Native Nations: Strategies for Governance and Development* (pp. 197–222), (Tucson: University of Arizona Press, 2007).

<sup>6</sup> Warren I. Weir, *First Nation Small Business and Entrepreneurship in Canada*, (National Center For First Nations Governance, December 2007).

of increasing entrepreneurship and small business by changes to law, government and institutions which are unique to the legal landscape in Canada regarding First Nations. The purpose of this paper is to:

- explore the tools that can be used and steps that can be taken to promote entrepreneurship on Indian Reserves<sup>7</sup> within the current legal landscape of Canada; and
- develop a model for the use of Indigenous knowledge to create economic development opportunities for entrepreneurs on Indian Reserves in Canada.

Under the current legal structures of Canada there are a number of tools and steps that can be taken to promote business and entrepreneurship on Indian Reserves. It is well established through the work of the *Harvard Project on American Indian Economic Development* (the “Harvard Project”) that “governance is crucial to the economic development for native people.”<sup>8</sup> The Harvard Project was focused on Indian Tribes in the United States and their Indian Reservations; the rights of Indian Tribes differ significantly from Canadian First Nations, specifically in rights on and off of reserve lands. Indian Tribes have sovereignty over their reservation lands; they can set up their own legal systems, and manage lands, but do not have any rights outside of their reservation lands. In Canada, First Nations, notwithstanding some exceptions, are governed by the *Indian Act*, and have Aboriginal rights and title that are protected by section 35 of the Canadian *Constitution Act, 1982*. These Aboriginal rights, unlike Indian Tribes’ sovereignty, give First Nations rights both on and off their reserve lands, including the right to self-government. Unlike Indian Tribes, a First Nation’s Aboriginal rights do not create true sovereignty. Sovereignty for First Nations comes in the form of self-government and is diminished by the legislation and case law of Canada. It is something that cannot fully exist but it is something First Nations will continue to fight for, and which is reflected in decisions of the Supreme Court of Canada, including the most recent *Tsilhqot’in Nation v. British Columbia* (“*Tsilhqot’in*”) decision.

*Tsilhqot’in* is a very important decision for aboriginal people in Canada; it is the first case to prove Aboriginal title. However, the courts placed restrictions on Aboriginal title, limiting First Nations’ control by allowing for justified infringements of Aboriginal rights which must pass a

---

<sup>7</sup> Indian Reserve lands as defined by the *Indian Act*.

<sup>8</sup> Tom Flanagan and Katrine Beauregard, *The Wealth of First Nations*, p.2.

three part test, and by defining Aboriginal title as a collective right that cannot be used in a way that substantially deprives future generations of the use and connection to the lands. Although it is still unknown what the effect of these restrictions will be on economic development or land use, the restrictions on Aboriginal title and the restrictions of the *Indian Act* set limits on the sovereignty of First Nations.

Within these restrictions on sovereignty in Canada, First Nations still have the power to create opportunities for their members to become entrepreneurs and to make laws that can influence entrepreneurs to remain within or move to their Indian Reserve lands. A number of legal tools exist that can be used to create economic development opportunities on Indian Reserves. The tools discussed in this paper each play a role in economic development on Indian Reserves; they are not the only tools out there, but investigating the role of legal tools is critically important and is a key differentiator between Canada and the US, which is the focus of Cornell and Miller. In order to understand how these tools can work to influence economic development, we must first look at the issues and understand the challenges faced by First Nations and by those who wish to become entrepreneurs on Indian Reserves.

## First Nations' Economies on Indian Reserves in Canada

Sheila Fraser, Auditor General of Canada, in a speech to the Canadian Club on May 25, 2012, speaking of her experiences throughout a decade of change regarding the conditions of First Nations living on Indian Reserves stated:

It's no secret that their living conditions are worse than elsewhere in Canada. For example, only 41 percent of students on reserves graduate from high school, compared with 77 percent of students in the rest of the country. And more than half of the drinking water systems on reserves still pose a health threat.

What's truly shocking, however, is the lack of improvement. Last year, Indian and Northern Affairs Canada reported that between 2001 and 2006 there was little or no progress in the well-being of First Nations communities. In a wealthy country like Canada, this gap is simply unacceptable.

Over the past 10 years, my Office has produced no fewer than 31 audit reports on aboriginal issues.

Yet despite these reports, and despite some federal action in response to our recommendations over the years, too many First Nations people still lack what most other Canadians take for granted.<sup>9</sup>

Something must be done to fix the problem and improve the lives of First Nations people in Canada, and clearly Canada is not getting the job done. The current status of economies on Indian Reserve is unacceptable. Aboriginal Affairs and Northern Development Canada ("AANDC") assigns a score to First Nations with respect to their community well being, which they refer to as the Community Well Being Index ("CBW").<sup>10</sup> The CBW "uses census data and is based on four factors: education (high school and university), housing (quantity and quality), labour force (participation and employment) and income (total per capital);"<sup>11</sup> its purpose is to "measure the quality of life of First Nations and Inuit communities in Canada relative to other

---

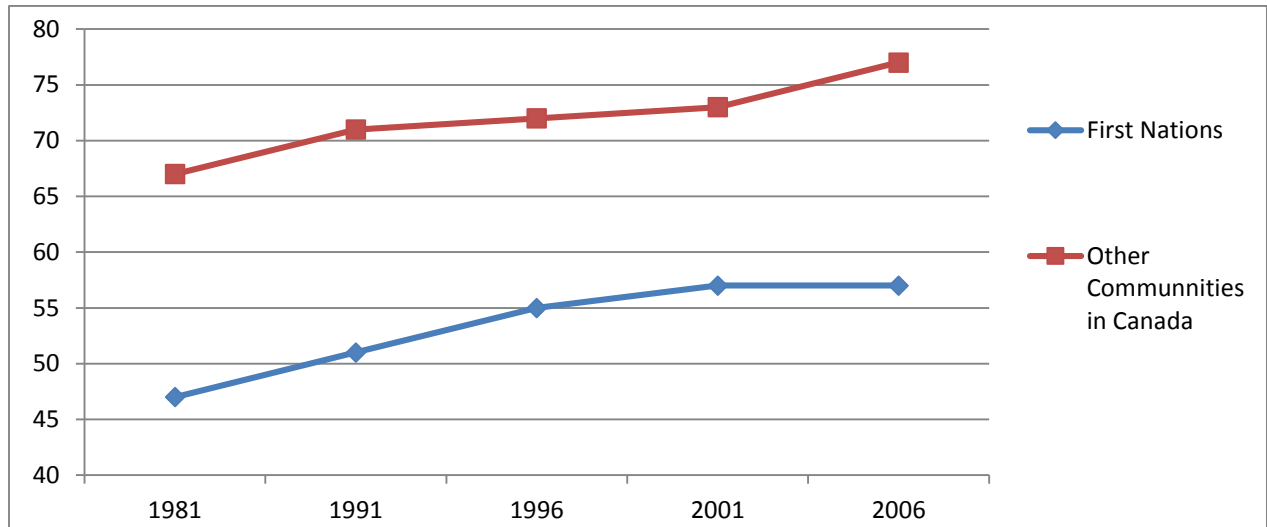
<sup>9</sup> Sheila Fraser, Speaking Notes for an Address by Sheila Fraser, FCA, Auditor General of Canada to the Canadian Club of Ottawa—*Serving Parliament through a Decade of Change*, (Ottawa: May 25, 2011), and John Graham, *Dysfunctional Governance - Eleven barriers to progress among Canada's First Nations*, Inroads 31 (First Nations Governance: 2012), <http://www.csls.ca/events/2012/cea.graham.pdf>

<sup>10</sup> John Graham, *Dysfunctional Governance*, p.31

<sup>11</sup> John Graham, *Dysfunctional Governance*, p.31

communities and over time.”<sup>12</sup> Figure 1 shows the change in CBW between First Nations and other communities in Canada from 1981 to 2006. The y-axis shows the CBW index values and the x-axis shows the years. It is clear that the gap is continuing to increase despite the progress that has been made in legislation and the common law relating to First Nations.<sup>13</sup>

Figure 1 Average CBW Scores Comparison Graph Between First Nations and Other Communities<sup>14</sup>



In 2006, “there were 615 First Nations, accounting for 748,371 individuals, with 397,980 living on reserves... the percentage of registered individuals living on [Indian] Reserve[s] and Crown lands has decreased from 71% in 1982 to 56% in 2005.” One of the reasons for moving off-reserve is that the living conditions “are worse than elsewhere in Canada.” First Nations need to improve the living conditions on Indian Reserves in order to bring people back to their land and to prevent the exodus of their members.

Canada has tried to improve the conditions of Aboriginal people by spending money on the problem. Federal spending on Aboriginal matters in 2006 was approximately \$5.9 billion, and in 2013, Canada spent approximately \$7.9 billion on Aboriginal matters.<sup>15</sup> This means that spending on Aboriginal matters increased 25% between 2006 and 2013, and there is little evidence to suggest resultant change in community well being. This is supported by a 2007 study

<sup>12</sup> Indian and Northern Affairs Canada, Strategic Research and Analysis Directorate, *First Nation and Inuit Community Well-Being: Describing Historical Trends (1981–2006)* (Ottawa: Indian and Northern Affairs Canada:2010), [www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/text-text/cwbdck\\_1100100016601\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/text-text/cwbdck_1100100016601_eng.pdf)

<sup>13</sup> John Graham, *Dysfunctional Governance*, p. 33

<sup>14</sup> Indian and Northern Affairs Canada, Strategic Research and Analysis Directorate, *First Nation and Inuit Community Well-Being: Describing Historical Trends (1981–2006)*, p. 11

<sup>15</sup> Aboriginal Affairs and Northern Development Canada Financial Statements for the Year Ended March 31, 2014 (Unaudited), <https://www.aadnc-aandc.gc.ca/eng/1406647854883/1406647953957>

on CBW that found that CBW was unaffected by the receipt of specific claims settlement money. This suggests that monetary compensation does not affect community well being, and that First Nations need to make changes to improve their community well being. One way to improve community well being is to increase the member's engagement in their community through governance that reflects their culture and traditions. The Harvard Project has found that governance is key to "promoting or retarding economic development."<sup>16</sup> In this way, governance supports the foundation of economic development that will improve the community's economy and well being.

There is no available data from 2006 to 2007 to support a CBW comparison between First Nations and other communities in Canada because AANDC has not published any CBW since 2006.<sup>17</sup> Given the increase in spending and the changes in the legal landscape for First Nations, it is clear that the government cannot solve the problems facing First Nations in Canada with its current approach. A more in depth look needs to be taken to determine what issues are contributing to the below average, and decreasing well being of First Nations.

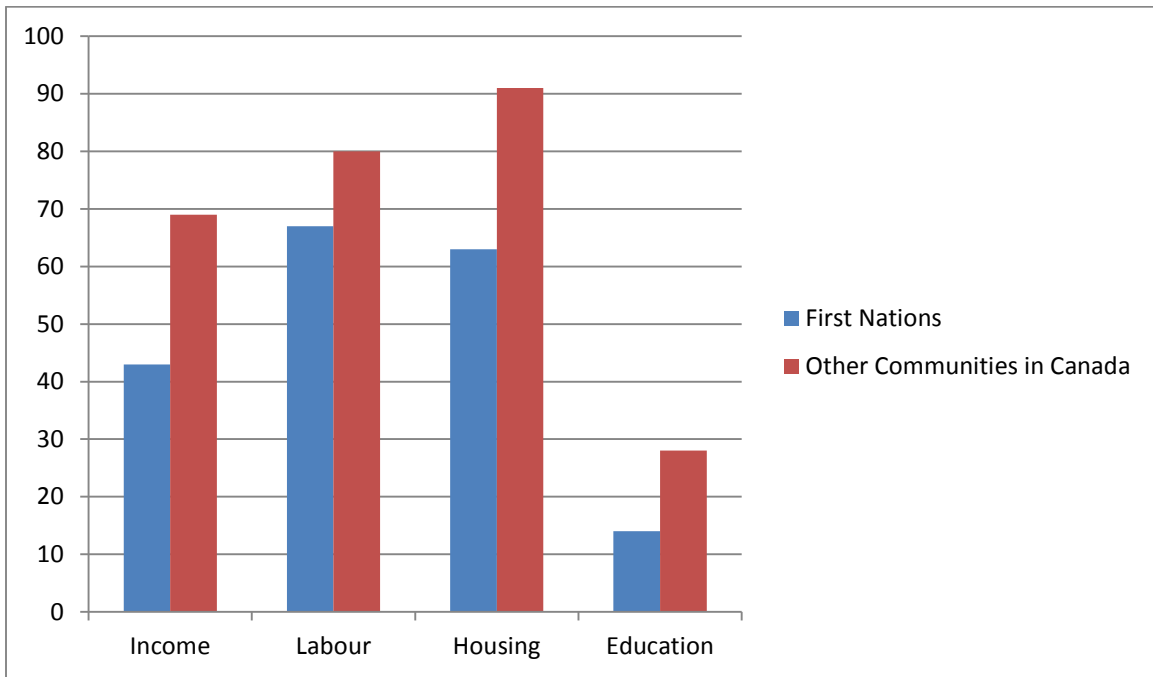
A comparison of the CBW scores between First Nations and other communities in Canada for each factor in 1980 shows a major difference between First Nations and other communities in Canada. Other communities do significantly better than First Nations in each of the four factors. This is the same for 2006. In Figure 2 and 3, you can see the comparison of CBW scores for each factor between the different communities.

---

<sup>16</sup> Tom Flanagan and Katrine Beauregard, *The Wealth of First Nations*, p. 7

<sup>17</sup> Erin O'Sullivan, *The Community Well-Being Index (CWB): Measuring Well-Being in First Nations and Non-Aboriginal Communities, 1981-2006* <https://www.aadnc-aandc.gc.ca/eng/1345816651029/1345816742083>

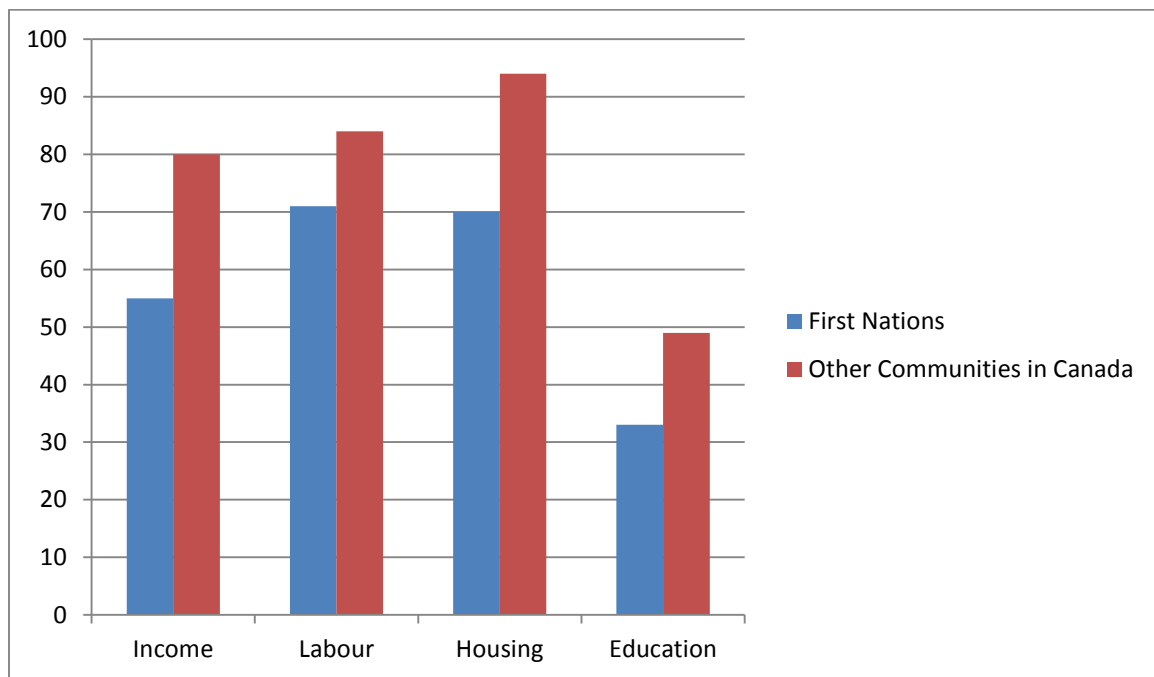
Figure 2 CBW Scores Comparison Graph Between First Nations and Other Communities 1980<sup>18</sup>



A comparison of Figure 2 to Figure 3 shows an increase in the CBW scores but the gap remains similar.

<sup>18</sup> Indian and Northern Affairs Canada, *First Nation and Inuit Community Well-Being*.

Figure 3 CBW Scores Comparison Graph Between First Nations and Other Communities 2006<sup>19</sup>



A comparison of the changes between 2001 and 2006 for each category between the communities below has interesting results.

Table 1 Comparison between CBW factors in 2001 and 2006<sup>20</sup>.

Years	Income		Labour		Housing		Education	
	FN	OC	FN	OC	FN	OC	FN	OC
2001	55	77	70	83	71	93	30	41
2006	55	80	71	84	70	94	33	49

Table 1 shows that First Nations had little change between 2001 and 2006, while the other communities in Canada experienced growth greater than one point on both income and education. This means that although the gaps have remained consistent between 1981 and 2006, there was a stabilizing of the First Nations CBW between 2001 and 2006 that was not experienced by other communities, which is supported by Figure 1.

For an explanation of the difference between First Nations CBW and other communities in Canada, the unemployment rates of First Nations living on-reserve (23.1% in 2006)<sup>21</sup> can be

<sup>19</sup> Indian and Northern Affairs Canada, *First Nation and Inuit Community Well-Being*.

<sup>20</sup> Indian and Northern Affairs Canada, *First Nation and Inuit Community Well-Being*, note\* FN = First Nation and OC = Other Communities in Canada

<sup>21</sup> Statistics Canada, *Table 7: Employment and unemployment rates for the First Nations identity population and the Registered Indian population (aged 25 to 54) living on and off reserve, Canada, 2001 and 2006*, <https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-559/table/t7-eng.cfm>



compared against those of First Nations living off-reserve (12.3% in 2006)<sup>22</sup> and against those of the general population (5.2% in 2006).<sup>23</sup> There is a significant difference between First Nations as a whole and the general population, as well as between First Nations off-reserve and on reserve, with respect to unemployment rates. This is a major concern for First Nations, as a society cannot function with an unemployment rate greater than twenty percent.<sup>24</sup> Of interest is that the remoteness of a First Nation reduces CBW, while the location of First Nation near urban areas and valuable resources, and a cultural background including traditional industries such as salmon fishing, increases CBW.<sup>25</sup>

These issues are not isolated to Canada, they are also prevalent in the United States where there has been extensive research by the Harvard Project on American Indian Economic Development.<sup>26</sup> Although Indian Tribes fall under a different legal regime than First Nations, the issues related to reservations and Indian Reserves are the same. However, Indian Tribes are not as dependent on their location for success as they are on the use of their sovereignty powers. The Harvard Project identified three keys to developing tribal economic development success:

- 1) governance:
- 2) strong institutions to assist and regulate businesses; and
- 3) fit between governance institutions and the culture of communities.<sup>27</sup>

These can all be addressed to some degree by the legal tools available to First Nations in Canada.

## **Leakage**

One of the major problems affecting First Nation economies on Indian Reserves is leakage. Leakage refers to money that is spent outside of the local community, and in the case of

---

<sup>22</sup> *Ibid.*

<sup>23</sup> Statistics Canada, *Table 6: Employment and unemployment rates of people aged 25 to 54, by Aboriginal identity, Canada, 2001 and 2006*, <https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-559/table/t6-eng.cfm>

<sup>24</sup> Robert J. Miller, *Reserve Capitalism*, p.2.

<sup>25</sup> Tom Flanagan and Katrine Beauregard, *The Wealth of First Nations*, p. 16 and 17.

<sup>26</sup> Harvard Project on American Indian Economic Development, <http://hpaied.org/>

<sup>27</sup> Robert J. Miller, *Reserve Capitalism*, p.142 – 144.

Indian Reserves, this refers to money spent off reserve lands.<sup>28</sup> This money comes into a community and “leaves or leaks away ... sooner than is expected and sooner than is optimal.”<sup>29</sup>

The ideal is for money to circulate in the local economy five to seven times before it leaves.<sup>30</sup> However, on Indian Reserves there are few businesses, if any, where people wish to purchase their goods and services, and they travel outside the Indian Reserve to spend their money before it has a chance to circulate.<sup>31</sup> The solution to this problem is the creation of new local businesses and jobs. This creates a stronger economy because more jobs means more local spending and more local businesses allowing money to circulate in the community.<sup>32</sup>

A leakage study about Six Nations and New Credit First Nation, two large and successful First Nations, found that sixty-two percent of all spending is done off the Indian Reserves. A study done of five Unama’ki communities in Nova Scotia, including the Membertou First Nation, also found that sixty-seven percent of spending was outside the communities.<sup>33</sup> In the Mohawk Council of Akwesasne leakage study, they found that seventy-six percent of all spending is done off the Indian Reserves<sup>34</sup> All of these First Nations or groups of First Nations had very high annual economic activity levels of at least \$50 million, with Six Nation and New Credit First Nation topping the three studies at over \$250 million, but with an unemployment rate of thirty percent, despite a tobacco industry that provides over 800 jobs and generates over \$42 million in net profit.<sup>35</sup> This means that even for some of Canada’s most economically successful First Nations, there is a significant amount of leakage.

In order to reduce the effects of leakage on a community, there must be sufficient local businesses to provide goods and services. Goods and service businesses provide community members with opportunities to spend their money within their community. For example:

---

<sup>28</sup>Travis Seymour, MNP LLP, *Economic Leakage Studies: Helping First Nations Communities Identify Opportunities for Economic Growth* <http://nationtalk.ca/story/economic-leakage-studies-helping-first-nations-communities-identify-opportunities-for-economic-growth/>

<sup>29</sup> Robert J. Miller, *Reserve Capitalism*, p.4.

<sup>30</sup> *Ibid.*, p.4.

<sup>31</sup> *Ibid.*, p.4.

<sup>32</sup> Aboriginal Investment Services, *Six Nations and New Credit Economic Leakage Study: Final Report*, March 2010, p.2.

<sup>33</sup> Nova Scotia Mi’kma Economic Benefits Office, *First Nations Study Purchasing Power of Household Spending*, <http://mebons.ca/reports/first-nations-study-purchasing-power-household-spending/>

<sup>34</sup> Indian Times, *Akwesasne spends \$107.1 million annually outside community: MCA Releases Economic Leakage Study Results*, <http://www.indiantime.net/story/2014/10/09/news/akwesasne-spends-1071-million-annually-outside-community/15520.html>

<sup>35</sup> Aboriginal Investment Services, *Six Nations and New Credit Economic Leakage Study*. Retrieved from <http://www.newcreditfirstnation.com/uploads/1/8/1/4/18145011/doc051010.pdf>

- 1) if a community has only one general store then money will be spent at the store and then will be spent outside the community; or
- 2) if a community has a gas station, general store, restaurant, mechanic, and other goods and service providers, then it is likely that the same money will be spent multiple times within a community before it leaves.

By increasing the number of businesses similar to the example in number two, above, communities will increase the number of available jobs, and consequentially, reduce unemployment. This will have the effect of allowing more community members to spend money within communities, improving the community's economy. Promoting and supporting entrepreneurship will create new businesses in communities, create new jobs, and allow community members to spend money in their communities, rather than travelling off-reserve to spend their money on goods and services. In addition, businesses on Indian Reserves can then contribute directly to the community as a source of revenue for the First Nation through taxation, user fees, and leasing.<sup>36</sup>

## **Economics and Culture**

There are First Nation leaders who believe that economic development and creating reserve economies is not going to fix the problems described above and that there should be a return to First Nation culture, and traditional ways of life including traditional economies.<sup>37</sup> However, it is “not necessary to stop being tribal or ‘traditional’ to develop economically ... developing reservation economies is vital to sustaining and developing Native American Culture”<sup>38</sup> Aboriginal people in North America were not poor before contact, they were entrepreneurial, and being poor is not their culture:

... After all, as a chairman of the Navajo Nation once stated: “Traditional Navajo values do not include poverty.” In fact, Navajo Culture requires that Navajo people work hard to support their families and to acquire enough materials assets to be financially secure and to be able to participate in ceremonies and assist the needy.<sup>39</sup>

An example of this culture in Canada is the Nuu-chah-nulth Nations, where economy of redistribution through “social, cultural, spiritual and economic event[s]” resulting from wealth

---

<sup>36</sup> Bryan Gallagher and Mark Selman, *Warrior Entrepreneur*, American Indian Quarterly, 39.1, Winter 2015, p.89.

<sup>37</sup> Dr. Tim Raybould, *The Economies of First Nations Governance Investment Capital, Money and Wealth Accumulation*.

<sup>38</sup> Robert J. Miller, *Reserve Capitalism*, p.5.

<sup>39</sup> *Ibid*, p.17.

creation was integral to their community and cultural well being.<sup>40</sup> So what has happened to make leaders believe that economic development will not help, and resulted in a loss of entrepreneurial spirit and the importance wealth accumulation in our communities?

One possibility that many argue is colonialism and oppression from hundreds of years of North America trying to rid itself of the “Indian Problem” through assimilation, as Treaty Commission Duncan Campbell Scott stated in 1920:

I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department.<sup>41</sup>

These statements clearly reflect the beliefs at the time and the purpose of the *Indian Act*. The years of oppression under the *Indian Act* have left First Nations people with a feeling that they are not fully able to identify with Canada.<sup>42</sup> An example of the oppressive nature of the *Indian Act* regarding economic development and entrepreneurship is exposed in “section one of *An Act to Amend "The Indian Act, 1880, S.C. 1881, c. 17, which prohibited the sale of agricultural products grown on reserves.”*<sup>43</sup> In order to sell agricultural products, Indians were required to obtain a permit from Indian Agents, among other things, this applied to the sale of grains, cut wood, and cattle.<sup>44</sup> Aboriginal groups in North America have traded and sold goods as a way of life, and as a way of acquiring and distributing wealth since before contact with Europeans, and continue to do so; an example of this is the potlatch ceremonies on the West Coast.<sup>45</sup> This shows that the laws do not reflect First Nations culture and traditions, and for those living on Indian Reserves their lives were, and continue to be, governed by the *Indian Act*. In order to escape this oppressive history First Nations must be able to pursue their economic development within the framework of their own laws.<sup>46</sup>

---

<sup>40</sup> Bryan Gallagher and Mark Selman, *Warrior Entrepreneur*, p 73-94,110.

<sup>41</sup> Anishinabek Nation Indian Residential Schools Commemoration Project, *About Indian Residential Schools*, <http://www.anishinabek.ca/irscp/irscp-about-residential.asp>

<sup>42</sup> John Borrows, *Recovering Canada: The Resurgence of Indigenous Law*, University of Toronto Press 2007, p. 144.

<sup>43</sup> Wendy Moss, Elaine Gardner-O'Toole, Law and Government Division, *Aboriginal People: History of Discriminatory Laws*, November 1991. Retrieved from [http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm#\(69\)](http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm#(69))

<sup>44</sup> Herald Lerat and Linda Ungar, *Treaty Promises Indian Reality Life on a Reserve*, Purich Publishing, 2005, p. 84.

<sup>45</sup> Robert J. Miller, *Reserve Capitalism*.

<sup>46</sup> John Borrows, *Recovering Canada*, p.144.

However, some First Nation leaders believe “that entrepreneurship will promote individualism, which will in turn lead to the erosion of [First Nations] culture and identity.”<sup>47</sup> Colonial roots of capitalism are believed to be at the centre of the government policy for the integration of First Nations “into the market economy and cultural assimilation.”<sup>48</sup> This leads to a belief that there is an ongoing struggle between First Nations culture and identity, and economic development including entrepreneurship.<sup>49</sup> The focus of papers on aboriginal entrepreneurship has been on the negative impacts on culture.<sup>50</sup> A study by Gallagher, in which indigenous entrepreneurs in Canada and Australia were interviewed, offered no support for the assertions that entrepreneurship weakens culture and identity.<sup>51</sup> In fact, the study found that entrepreneurship had either a “neutral effect on their indigenous identity or strengthen[ed] it.”<sup>52</sup>

How does entrepreneurship strengthen First Nations culture? Many indigenous entrepreneurs run their businesses in a community-oriented way and give back to their First Nations and community of indigenous entrepreneurs.<sup>53</sup> These entrepreneurs develop positive social and self-identities, and describe entrepreneurship as “helping to strengthen their indigenous identity.”<sup>54</sup> A sense of self-sufficiency from entrepreneurship can contribute to the removal of the constraints of colonization and sense of dependency on government, which may be a way for First Nations to regain control over their lives.<sup>55</sup> This is a “fundamental aspect of [First Nations] identity.”<sup>56</sup> Further, “some indigenous entrepreneurs run their businesses... to strengthen an aspect of indigenous culture and identity.” This can “generate pride in an indigenous identity...[and] increase knowledge about and confidence in an indigenous identity.”<sup>57</sup>

For example, Spirit Works Limited “is an Aboriginal owned, operated, and staffed company focused on the creation and distribution of authentic Aboriginal products.”<sup>58</sup> Spirit

---

<sup>47</sup> Bryan Mathew Gallagher, *Entrepreneurship and Indigenous Identity: Three Studies on the Connections between Indigenous Identity and Entrepreneurial Practices in Canada and Australia*, (Simon Fraser University, Spring 2015), p.7.

<sup>48</sup> Gerald Taiaiake Alfred, *Colonialism and State Dependency*, *Journal of Aboriginal Health*, November 2009, p.44.

<sup>49</sup> Bryan Mathew Gallagher, *Entrepreneurship and Indigenous Identity*, 2015, p.11.

<sup>50</sup> *Ibid*, p.11.

<sup>51</sup> *Ibid*, p.8 and 24.

<sup>52</sup> *Ibid*, 2015, p.8.

<sup>53</sup> *Ibid*, 2015, p.25.

<sup>54</sup> *Ibid*, 2015, p.26.

<sup>55</sup> *Ibid*, 2015, p.47.

<sup>56</sup> *Ibid*, 2015, p.47.

<sup>57</sup> *Ibid*, 2015, p.149.

<sup>58</sup> Spirit Works, About Us. Retrieved from <http://www.authenticaboriginalproducts.ca/about-us/>

Works believes “that passing down knowledge is an obligation” and in protecting their heritage and environment.<sup>59</sup> The founder, Sechelt First Nation member Shain Jackson has built on the success of Spirit Works with the help of like-minded entrepreneurs, artists, First Nations people, leaders and First Nations to develop the Authentic Indigenous Arts Resurgence Campaign to “promote and support authentic Indigenous artworks in the retail and wholesale marketplace.”<sup>60</sup> In these examples, Shain used his First Nations culture and traditions to build Spirit Works, and from that worked with others to protect aboriginal art from “knock offs” by developing the Authentic Indigenous Arts Resurgence Campaign. This is one way in which indigenous entrepreneurs can leverage culture to create economic opportunities. Other examples include First Nations people that engage in fishing, hunting and harvesting activities, these activities use cultural and traditional practices to create opportunities of First Nations people.

The challenge facing First Nations is in finding a balance of business development, governance and culture.<sup>61</sup> Indigenous entrepreneurs and First Nations need to find ways to overcome the colonial past in order to thrive in a capitalist society and create economic stability on Indian Reserves. Economic development relies on stability of governance and institutions, for First Nations on Indian Reserves this has been dictated by the *Indian Act*. A “cultural mismatch” has been at the centre of economic failure for First Nations and is only now beginning to be resolved through various tools available to First Nations.<sup>62</sup> First Nations are developing their own laws, governance structures, and institutions that reflect their community’s needs, as well as their culture and traditions. This is critical for economic development on Indian Reserves and can only be addressed through the development of laws by First Nations

The key to development of laws that will work for First Nations is sovereignty, unfortunately in Canada this is not the same as the sovereignty afforded to tribes in the United States.<sup>63</sup> It is a limited sovereignty that allows First Nations to create laws that will work for them within a set of rules governed by the legislative and common law framework of Canada.<sup>64</sup> It has been shown that one pathway does not always work for all aboriginal groups, but rather, “there

---

<sup>59</sup> *Ibid.*

<sup>60</sup> *Authentic Indigenous Arts Resurgence Campaign*, Retrieved from <http://authenticindigenous.com/>

<sup>61</sup> Miriam Jorgensen, *Rebuilding Native Nations: Strategies for Governance and Development*, The University of Arizona Press, 2007, p. 36.

<sup>62</sup> *Ibid*, p. 49.

<sup>63</sup> *Ibid*, p. 53.

<sup>64</sup> *Ibid*, p. 53.

are multiple pathways to” economic success.<sup>65</sup> First Nations must create their own laws within the legal landscape of Canada by embedding their culture and traditions into the laws they create. Despite the right to self-government and the sovereignty that may exist for First Nations in theory, it is not practical for most First Nations to fight to make these rights a reality. In order to create progress, First Nations must embrace transformation and find creative ways to use indigenous knowledge to make the tools available to promote economic development fit with their culture and traditions. In order for meaningful changes to occur, economic development “must be done in an indigenous way.”<sup>66</sup>

---

<sup>65</sup> *Ibid*, p. 53.

<sup>66</sup> Gerald Taiaiake Alfred, *Colonialism and State Dependency*, p.48.

## Indigenous Knowledge

We live in a time that David Newhouse refers to as “after great pain”, a time of gathering indigenous knowledge to influence law and policy through the use of tools that have come about by the work of First Nations and individuals fighting for Canadian Aboriginal people’s inherent right to self government.<sup>67</sup> This allows indigenous knowledge to become the foundation of laws, policies and economic development.<sup>68</sup> It is a realization that assimilation will not work, and the Canadian government cannot fix First Nations problems; First Nations must do it themselves by injecting indigenous knowledge back into their communities, in order to make things better for the future.<sup>69</sup> Within First Nations, what is the role of indigenous knowledge and how is it being used?

Within Aboriginal Society: Indigenous knowledge is present throughout its structure and processes; contemporary governance practices recognize Elders, youth and women in important and significant ways; Aboriginal spirituality is honoured and recognized and accorded a central part in organizational practice; Creation stories; Indigenous moral and ethical values, Indigenous ideas about the nature of society and human life are taught in schools and used as a basis for Aboriginal policy and programming; Aboriginal pedagogies are found in primary and secondary schools; community development which fosters an integrated holistic approach to development based upon the centrality of the collective Indigenous knowledge is in widespread use.<sup>70</sup>

Indigenous knowledge reminds First Nations about who they are; their values and their way of life. This knowledge is passed on through practice, ceremony, and instruction. Indigenous knowledge is “multi-disciplined,” “inherently practical,” and instructive even in modern times,<sup>71</sup> and its way of thought looks at the “interconnectedness” of all things and is holistic.<sup>72</sup> This way of thinking is fundamental to First Nations’ governance systems that will improve economic development and the communities involvement in that economic development.

---

<sup>67</sup> David Newhouse, Jeff Orr and the Atlantic Aboriginal Economic Development Integrated Research Program, *Aboriginal Knowledge for Economic Development*, (Black Point and Winnipeg: Fernwood Publishing, 2013), p. xi –xx.

<sup>68</sup> *Ibid.*, p.xx.

<sup>69</sup> *Ibid.*, p.xx.

<sup>70</sup> *Ibid.*, p. xxi.

<sup>71</sup> John Borrows, *Drawing Out Law: A Spirit’s Guide*, (Toronto: University of Toronto Press, 2010).

<sup>72</sup> David Newhouse, *et al.*, *Aboriginal Knowledge for Economic Development*, p. xxiii.



An example of this is the effects that a First Nations language immersion program has in the community. It infuses indigenous knowledge into the community, allowing fluent speaker the opportunity to “contribute to a community’s cultural renewal and ... bring strong language and cultural assets to the workforce of [the] community.”<sup>73</sup> The effect of immersion programs on the economic development of a community can be seen in how the programs encouraged students to become better students and increased self-esteem, which influences leadership qualities. This also benefit the community in the future as the students may someday become community and business leaders.<sup>74</sup> Although the studies on immersion programs were limited, there were clear benefits that developed leadership skills in students.

Indigenous knowledge creates multiple benefits for economic development. It allows for:

- the creation of laws and policy that First Nation people can directly relate to and feel a part of;
- the creation of opportunities to develop stronger communities through the interaction of multiple generations of community members from children to Elders;
- the creation jobs, which helps brings language and traditional knowledge holders back to the community; and
- the development of self esteem and leadership skills in youth.

By applying indigenous knowledge to land use, governance, institutions and entrepreneurship, First Nations can create economic development in a way that considers their culture and traditions. ‘Culture matters’, is one of the key findings of the Harvard Project. Indian Tribes that were successful in economic development were able to match their land use, governance, institutions and economic development projects with their culture. To do this indigenous knowledge must inform land use, governance, institutions and economic development including entrepreneurship.

---

<sup>73</sup> *Ibid.*, p. 49.

<sup>74</sup> *Ibid.*, p 49, 63 and 97.

## Indigenous Law

Indigenous knowledge informs and provides the basis for indigenous laws. Indigenous law is based on the culture, traditions and practices of First Nations.<sup>75</sup> Indigenous law is often recorded in oral history stories, which describe laws that have been developed to govern “spiritual, political and social customs and conventions to guide their relationships.”<sup>76</sup> These laws are also recorded in “memory devices” such as wampum belts, masks, totem poles, medicine bundles, culturally modified trees, birch bark scrolls, petroglyphs, button blankets, land forms, crests, and more.<sup>77</sup>

In some cases, indigenous law can be difficult to describe and explain, because it relies on indigenous knowledge that may be incomplete or misinformed because the elders were taken from the community and placed in residential schools, and because the churches or Indian agents may have said it was wrong or made rules against certain practices. For example: Napoleon recalls a story about indigenous law as it relates to the keeping of sweet grass; in the story, sweet grass was left out in a classroom and members were angry about the disrespectful treatment of the sweet grass. The elders discussed that sweet grass was supposed to be kept sealed and out of sight, however, an elder with a longer memory than the others reminded everyone that it was the church and the Indian Agent that made the people keep sweet grass in jars and hidden, it was not their custom, tradition, or laws that created this practice.<sup>78</sup> From this story, it is easy to see how indigenous laws can be misinterpreted and how they must be developed over time from the collection and development of indigenous knowledge. Through indigenous knowledge studies and development, indigenous laws will evolve. Indigenous laws will inform laws developed by First Nations now, through the current legislation that allows First Nations to make their own laws.

The development of indigenous knowledge and law is a process that can inform the laws that First Nations can make to improve opportunities for business, including entrepreneurs. Inversely, business can also be used to add to the indigenous knowledge of First Nations through traditional use studies, or by providing an economic base and own-source funding for First Nations to raise funds to further research and develop their indigenous knowledge and laws.

---

<sup>75</sup> John Burrows, *Indigenous Legal Traditions in Canada Contemporary and Comparative Perspectives on the Rights of Indigenous Peoples*, Washington University Journal of Law & Policy, Vols. 19 (2005) p.167-228.

<sup>76</sup> *Ibid.*, p.190.

<sup>77</sup> *Ibid.*, p.190.

<sup>78</sup> Val Napoleon, Thinking About Indigenous Legal Orders, National Center For First Nations Governance, June 2007, [http://fngovernance.org/ncfng\\_research/val\\_napoleon.pdf](http://fngovernance.org/ncfng_research/val_napoleon.pdf)

## Entrepreneurship on Indian Reserves

Entrepreneurship on Indian Reserves presents a number of issues in the following areas:

- Property rights;
  - Property rights on Indian Reserves in Canada are difficult to obtain and require the involvement of AANDC which can lead to lengthy delays and increased costs.
- Business skills and education;
  - First Nations have lower levels of education than the rest of Canada and lack skills and experience because of higher unemployment rates.
- Financing;
  - Financing is restricted on Indian Reserves, as lands cannot be used for collateral to obtain financing, because they are exempt from seizure under section 29 of the *Indian Act*.
- Utilities;
  - Indian Reserves generally do not have municipal services, and in some cases internet can be slow or unavailable.
- Unstable governance; and
  - Under the *Indian Act*, elections are held every two years, which means that a new Chief and Council could come into power every two years with new ideas that may create an unstable environment.
- Cultural and social issues.
  - Many First Nations people believe that development is the road to “cultural ruin” and that the capitalist model does not fit with their culture and traditions.<sup>79</sup>

---

<sup>79</sup> Robert J. Miller, *Reserve Capitalism*, p. 115.

- Entrepreneurs often make the decision to locate off Indian Reserves due to lack of community support, and the expectation of them to provide jobs, credit, and assistance to the community and relatives.<sup>80</sup>
- “Social Jealousy” known as the “crab in the bucket, an analogy, where a crab tries to climb out of a bucket and is pulled back in by the others.”<sup>81</sup>

These are just a few of the problems faced by entrepreneurs that may wish to locate their businesses on Indian Reserves. It is the job of the First Nation government to influence entrepreneurs to locate on their Indian Reserves by reducing these barriers.

In Canada, the 2001 census found that three percent of the overall Aboriginal population was self employed and that only fourteen percent of those people resided on an Indian Reserve.<sup>82</sup> In 1996, only four percent of aboriginal people owned a business while approximately eight percent of non-aboriginal people owned a business.<sup>83</sup> This is a small number of the entrepreneur aboriginal population of Canada that reside on Indian reserves, however these entrepreneurs contribute to their communities by:

supporting and promoting Aboriginal self-governance and economic development in important and valuable ways. For example, Aboriginal small businesses hire Aboriginal employees (even when other businesses and organizations are not). And Aboriginal entrepreneurs are creatively providing community members with needed, relevant, affordable and accessible products and services. A portion of the revenues that these individuals and businesses earn stays in the community: it doesn't leak out to small businesses located off-reserve, owned and operated by non-community members.<sup>84</sup>

This makes it important for First Nations to look to entrepreneurship to reduce leakage and to improve the economy of their Indian Reserves. However, many aboriginal governments “fail to include entrepreneurs in their development strategies.”<sup>85</sup>

Indigenous entrepreneurship is defined as follows:

Indigenous entrepreneurship [is] the creation, management and development of new ventures by Indigenous people for the benefit of Indigenous people. The organizations thus created can pertain to either the private, public or non-profit sectors. The desired and achieved benefits of venturing can range from the narrow view of economic profit for a

---

<sup>80</sup> *Ibid.*, p. 116.

<sup>81</sup> *Ibid.*, p 117 and Warren I. Weir, *First Nation Small Business and Entrepreneurship in Canada* p. 8.

<sup>82</sup> Warren I. Weir, *First Nation Small Business and Entrepreneurship in Canada*, p.22.

<sup>83</sup> *Ibid.*, p23.

<sup>84</sup> *Ibid.*, p.23.

<sup>85</sup> Miriam Jorgensen, *Rebuilding Native Nations*, p.198

single individual to the broad view of multiple, social and economic advantages for entire communities. Outcomes and entitlements derived from Indigenous entrepreneurship may extend to enterprise partners and stakeholders who may be non-Indigenous.<sup>86</sup>

A “warrior entrepreneur” is a type of indigenous entrepreneur that operates to:

- “battle colonial mind-sets and institutions”;
- “revitalize indigenous economic activity that was present” prior to contact; and
- increase community “self-sufficiency and a sense of agency.”<sup>87</sup>

Warrior entrepreneurs can work to bridge the gaps between First Nations fear of colonialism and capitalism with respect to economic development by emphasising culture and tradition over wealth creation, asserting indigenous values, and locating themselves in their communities where there are few businesses providing goods and services<sup>88</sup>

## **Program Support for Entrepreneurs on Indian Reserves**

In order to begin building economies on Indian Reserves, First Nations need programs to support entrepreneurs. First Nations can offer or provide information on programs to support entrepreneurs on Indian Reserves through grants, funding, loans and support programs. There are a number of programs that are available to support indigenous entrepreneurs which are easily found; some of these sources are identified in Weir. Generally, these programs are funded by government, industry, banks, non-profit organizations and by the First Nations directly; unlike laws created by First Nations, the majority of programs require funding sources, and if funding sources end, so will the programs unless a new source of funding is found. The *Great Law of the Iroquois Confederacy* states that “[i]n our every deliberation, we must consider the impact of our decisions on the next seven generations.” This indigenous law is shared with many First Nations in different ways, but all require that the current generation, when making decisions, must consider the generations to come and protect the way of life for them. For example, the Cheam First Nation declaration states:

**S’ólh téméxw te íkw’elò. Xyólhmet te mekw’ stám ít kwelát.**

This is our land. We have to take care of everything that belongs to us.

---

<sup>86</sup> K. Hindle and M. Lansdowne, “*Brave Spirits on New Paths: Toward a Globally Relevant Paradigm of Indigenous Entrepreneurship Research*,” *Journal of Small Business and Entrepreneurship* 18, no.2 (Spring 2005): p. 132

<sup>87</sup> Bryan Gallagher and Mark Selman, *Warrior Entrepreneur*, p. 74

<sup>88</sup> *Ibid*, r, p. 79 - 87

Our declaration is based on our **Sxwōxwiyám**, our **Sqwélqwel** and our connection through our **Shxwelí** to **S'ólh Téméxw**.

We make this declaration to protect our **Sxoxomes**, (our gifts), including all the resources from the water, the land and the mountains including **Xoletsa** (Frozen Lakes) and **Mometes**. We make this declaration to preserve the teachings

We make this declaration to protect **S'ólh Téméxw** for our **Tómiyeqw** (seven generations past and future).<sup>89</sup>

These examples show that the need to consider future generations is a value shared by First Nations. Consideration of future generations requires something in addition to programs support for entrepreneurs, the creation of laws, and the development of governance and institutions that can assist in the support of entrepreneurs for future generations. Laws, governance, and institutions increase stability on Indian Reserves and will remain in place if funding sources for programs are reduced or removed.

---

<sup>89</sup> *Cheam First Nation Forest and Range Consultation and Revenue Sharing Agreement*, <http://www2.gov.bc.ca/gov/DownloadAsset?assetId=1CA9FCD51C5443B4BED00E3D084B1B5B> (2012)

## ***Indian Act Land Issues***

Section 91(24) of the *Constitution Act* places jurisdiction over “Indians, and Lands reserved for the Indians” under the federal government. The federal government exercises its jurisdiction over Indian Reserves through the *Indian Act*, and AANDC is responsible for the administration of the *Indian Act*.<sup>90</sup>

Indian Reserves are not held by First Nations in fee simple, the title to Indian Reserves is held by Canada for the “use and benefit of the band.”<sup>91</sup> Any interest in Indian Reserves requires the application of the *Indian Act*, of significance for the purposes of this paper are lease hold interests, specifically:

- 1) Designated Land Leases;
- 2) Certificate of Possession Leases; and
- 3) Buckshee Leases.

These are the three main interests in Indian Reserves that entrepreneurs may encounter when locating their businesses on Indian Reserves,

### **Designated Land Leases**

Under section 38(2) of the *Indian Act*, a First Nation can designate lands for leasing purposes. Once Indian Reserve lands are designated for leasing purposes, the Minister of AANDC (the “Minister”) may lease lands on behalf of the First Nation under section 53 of the *Indian Act*. For development projects, the lands are leased to the First Nation’s development corporation, and then subleased to third parties. The issue for entrepreneurs and First Nations is that the designation process is a costly, lengthy, and frustrating process<sup>92</sup> requiring: a survey; an environmental assessment; an appraisal; and a referendum of the First Nation’s members. This process can cause lengthy delays for project proponents and entrepreneurs, and in some cases,

---

<sup>90</sup> James I Reynolds, *Acquiring Interests in Reserve Lands*, Understanding the Indian Act, Continuing Legal Education Society of British Columbia, April 1, 2007, p.5

<sup>91</sup> *Indian Act*, section 2 definition of “reserve”.

<sup>92</sup> John Gailus, *Land Management and Economic Development under the Indian Act*, Continuing Legal Education Society of British Columbia, November 2009, p1.1.5 (“Gailus”)

will cost a First Nation opportunities to develop their lands, because the minimum time required for designating lands for leasing purposes is just under a year, for the simplest and most efficient cases.<sup>93</sup> Any turmoil within the membership of the First Nation or complexities in the project will have a significant effect on the timelines, and could prevent the lands from being designated for leasing purposes, bringing the project to a halt

If a First Nation has conducted some land use planning, and has portions of its Indian Reserve that are held by the First Nation, then it would be in the best interest of the First Nation and it's members to designate the lands for leasing purposes and lease the lands to the First Nations development corporation. This will save time once development opportunities become available, as this first step will already be completed.

A Designated Land Lease is the preferred type of interest in lands for developers and entrepreneurs, because it can offer the most security, and can be mortgaged. Two issues that third parties should be aware of when entering into a Designated Land Lease are the length of the Lease and whether the Lease is prepaid, or requires a rent review. Designated Land Leases can vary in lengths, the length is determined by the head lease, and the maximum duration is ninety-nine years. Prepaid leases have the rent prepaid for the term of the lease, while rent review leases will generally have rent reviewed every five years, with an appraisal of fair market value conducted to determine rent for the subsequent five years. A rent review lease is very risky, depending on the term of the lease and increase in adjacent property values.

## **Certificate of Possession Leases**

Under section 20(2) of the *Indian Act*, the Minister may issue a member of a First Nation a certificate of possession ("CP Holder") to a portion of an Indian Reserve that has been allotted by the council of the First Nation to the member. A certificate of possession grants a CP Holder "an exclusive right to possess a parcel of land,"<sup>94</sup> and is the closest interest in land under the *Indian Act* to fee simple title that a member of a First Nation can hold. If an entrepreneur is a member of the First Nation where their business is located on the Indian Reserve, then they may purchase from the current CP Holder a certificate of possession, or ask Chief and Council to allot them a certificate of possession. This is the best option for an entrepreneur that is a member of the First Nation, unless financing is required to purchase the interest in the lands..

---

<sup>93</sup> Shelly Pikowicz, Lands Advisory Services, Department of Indian Affairs and Northern Development Canada, *Designation Process on Indian Reserve Land*, p.10. Retrieved from <http://library.lawsociety.sk.ca/inmagicgenie/documentfolder/AC1424.pdf>

<sup>94</sup> John Gailus, *Land Management and Economic Development under the Indian Act*, p1.1.3.



A CP Holder may lease the lands under section 58(3) of the *Indian Act* with the approval of the council of the First Nation and the Minister. This type of lease does not take as long to be set up as the Designated Land Lease, because they do not have to be designated. Certificate of possession leases do not allow for mortgages, unless approved by council<sup>95</sup> and the same concerns arise as in a Designated Land Lease with respect to rental payments.

## **Buckshee Leases**

A Buckshee Lease is a common term that is used to describe an illegal lease under section 28(1) of the *Indian Act*, where lands are leased by the First Nation or a CP Holder outside of the provisions of the *Indian Act*. These types of leases are frequently encountered on Indian Reserves for short term and minimal rental payment leases, because the leasing process under the administration of the AANDC is lengthy, expensive, and time consuming. Where there is a tenancy dispute, the tenant has no rights if the Band or CP Holder wishes to evict the tenant, because the courts have found Buckshee Leases to be unenforceable.<sup>96</sup> A Buckshee Lease has no security of tenure, and the lessee has no right to possession. Buckshee Leases are generally used for recreational or agricultural purposes, campgrounds, or primary residences, and are fairly common in Canada, because of the complexities created by the *Indian Act*.<sup>97</sup>

## **Laws of General Application**

Under section 88 of the *Indian Act*, “all laws of general application ... in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal Management Act*...” Generally, the exceptions are those laws that apply to the management of Indian Reserve lands and taxation of the property of Indians on Indian reserve lands. For example, generally in British Columbia the *Residential Tenancy Act* and the *Land Title Act* do not apply to Indian Reserve lands, but the *Motor Vehicle Act* and the *Liquor Control and Licensing Act* will apply on Indian Reserve lands. This is very important for entrepreneurs to be aware of, specifically as it relates to the rental or purchase of property, because the protections of provincial laws that apply to lands off reserve will not apply on Indian Reserves. Entrepreneurs must carefully review leases because they will

---

<sup>95</sup> *Ibid*, p1.1.6.

<sup>96</sup> *Obomsawin c. Marcil*, [1987] J.L. No.88-25 (R.L.), and *Sampson v. Locations West Property Management Ltd.* 91993), 82 B.C.L.R. (2d) 157.

<sup>97</sup> Gary Campo and Holly Vear, *Land Interest in Reserves*, Aboriginal People and the Law Programme, Native Courtworkers and Counselling Association of BC. p.2 and 3.

have to rely on them in the case of a dispute with the landlord, generally, leases for Indian Reserve lands will include dispute resolution clauses that will refer disputes to mediation and arbitration.

## **Discussion**

Certainty of legal interest in land should be a major concern for entrepreneurs looking to relocate or locate themselves on Indian Reserves. As discussed earlier, there are Buckshee Leases that are illegal under the *Indian Act*, the provincial laws related to the management of land may not apply, CP lands cannot be financed by Tenants, Designation Leases can take over a year to receive approval, and a Land Code may take years to implement. However, First Nations can take steps to prepare their lands for economic development, including entrepreneurship.

For businesses where there is no major investment or need for financing in lands, anticipated entrepreneurs may be interested in Buckshee Leases or CP Leases as they generally cost less money. In the case of a Buckshee Lease, entrepreneurs must be aware of the risk and be prepared to move upon notice from the landlord. CP Leases are best for entrepreneurs that do not anticipate the need for any financing, because they will not be able to leverage their interest in land as collateral to borrow money. The benefit of the CP lease is that it is a legal interest in land and may be registered in the Indian Land Registry System giving security to the business.

For businesses where major investments and financing are required, entrepreneurs will need a Designation Lease or an interest under a Land Code. These interests take over a year to establish; however, First Nations can take steps to designate lands for leasing purposes or create their own Land Codes before the contemplation of any economic development. If economic development is something that a First Nation would like to encourage on their Indian Reserve lands, it is best to designate any unused First Nation held lands for leasing purposes. At the same time or earlier First Nations should apply to be added to the list of First Nations accepted as signatories to the *FNLMA Framework Agreement* this list is known as the “Rolling 30”. Once a First Nation is a party to the “Rolling 30” they receive funding to develop their own Land Code. It can take up to fifteen years to be added to the “Rolling 30,” and there is no requirement to sign onto the Framework Agreement if a First Nation is accepted. This means that any First Nation contemplating their own Land Code should immediately apply to be added to the Framework Agreement.

## Income Tax Exemption

The type of business structure that a status Indian chooses can affect the tax exemption of the business, and can offer benefits to individuals that choose to locate their business on Indian Reserves. Section 87 of the *Indian Act* provides for the tax exemption of the personal property of an Indian situated on Indian Reserves. The Courts have found that the *Income Tax Act* imposes tax on personal property that is exempt under section 87.<sup>98</sup> This means that entrepreneurs that are Indians under the *Indian Act*, with business structures of sole proprietors and partnerships located on an Indian Reserve, may be exempt from taxation. However, corporations will not receive a tax exemption, because at law they are an individual person and the courts are not willing to pierce the corporate veil to allow for the section 87 tax exemption to First Nations that own shares in corporations.<sup>99</sup>

In *Southwind v. Canada*, 1998 CanLII 7300 (FCA), the Federal Court of Appeal at paragraph 12, set out what is known as the “connecting factors test,” which is a set of factors that must be considered in determining if business income is located on an Indian Reserve, and therefore exempt from taxation. The factors are as follows:

- 1) the location of the business activities;
- 2) the location of the customers (debtors) of the business,
- 3) where decisions affecting the business are made;
- 4) the type of business and the nature of the work;
- 5) the place where the payment is made;
- 6) the degree to which the business is in the commercial mainstream;
- 7) the location of a fixed place of business and the location of the books and records;
- 8) the residence of the business' owner.

---

<sup>98</sup> Jack Woodward, *Native Law*, Carswell, 2015,(2011 – Rel.5) p12-26

<sup>99</sup> *Kinoosamin Beach Assn. v. Saskatchewan* (1979), [1979] 6 W.W.R. 84

Until the decision in *Bastien and Dube v. Canada*, 2011 SCC 39, most cases were decided based on income being earned in the commercial mainstream.<sup>100</sup> In *Bastien and Dube* the Supreme Court of Canada found that interest income from term deposits from an on-reserve financial institution were exempt from tax, reducing the influence of the “commercial mainstream.” The reasoning of the Court found that:

The exemption from taxation protects an Indian’s personal property situated on a reserve. Therefore, where the investment vehicle is, as in this case, a contractual debt obligation, the focus should be on the investment activity of the Indian investor and not on that of the debtor financial institution

*Canada v. Robertson*, 2012 FCA 94 and *Ballantyne v. Canada*, 2012 FCA 95, demonstrate that commercial fishing income can be exempt from tax even if the income has connections to off-reserve activities, both these cases this case because the fishers sold their catch to a Co-op located on an Indian Reserve. In *Dickie v. Canada*, 2012 TCC 242, business income from a proprietorship was held to be situated on reserve and exempt from tax, because the managerial and control of the business took place exclusively on an Indian Reserve, even though the majority of the operations were located off-reserve.

For entrepreneurs, these cases are important, but each case determined on a factual basis and unfortunately, tax exemptions will also be determined on a case by cases basis. However, these cases do give some direction as to what is required to determine if a business income will be found to be “personal property” located on an Indian Reserve.

In the case of a partnership, income will be taxed based on the same test as any other business income; if income is earned on an Indian Reserve, then that portion will be tax exempt.<sup>101</sup> Tax exemption will be reduced by the portion of income activities of the Partnership that are located off-reserve, and only the status Indian will benefit from the tax exemption.<sup>102</sup>

---

<sup>100</sup> Jack Woodward, *Native Law*, (2012-Rel.5)

<sup>101</sup> <http://www.cra-arc.gc.ca/brgnls/stts-eng.html#hdng5>

<sup>102</sup> <http://www.cra-arc.gc.ca/brgnls/stts-eng.html#hdng5>

## Specific Considerations for Entrepreneurs on Indian Reserves

The considerations for entrepreneurs who wish to locate on Indian Reserves will depend on the type of business, the liability involved in the business, financing, and investment in property. Entrepreneurs will need to determine their business structure and the type of property rights that are required. For example, a farming company will require less security in tenure, and have low liability, compared to a forestry company, where liability is high or an auto mechanic where there is a high investment in the property requiring security of tenure. These are all considerations that must be weighed when setting up a business structure and locating on an Indian Reserve.

### Business Structure

Business structure is important for entrepreneurs, especially when locating a business on an Indian Reserve and the entrepreneur is a status Indian. As discussed previously, there are tax exemptions that must be taken into consideration and be weighed against liability. The following are three common business structures, and their implications for status Indian entrepreneurs on Indian Reserves:

#### Sole Proprietor

- The owner is the sole recipient of any profits and personally liable for all debts of the business.<sup>103</sup>
- The owner does not pay any income tax if the business income is situated on the Indian Reserve, this can become complicated when some of the work of the business is done off the Indian Reserve.
- This is a good option for status Indian entrepreneurs that have low liability and their business income is situated on the Indian Reserve.

---

<sup>103</sup> Robert Brent Anderson, *Economic Development among the Aboriginal People in Canada: The Hope for the Future*, (Captus Print, 1999). p. 145.

## Partnership

- The business is owned by two or more people.<sup>104</sup>
- The partners share equally in any profits and personally liable for all debts of the business.
- Only the portion of the business located on the Indian Reserve is tax exempt and only the status Indian partner receives the tax exemption.
- This is a good option for status Indian entrepreneurs that that have low liability, their business income is situated on the Indian Reserve, and they wish to begin their business with other status Indians, instead of creating a corporation in order to receive a tax exemption.

## Corporation

- The business is owned buy one or more shareholders.
- There is no personal liability or tax exemption on the profits of the corporation.
- This is an option for a business that has a high risk of liability and a large number of status Indian employees. By locating a corporation on an Indian Reserve, status Indian employees and shareholders will receive a tax exemption.

## **Interest in Land**

Due diligence will need to completed by entrepreneurs looking to locate on Indian Reserves, to determine the following:

- Type of lease, some types of leases are illegal on Indian reserve lands and provincial tenancy legislation does not apply.
- Terms of the lease, it is very important to know if the lease is a prepaid lease or rent renewal lease. A prepaid lease will be for a set term with rent paid up front. A rent renewal lease will be for a set term but rent will be recalculated by an appraisal after a set number of years (usually five or ten years) this can be a major concern for entrepreneurs as rent could significantly increase after the renewal period.

---

<sup>104</sup> *Ibid*, p.145.

- Financing, if financing for purchase of property is required, then a Designation Lease will be required.
- Zoning or land use plan, generally First Nations do not have detailed zoning or land use plans, so it is important for entrepreneurs to know if there are any and if there are any restrictions.
- Property taxation, entrepreneurs will need to know if there is property taxation and if it is paid to the First Nation, or to the neighbouring municipality. If a First Nation does not have their own property taxation bylaw or law, then the entrepreneur will pay property tax, if any, to the neighbouring municipality. Entrepreneurs can check for First Nations property taxation in the First Nations Gazette.
- Service Agreement, entrepreneurs will need to determine if the First Nation has any service agreements with neighbouring communities if not, there could be issues with fire protection, clean water, sewer, and other utilities.

# Legal Tools to Improve Entrepreneurship on Indian Reserves

## Impact Benefit Agreement

An impact benefit agreement (“IBA”) is an agreement between a project proponent and a First Nation intended to provide the First Nations support for a project located in the First Nation’s traditional territory in exchange for benefits. These benefits may include:

- employment and training;
- business opportunities;
- scholarships;
- revenue sharing; and
- other benefits.<sup>105</sup>

IBAs have become important for project proponents in Canada because of the development of case law regarding Aboriginal rights and title. IBAs allow proponents to enter into agreements with First Nations to mitigate potential losses from delays in the environmental assessment process, Crown consultation, and potential legal action from the Crown’s failure to adequately consult and accommodate First Nations. For example, the *Tahltan Nation Impact Benefit Agreement for the Forrest Kerr Hydroelectric Run-of-River Project*<sup>106</sup> provides the following benefits in exchange for the Tahltan Nations’ support of the project:

- environmental and heritage protection;
- financial benefits;
- direct award contracts; and
- training and employment.

---

<sup>105</sup> Sandra Gogal, Richard Riegert and Joann Jamieson, *Aboriginal Impact and Benefit Agreements: Practical Considerations*, *Alberta Law Review*, Vol/Issue: 43 (1), Jul 1, 2005, p.129.

<sup>106</sup> *Overview of the Tahltan Nation Impact Benefit Agreement Negotiated for the Forrest Kerr Hydroelectric Run-of-River Project*, [http://www.tahltan.org/sites/default/files/news/IBA%20Summary\\_0.pdf](http://www.tahltan.org/sites/default/files/news/IBA%20Summary_0.pdf)



The role of IBAs in project development has become even more important with the recent Supreme Court of Canada decision in *Tsilhqot'in*. In this decision, the Supreme Court of Canada found Aboriginal title for the first time. In its decision, the Court stated that where Aboriginal title exists, First Nations have the right to govern the lands and others must obtain the consent of the First Nation to use the land:

The right to control the land conferred by Aboriginal title means that governments and others seeking to use the land must obtain the consent of the Aboriginal title holders.<sup>107</sup>

The Court went on further to confirm that before Aboriginal title is determined the Crown has an obligation to consult and accommodate at a level proportionate to the strength of claim. If the Crown fails to fulfil its duty to consult, then there are remedies available:

Prior to establishment of title by court declaration or agreement, the Crown is required to consult in good faith with any Aboriginal groups asserting title to the land about proposed uses of the land and, if appropriate, accommodate the interests of such claimant groups. The level of consultation and accommodation required varies with the strength of the Aboriginal group's claim to the land and the seriousness of the potentially adverse effect upon the interest claimed. If the Crown fails to discharge its duty to consult, various remedies are available including injunctive relief, damages, or an order that consultation or accommodation be carried out: ...<sup>108</sup>

The duty to consult and accommodate is a duty owed by the Crown, and is not an obligation of third parties, although the Crown can delegate procedural processes and require consultation measures as part of the project authorization process.<sup>109</sup> The best option for project proponents is to mitigate any potential losses through entering into an IBA.

### **Employment, Training, Business Opportunities, and Scholarship**

Employment, training, business opportunities and scholarships offered under IBAs are typically limited to those directly related to the project or industry that will support the project. These opportunities are often not fully realized, because higher paying jobs and business opportunities, require high levels of education or skills and experience, which members of the First Nation typically do not have, and education opportunities are limited to industries that will support the project.

---

<sup>107</sup> *Tsilhqot'in*, para. 76.

<sup>108</sup> *Ibid*, para. 89.

<sup>109</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 and *Taku River Tlingit v. British Columbia (Project Assessment Director)* 2004 SCC 74 para. 53.

In order to benefit from the business opportunities, First Nations will generally create development companies that will joint venture, partner, or take on the work available from the project. Through these companies, individuals will gain experience, skills, and education in the project's industry or a related industry. After a few years, individuals have gained the experience required to run their own companies, however, the First Nations that they belong to already have well established companies and joint ventures with industry. This means that there are few opportunities for members to create their own businesses and once the project is completed, there are no sustainable benefits to the community, with the exception of a few skilled individuals and businesses that no longer have work because the project has ended.

In contrast, First Nations could insist on these benefits going instead to support entrepreneurship, because the opportunities afforded by IBAs do not usually create sustainable benefits and do not address leakage. IBAs offer opportunities for First Nations to obtain training, education and funding for their members in entrepreneurship, and this will benefit project proponents as well. Training people to run a business, such as convenience store, restaurant, gas station, heavy machinery repair shop, auto shop, banks, and other goods and services will give individuals an opportunity to fill a need in their community. Often resource projects where First Nations benefit from IBAs are located in rural or remote areas that lack goods and service providers; and developing these providers from within the community provides opportunities for sustainable development. In order to obtain these benefits First Nations must insist on diverse training, education, and business opportunities, and project proponents must be open to allowing First Nations to choose where they place their benefits.

These opportunities can be further improved upon via funding and resources provided by IBAs and specific claims. Most, if not all, programs that support entrepreneurship involve funding that may not be sustainable for seven generations into the future. By using the benefits from IBAs and specific claims to contribute to a First Nations or group of First Nations own program delivery society or business, First Nations can try to create sustainable programming from cash benefits obtained through IBAs or cash awards from specific claims. This could include investing money to create a scholarship fund, or providing business grants, loans, or other financing to businesses located on Indian Reserves. By investing large amounts of money from IBAs and specific claims, the interest can be used to provide for the support programs; if this managed conservatively, then it is likely that the First Nations could create sustainable programming. In addition to this, other benefits from IBAs can be used to supplement the initial and subsequent cash investments.

An example partnership that is similar to the ideas expressed above is the Pacific Trail Pipelines Aboriginal Skills Employment Partnership (“PTP ASEP”) which is an Aboriginal training to employment program that offers training opportunities for skilled trades that leads to apprenticeships and jobs.<sup>110</sup> However, PTP ASEP is focused on developing skilled trades to benefit only the pipeline industry, which is one of the issues with IBAs that was previously discussed. The option that would provide a greater benefit to the community and the economy would be a similar type of organization that would offer skilled trade opportunities as well as entrepreneur and small business support, funding, grants, scholarships, loans and other support programs. This would be done through funding from an IBA but would also receive funding from other monies received by First Nations, such as compensation from accommodation agreements and specific claims. Again, the issue with these sources of funding is that they are not sustainable unless the funds are properly managed.

## **Municipal Service Agreement**

For any development it is important to have municipal services such as:

- water;
- sewer;
- solid waste collection;
- fire protection;
- recreation;
- transit;
- building inspection; and
- animal control.<sup>111</sup>

Without these services, it would be very difficult to develop a project on an Indian Reserve. In order to acquire these services, a First Nation must negotiate for a municipal service agreement (“MSA”) with a neighbouring community, in some cases, the Indian Reserve may be

---

<sup>110</sup> Pacific Trail Pipelines Aboriginal Skills Employment Partnership, *About Us*  
<http://www.ptpasep.ca/about-ptp-asep-training-society/>

<sup>111</sup> Federation of Canadian Municipalities, *Service Agreements*,  
<http://www.fcm.ca/home/programs/community-infrastructure-partnership-program/program-resources/service-agreements.htm>

located within the neighbouring community's municipal boundaries yet still not have any services. An MSA can be comprehensive or can cover individual services.<sup>112</sup>

A major issue for the negotiation of an MSA is the neighbouring community's appetite for discussions and capacity to provide service. These issues can become very contentious and it can appear like the municipality is preventing First Nations from establishing an economic base because they do not have services.<sup>113</sup> In *Tsawwassen Indian Band v. Corporation of Delta*,<sup>149</sup> DLR (4th) 672. and *Burns Lake Indian Band v. Burns Lake (Village)* [2000] B.C.J. No. 1374, the courts found that "First Nations must pay a reasonable price for services from local governments and [l]ocal governments can refuse to provide services to First Nations but only after a reasonable notice period, which could be up to two years."<sup>114</sup>

It is in the best interest of a First Nation trying to develop their economy, and to keep and promote entrepreneurship, to enter into an MSA. An MSA will create opportunities, and in connection with other tools, can influence economic development on a First Nation's Indian reserve. Developers and entrepreneurs are more likely to bring business opportunities to a First Nation with clear and simple processes. In order to enter into these discussions, it is important to develop relationships with neighbouring municipalities, and to learn from the lessons of other First Nations such as the Tsawwassen First Nation, in respect to what not to do. In the case of Tsawwassen First Nation, their action of legally challenging the decision of the City of Delta not to provide sewer services has resulted in the Tsawwassen First Nation having to building their own water treatment plant and infrastructure.<sup>115</sup> This is very costly to the Tsawwassen First Nation and this could have been avoided if the two communities had worked together.

## ***Indian Act***

Under the *Indian Act*, there are few opportunities for Chief and Councils to assist entrepreneurs. In addition to the Indian Act leases discussed previously two other sections of the

---

<sup>112</sup> *Ibid.*

<sup>113</sup> Kim Pemberton, *UBCM workshop highlights need for co-operation between First Nations, municipalities*, Vancouver Sun, September 16, 2013. Retrieved from <http://www.vancouversun.com/life/UBCM+workshop+highlights+need+operation+between+First+Nations+municipalities/8920005/story.html>

<sup>114</sup> Murray Brown, *Working Together: Improving First Nations and Local Government Coordination and Cooperation in Planning*, BC Land Summit: Working Together for Better Results, May 12-14, 2004, Vancouver, B.C.

<sup>115</sup> Tyler Harbottle, *Delta washes hands of sewage debate*, The Canadian Press, April 14, 2013. Retrieved from <http://metronews.ca/news/vancouver/632893/delta-washes-hands-of-sewage-debate/>

*Indian Act* allow Chief and Council to take control from Canada and neighbouring municipalities; these are related to by-laws and election codes.

### **By-Laws**

There is some confusion over the application of municipal by-laws to Indian Reserves. The division of powers under section 92(8) of the *Constitution Act 1867* places municipalities under the control of the provinces.<sup>116</sup> Each province can delegate law making authority to municipalities, and they can expand their boundaries to include Indian Reserves.<sup>117</sup> There are a number of Indian Reserves that are located within municipalities, for example, in 1991 the Union of British Columbia Indians, policy paper on *Local Governments and Native Land Claims* stated that forty-five Indian Reserves in British Columbia were located with municipal boundaries.<sup>118</sup> In *Surrey (District) v. Peace Arch Enterprises*, 74 W.W.R. 380, it was found that municipal zoning laws cannot apply to Indian Reserves, this was expanded in *Oka (Municipality) v. Simon 2* CNLR 205, to include any municipal by-laws that apply to land do not have jurisdiction over Indian Reserves.<sup>119</sup> However, municipal by-laws that do not regulate the use of land will apply to Indian Reserves.<sup>120</sup>

Municipal by-laws that do not apply to the regulation of land apply on Indian Reserves and can have an impact on entrepreneurs, especially regarding such as business licences, building codes, nuisance, and taxation. These types of by-laws place restraints on what entrepreneurs can do in municipalities, and creates opportunities for First Nation governments to influence entrepreneurs to move to their Indian Reserves where there may be more favourable conditions and less restrictions. The doctrine of paramountcy and section 81 of the *Indian Act* create an opportunity for First Nation governments to create by-laws that remove the restraints of municipal by-laws. The doctrine of paramountcy in Canada states that where federal and provincial laws conflict or are contradictory, then federal laws will be paramount.<sup>121</sup> In this case, municipalities obtain their power from the provincial government, while First Nations obtain their

---

<sup>116</sup> Jack Woodward, *Native Law*, 2015, p.4-20.1 (2012-Rel.3).

<sup>117</sup> Jack Woodward, *Native Law*, p.4-21 (2010-Rel.5).

<sup>118</sup> *Local Governments and Native Land Claims*, Union of British Columbia Municipalities, p. 76, <http://www.ubcm.ca/assets/Resolutions~and~Policy/Policy~Papers/1991/Local%20Government%20and%20Native%20Land%20Claims%201991.pdf>

<sup>119</sup> Jack Woodward, *Native Law*, p.4-22 (2010 –Rel.5).

<sup>120</sup> Jack Woodward, *Native Law*, p.4-22 (2010 –Rel.5).

<sup>121</sup> <http://ualawccsprod.srv.ualberta.ca/ccs/index.php/cd/509-doctrine-of-paramountcy>

powers from the federal government through the *Indian Act*, meaning that First Nations by-laws would be paramount.<sup>122</sup>

The recent enactment of *Bill C-428, Indian Act Amendment and Replacement Act*, on December 16, 2014, has created new opportunities for First Nations to pass the majority of their by-laws via band council resolution, without the previous requirement of approval by the Minister of AANDC. Although there are some exceptions, such as taxation under section 83 of the *Indian Act*, and alcohol under section 85 of the *Indian Act*, that still require Ministerial approval, the rest of the by-laws, such as those relating to buildings and commercial activities, can now be easily passed by the First Nation. This provides First Nations with an opportunity to create a competitive advantage for entrepreneurs to relocate to their Indian Reserves, where they are not limited by the neighbouring municipalities by-laws.

### **Election Code**

One of the important factors in economic development discussed earlier is governance and a key component of governance is stability. Under section 78 of the *Indian Act*, the term for Chief and Council is only two years; given the time required for leases and business development, changes in elected officials every two years can be disruptive to economic development, if the new Council does not share the same views and priorities as the previous Council. A change in Council every two years creates uncertainty that will prevent entrepreneurs from locating on Indian Reserves. However, First Nations can limit this uncertainty by developing their own election codes under section 74 of the *Indian Act*, with longer terms of office to create stability for economic development. Terms can be increased to three, four, or more years, although it is common to see four years, and some have overlapping terms, to ensure that there is a “institutional memory” of the work that Council has been doing. These steps create stability in First Nation governance that helps influence entrepreneurs to move to Indian Reserves.

Further, election codes can take into consideration the culture and traditions of the First Nation. They can include designated elder and youth members on Council, representation by clan, house, family or other traditional governments. However, there are limits placed on what can be done with an election code by case law and AANDC policy, such as the requirement to allow full participation in the election process for off-reserve members. An example of how this may create issues is that some First Nations may have traditional and cultural practices that require the Chief

---

<sup>122</sup> Section 91 and 92 of the *Constitution Act 1867*, section 81 of the *Indian Act* and Jack Woodward, *Native Law*, p4-27 (2010 –Rel.5).

to live at a traditional village site, which is now located on the Indian Reserve. Although this could be argued, it is unlikely that the residency requirement described above would be accepted by the Minister. The Minister has accepted, but is not supportive of, a traditional territory residency requirement.

Governance structure is important because it is responsible for the stability of governance on Indian Reserve lands, where council has significant control over land use through their bylaw making authority, the designation process, and other decision making authority that requires approval by Council. Entrepreneurs require stability of governance where the decisions of Council can directly affect their business plans. The implementation of an election code is the best way to improve the stability of governance on Indian Reserves. As discussed above, election codes can reflect the indigenous knowledge and laws of a First Nation; terms of office can be extended from two years under the *Indian Act* to three, four or five years under an election code; the number of council members can be limited; and policy for the way council makes decisions can be established. These are all examples of changes that can be made to increase stability of governance on Indian Reserves.

### ***First Nation Land Management Act***

The *First Nations Land Management Act*<sup>123</sup> (the “FNLMA”) gives a First Nation control over their Indian Reserves and the legal power to manage the lands. Section 18(1) of the *FNLMA* sets out the management powers:

#### Power to manage

**18.** (1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular, may

- (a) exercise the powers, rights and privileges of an owner in relation to that land;
- (b) grant interests or rights in and licences in relation to that land;
- (c) manage the natural resources of that land; and
- (d) receive and use all moneys acquired by or on behalf of the First Nation under its land code.

Section 18(2) of the *FNLMA* gives First Nations the legal capacity to manage their Indian Reserves:

#### Legal capacity

---

<sup>123</sup> *First Nations Land Management Act* (S.C. 1999, c. 24)

(2) For any purpose related to First Nation land, a First Nation has the legal capacity necessary to exercise its powers and perform its duties and functions and, in particular, may

- (a) acquire and hold property;
- (b) enter into contracts;
- (c) borrow money;
- (d) expend and invest money; and
- (e) be a party to legal proceedings.

The adoption of a Land Code requires a transition from the *Indian Act* to the *FNLMA* through a drafting, negotiation, adoption and ratification process.<sup>124</sup> Once adopted, the Land Code replaces the land provisions of the *Indian Act* and becomes the law on First Nation's Indian Reserves for which it applies.<sup>125</sup> This process can take years, and it is best to start the process very early, before any economic development plans are made. Once in place, the First Nation will have control over their Indian Reserves and no longer be required to submit leases, permits, and licences to AANDC for approval; this offers a significant change in the length of time it takes to obtain tenure to Indian Reserves.

### ***First Nations Fiscal Management Act – Property Tax Law***

The *First Nations Fiscal Management Act* (“FMA”) allows First Nations to develop their own property tax regimes and to access capital markets for financing.<sup>126</sup> The development of a property tax regime allows First Nations to create their revenue from their lands, and in the case of Indian Reserves located in municipal boundaries, regain the taxation fund collected by the municipality from the Indian Reserve.

Generally, First Nations are now developing property tax laws as the *Indian Act* section 83 by-laws are older and the property taxation laws offer better protection and certainty to the taxation regime. Under a property taxation law a First Nation can include revitalization language that allows for property tax exemption for projects including economic development projects over a set number of years until the projects are established.

---

<sup>124</sup> Jean Yuen of Boughton Law Corporation, *Conveyance of a Leasehold Interest in First Nation Lands*, Residential Real Estate Conference 2012, Paper 5.1, Continuing Legal Education Society of British Columbia, December 2012, p.5.1.4 (“Yuen”)

<sup>125</sup> Jean Yuen, *Conveyance of a Leasehold Interest in First Nation Lands*, p 5.1.4.

<sup>126</sup> Jack Woodward, *Native Law*, 12-13 (2006 – Rel.1)



## **Grouping of Issues and Tools**

For ease of discussion and development of a model for the development of entrepreneurship on Indian Reserves, the issues and tools discussed above will be grouped into categories. The purpose of developing a model is to show how indigenous knowledge and law, and culture and traditions, can inform the development of program support, land regimes on Indian Reserves, governance structure, and institutions and services over time. This is important for creating stability on Indian Reserves, and for creating an environment that supports entrepreneurship, in order for First Nations to develop and bring entrepreneurs to their Indian Reserves.

### **Program Support**

Program Support will refer to programs and tools discussed above that support entrepreneurship, including grants, funding, loans, program support, IBAs and specific claims. Although IBAs and specific claims are not programs, they are a source of funding that can be used to support entrepreneurship.

### **Land Regime**

Land regime will refer to the issues and tools discussed above that relate to lands, including land leases and Land Codes.

### **Governance Structure**

Governance Structure will refer to election codes.

### **Institutions and Services**

Institutions and Services will refer to issues and tools related to taxation, MSAs and by-laws.

## **Application of Indigenous Knowledge**

Earlier in this paper, the importance and difficulties of applying indigenous knowledge and laws were discussed. This section will look at how indigenous knowledge can be practically applied to program support, land regimes, governance structure, and institutions and services.

### **Program Support**

It is difficult to determine how program support can be informed by indigenous knowledge or laws. Funding, grants, loans and other programs from outside sources cannot practically be restricted or made to conform with indigenous knowledge or laws. However, programs and services provided by First Nations, IBAs, and specific claims can be influenced by indigenous knowledge, because the First Nation has control over the resources that will be provided to entrepreneurs. For example, First Nations could require entrepreneurs that receive program support from the First Nation to give back to the community, which would be in line with the Anishinabek legal tradition of *daebizitawaugaewin* (obligation to family and community).<sup>127</sup> This is one way of how First Nations can ensure that their indigenous knowledge informs entrepreneurship. If a First Nation has few or no small businesses on their Indian Reserves, limits like the above example on programming create opportunities for warrior entrepreneurs on Indian Reserves. The First Nation should develop their own or bring warrior entrepreneurs into their communities at the beginning of economic development, this can build support for business that may have been lost to the impacts of colonialism on First Nations.

### **Land Regime**

Land regime issues are closely related to indigenous knowledge and laws because of the relationship that First Nations have with their lands, including their Indian Reserves. Indigenous knowledge can influence how lands are held under the *Indian Act* through CP holdings or prevent lands from being designated for leasing. A Land Code can have minor changes made that recognize indigenous knowledge or laws such as designating positions on the land for Council members or elders. However, like most agreements under provincial and federal government

---

<sup>127</sup> John Borrows, *Canada's Indigenous Constitutions*, ( Toronto:University of Toronto Press, 2010). p. 79.

legislation, changes are limited and the agreements are based on template language that cannot be changed without significantly increasing already lengthy timeframes for review by governments legal counsel. Even after these reviews, if there are substantial changes, it is unlikely that they will be accepted.

## **Governance Structure**

Governance Structure through the development of an election code is the one area where indigenous knowledge and law can likely have the greatest impact. The *Indian Act*, AANDC policies, and the common law have established minimum standards for election codes. For example, off reserve members of First Nations must be allowed to fully participate in elections, Chief and Council cannot be required to live on the Indian Reserves or in the traditional territory of the First Nation in order to run for the positions. However, First Nations can recognize traditional governance structures such as houses and clans, and the importance of elders. For example, the *Gitxaala Nation Custom Election Code* recognizes the *ayaawk* (the customary laws of the Gitxaala Nation), the matrilineal clan system, and the *sm'algyax* (the traditional language of the Gitxaala Nation).<sup>128</sup> Their Council is comprised of one Chief, one deputy chief and five council members, one from each clan. This is an example of how indigenous knowledge and law can be used in unison with the current restraints of the law in Canada.

## **Institutions and Services**

Institutions and services are an area where it can be difficult to apply indigenous knowledge and laws. However, bylaws offer an opportunity to place limits on the use of lands and activities on Indian Reserves that reflect indigenous knowledge and laws. For example, land use or zoning bylaws can limit the use of lands on areas of Indian Reserves that have significant cultural or traditional value to the First Nation. Bylaws can also be made to reflect cultural practices and traditions, such as Band Council decision making, heritage conservation, residency bylaws or bylaws that restrict who can live or work on the Indian Reserve, provided they do not infringe on the criminal laws, human rights legislation or laws of general application in Canada.<sup>129</sup>

---

<sup>128</sup> Gitxaala Nation Custom Election Code, 2009. Retrieved from <http://gitxaalanation.com/Gitxaala%20Nation%20Custom%20Election%20Code%20dated%20December%2015%2009%20Final.pdf>

<sup>129</sup> Tk'emlúps te Secwepemc Bylaws, Retrieved from <http://tkemlups.ca/by-laws/>

# First Nation Entrepreneurship Development Model

Figure 4 First Nation Entrepreneurship Development Model

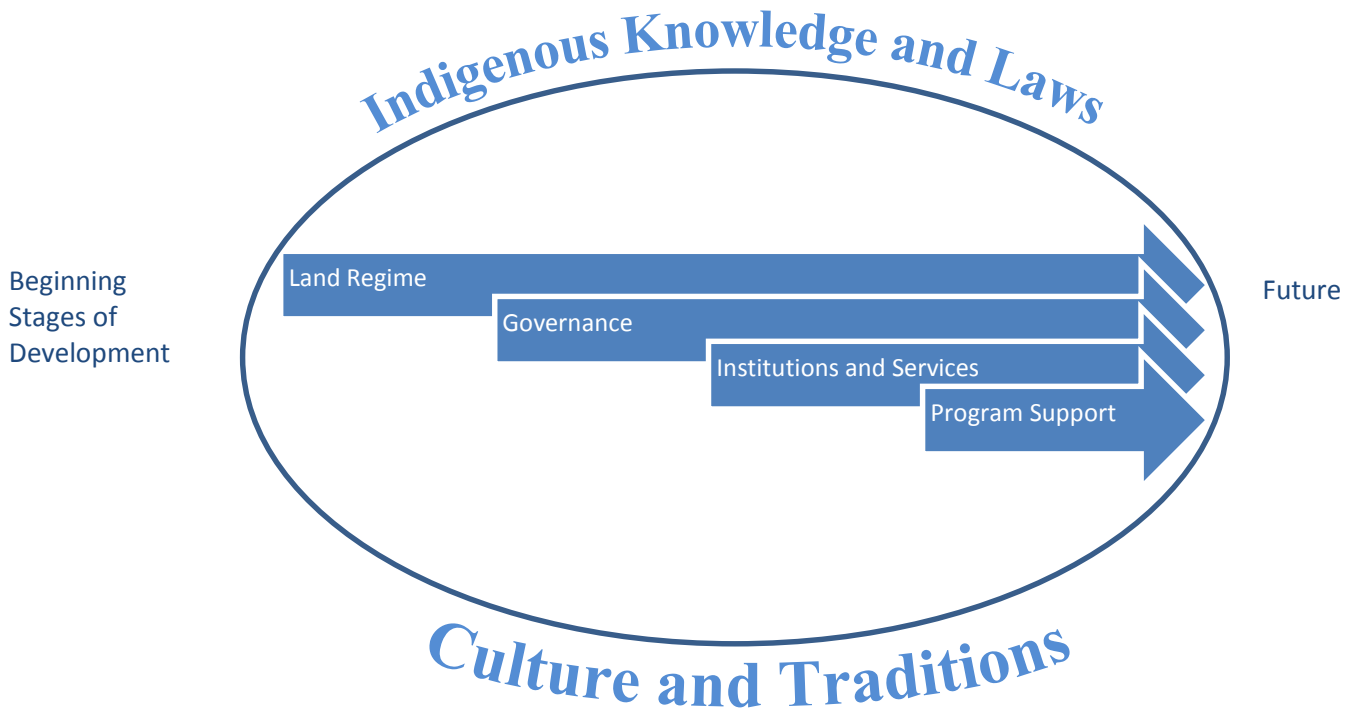


Figure 5 Entrepreneurship Progression Over Time



The First Nation Entrepreneurship Model shown above in Figure 4 (the “Model”) is based on the development of land regimes on Indian Reserves, governance, institutions and structures, and program support that can bolster entrepreneurship on Indian Reserves. The Model looks at the development of support for entrepreneurs over time with respect to a process that implements tools that take the longest time, to those that are currently available or can be made available intermittently over time. These tools are encircled by indigenous knowledge and laws, and culture and tradition, which will be used to inform the development of tools as they are

refined, in order to create a cultural match. Parallel and below the tools in the Model is a diagram in Figure 5 that shows the progress of types of entrepreneurs that will be attracted to development on Indian Reserves and will help with the acceptance of entrepreneurs and small business on Indian Reserves by First Nations people.

## **Indigenous Knowledge and Laws, and Culture and Traditions**

Indigenous knowledge and laws, and culture and tradition encircle the tools because First Nations understanding of their knowledge, laws, culture and traditions in Canada must be rebuilt and passed on to future generations. This recognizes the loss that has occurred from over a hundred years of assimilation in Canada. It also recognizes that there will be an ongoing review and promotion of indigenous knowledge and law development, and an ongoing analysis of the importance of aspects of culture and traditions that are essential to the First Nation. As knowledge, laws, culture and traditions are regained and there is a greater understanding of them over time they will continue to inform the development of tools. Indigenous knowledge and law, and culture and traditions encircle the whole development process from beginning to end and provide the foundation for First Nations economic development with respect to entrepreneurship.

## **Land Regime**

Land regime development is at the top of the Model because changes to the land regime take the longest time, and can be started any time before economic development is contemplated. Designation of lands for leasing purposes can be started at any time if lands held by First Nations are identified for potential developments. This process will take a minimum of one year, and can take many years, in some cases lands will not be designated because the process requires a referendum of the members of the First Nation. If the members do not vote in favour of the designation then it will not occur, for these reasons it is best to begin the process as soon as possible so that the First Nation does not lose any economic development opportunities.

A similar referendum is required for transition to a Land Code; however, there are more steps and significantly more work required to develop a Land Code. As discussed earlier, the longest part of the Land Code process can be the acceptance to be a signatory to the FNLMA Framework Agreement. In order to prevent any future delays, First Nations can apply to be added to the Rolling 30 as soon as they contemplate the development of their own Land Code. To apply to be added to the Rolling 30, all that is required is a letter and band council resolution to be sent to the First Nations Land Management Resource Centre indicating the First Nations desire to take

control over their Indian Reserve through the development of a Land Code. The letter and band council resolution are template documents and this can be done at little to no cost to a First Nation.

## **Governance Structure**

Change in governance structure can range from a simple change to increase the term of office for Chief and Council, to complex changes that reflect the indigenous knowledge and laws, and culture and traditions of the First Nation. Changes to governance structure is placed second in the Model because the change requires a referendum similar to land designations and Land Codes, but there is a broad range of changes that can be made. Some work should be done to research and analyse the indigenous knowledge and laws, and culture and traditions of the First Nation before changes are made, as well as discussions at community meetings that will inform Council about the changes that the First Nation community would like to see. After this initial work has been completed, the election code needs to be accepted by AANDC before it can be voted on by the community, which can add time to the timeframe.

## **Institutions and Services**

The timeframe for changes to institution and services vary greatly depending on what is being changed and may rely on the cooperation of outside parties such as MSAs and FMA financial administrative laws and property tax laws. However, they can also be made fairly quickly and only require a decision of Council by band council resolution. For these changes, there is no requirement for a referendum of members of the First Nation. This significantly reduces the amount of time required to implement decisions, and they can happen at any time. As such, there is no urgency to begin the process and the changes can generally be implemented within a year of decision to proceed with the changes being made. The changes that take the longest will be for MSAs and FMA financial administrative laws and property tax laws, because they require external parties to participate in the change process. If a First Nation is located in municipal boundaries or located adjacent to a municipality with utility services, it is prudent to initiate discussions with respect to an MSA as soon as possible, to develop a relationship with the municipality.

## **Program Support**

Program support is at the bottom of the model because the time frame for changes and implementation take the least amount of time, and a number of programs already exist that entrepreneurs can take advantage of to establish businesses on Indian Reserves. Program support can take place at any time or can be driven by industry with respect to accommodation agreements and IBAs.

## **Entrepreneurs**

The type of entrepreneur that the First Nation tries to bring to the community can be important as well, because of the colonial past and distrust with respect to economic development that a First Nation community may have. This is reflected at the bottom of the Model where there is a diagram showing a progression over time, through the following three types of entrepreneurs:

- Warrior entrepreneurs;
- Indigenous entrepreneurs; and
- Non-indigenous entrepreneurs and small businesses.

This progression may not be required in most communities, but in those that do not support economic development, it may be a requirement in order to build community support. Warrior entrepreneurs can bring support to economic development by emphasising culture and traditions over wealth creation, and in some cases, contribute to the development of indigenous knowledge and laws, and research of culture and tradition. As support for economic development builds, First Nation may try to bring in indigenous entrepreneurs that are more focused on wealth creation, but who are First Nations people or members of the First Nation; this will then lead towards community support for non-indigenous entrepreneurs and small business.

## **First Nation Use of the Model**

First Nations are all different in where they will be located within the timeframe of the Model and what progress they have made towards preparing their Indian Reserve for economic development. For a First Nation that has no economic development the following is an example of how the Model can be applied, once economic development has been contemplated.

### **Year One**

- Make an application to be added to the Rolling 30 to develop a Land Code.
- Review indigenous knowledge and laws, cultures and traditions, and assess status of reserve lands.
- Identify usable lands held by the First Nation that are not required for cultural or traditional purposes and begin the designation process for designating lands for leasing purposes.
- Hold community meetings to discuss lands and election code with community members of the First Nation.
- Engage neighbouring community in discussions regarding municipal services, if there is not a neighbouring community, then assess options for obtaining First Nation owned services.
- Assess and analyze status of Indian Reserve lands to determine if there are any potential specific claims. This is an ongoing process.
- Negotiate accommodation agreements and IBAs for any projects located on Crown land within the traditional territory of the First Nation. This is an ongoing process.
- Look for warrior entrepreneurs to establish businesses on Indian Reserve.

### **Year Two to Five**

- Draft election code, submit to AANDC for review and conduct referendum if acceptable to AANDC



- Review indigenous knowledge and laws, and cultures and traditions. This is an ongoing process.
- Continue designation process and proceed with referendum separate from election code referendum.
- Develop property tax law if there are any leases of land to non-members of the First Nation. Once a property tax law is in place and there is some economic development, develop a financial administrative law. This is ongoing until a property tax law and financial administrative law are in place.
- Lease designated lands. This is ongoing.
- Engage neighbouring community, if any, in discussions on an MSA. This is an ongoing process until an MSA is in place.
- Research and submit any specific claims to AANDC.
- Continue looking for warrior entrepreneurs to establish businesses on Indian Reserve. Once there are warrior entrepreneurs established on the Indian Reserve, look for indigenous entrepreneurs to establish businesses on Indian Reserve.
- Conduct land use planning exercise, and hold community meetings to discuss land use. This is ongoing.
- Develop and implement bylaws as needed. This is ongoing.

#### Years 5 to 20

- Receive acceptance to the Rolling 30, develop and implement Land Code.
- Continue looking for indigenous entrepreneurs to establish businesses on Indian Reserve. Once there are indigenous entrepreneurs established on the Indian Reserve, look for non- indigenous entrepreneurs and small businesses to establish businesses on the Indian Reserve.
- If there are any accommodation agreements, IBAs or specific claims awards, use cash payments and benefits to establish programs to support entrepreneurs. This is ongoing and dependent on accommodation agreements, IBAs, and specific claims awards.

## **Conclusion**

For First Nations it is important to build businesses in a way that supports indigenous knowledge and laws, and culture and traditions. This is evidenced by the work of Borrows, Cornell, Miller, Gallagher, and others. Failure to respect the connection between First Nations and their culture and traditions will result in a loss of support for business and entrepreneurship. This paper builds on the work of Cornell and Miller and applies their findings regarding the benefits of law, governance, and institutions to Canada, in order to provide a model to First Nations for the development of entrepreneurship on their Indian Reserves.

Community well being for First Nations on Indian Reserves is significantly lower than the rest of Canada including First Nations people that live off of Indian Reserves. As such, there has been a migration of First Nations people away from Indian Reserves because of the lack of employment opportunities. Contributing factors are the lack of businesses, the distrust in capitalism from colonialism and the effort to assimilate First Nations, and a perceived belief that there is not a fit between entrepreneurship and First Nations culture. These factors and a lack of goods and service providers on Indian Reserves have created leakage. In order to stop leakage and create more employment opportunities, First Nations need to attract entrepreneurs and small businesses to their Indian Reserves.

In order to move past the colonial past and distrust in capitalist society, First Nations need to ensure that their community supports economic development. To do this, economic development must reflect indigenous knowledge and laws, and culture and traditions. To provide a basis for entrepreneurs, First Nations can develop tools that are influenced by indigenous knowledge and laws, and culture and traditions. This is reflected in the Model.

The Model provides a process for First Nations to develop Indian Reserve land regimes, governance structures, institutions and services, and program support in a way that will support entrepreneurship. By following the Model, and including indigenous knowledge and law, and culture and traditions throughout the development process First Nations will be able to create opportunities for entrepreneurship that are a cultural fit. Although the processes to prepare lands for leasing, implement a Land Code, election code, financial administrative law, or property law

may take a long time, having them in place will create a sustainable environment for entrepreneurs to succeed and for First Nations to benefit.

The Model also provides for a timeframe with respect to the type of entrepreneurs that are targeted by the First Nation to begin economic development on their Indian Reserves. For First Nations that are not supportive of entrepreneurship, it is important to bring in warrior entrepreneurs that support the culture and traditions of the First Nations. Over time, warrior entrepreneurs will build support for economic development, then business run by indigenous entrepreneurs that are focused on wealth creation, and finally non-indigenous entrepreneurs and other small business. This progression will allow for transformation in the opinions of First Nation community members.

It is anticipated that improving the legal landscape for entrepreneurs on Indian Reserves will bring more entrepreneurs and small businesses to the reserve. This will have a direct effect on First Nations community well being, for instance, by bringing First Nation members back to their Indian Reserves because there will be more employment opportunities. Members moving back to their communities will then have an effect on the resurgence and protection of First Nations indigenous knowledge and law, and culture and traditions, making the communities stronger and providing for the well being of future generations.

## **Bibliography**

### **Works Cited**

Aboriginal Investment Services, *Six Nations and New Credit Economic Leakage Study: Final Report*, March 2010. Retrieved from <http://www.newcreditfirstnation.com/uploads/1/8/1/4/18145011/doc051010.pdf>

Anderson, R. B., *Economic Development among the Aboriginal People in Canada: The Hope for the Future*, Captus Print, 1999

Borrows, J., *Canada's Indigenous Constitutions*, University of Toronto Press, 2010

Borrows, J., *Drawing Out Law: A Spirit's Guide*: University of Toronto Press, 2010

Burrows, J., *Indigenous Legal Traditions in Canada Contemporary and Comparative Perspectives on the Rights of Indigenous Peoples*, Washington University Journal of Law & Policy, Vols. 19 (2005)

Borrows, J., *Recovering Canada: The Resurgence of Indigenous Law*, University of Toronto Press 2007,

Brown, M., *Working Together: Improving First Nations and Local Government Coordination and Cooperation in Planning*, BC Land Summit: Working Together for Better Results, May 12-14, 2004, Vancouver, B.C.

Campo, G., and Vear, H., *Land Interest in Reserves*, Aboriginal People and the Law Programme, Native Courtworkers and Counselling Association of BC.

- Cornell, S., Jorgensen, M., Record, I. W., and Timeche, J., *Citizen Entrepreneurship: An Underutilized Development Resource*. In Miriam. Jorgensen (Ed.), *Rebuilding Native Nations: Strategies for Governance and Development* (pp. 197–222). University of Arizona Press, 2007
- Flanagan, T., and Beauregard, K., *The Wealth of First Nations, An Exploratory Study*, Center for Aboriginal Policy Studies, June 2013
- Fraser, S., *Speaking Notes for an Address by Sheila Fraser*, FCA, Auditor General of Canada to the Canadian Club of Ottawa—Serving Parliament through a Decade of Change, Ottawa, May 25, 2011
- Gailus, J., *Land Management and Economic Development under the Indian Act*, Continuing Legal Education Society of British Columbia, November 2009,
- Gallagher, B. M., *Entrepreneurship and Indigenous Identity: Three Studies on the Connections between Indigenous Identity and Entrepreneurial Practices in Canada and Australia*, Simon Fraser University, Spring 2015,
- Gallagher, B., and Selman M., *Warrior Entrepreneur*, *American Indian Quarterly*, 39.1, Winter 2015
- Graham, J., (Graham), *Dysfunctional Governance - Eleven barriers to progress among Canada's First Nations*, Inroads 31 | First Nations Governance, Retrieved from <http://www.csls.ca/events/2012/cea.graham.pdf>
- Gogal, S., Riegert, R., and Jamieson, J, *Aboriginal Impact and Benefit Agreements: Practical Considerations*, *Alberta Law Review*, Vol/Issue: 43 (1),Jul 1, 2005,
- Harbottle, T., *Delta washes hands of sewage debate*, *The Canadian Press*, April 14, 2013, Retrieved from <http://metronews.ca/news/vancouver/632893/delta-washes-hands-of-sewage-debate/>

Hindle, K., and Lansdowne, M., *Brave Spirits on New Paths: Toward a Globally Relevant Paradigm of Indigenous Entrepreneurship Research*, *Journal of Small Business and Entrepreneurship* 18, no.2 (Spring 2005)

Indian and Northern Affairs Canada, (CBW), *Strategic Research and Analysis Directorate, First Nation and Inuit Community Well-Being: Describing Historical Trends (1981–2006)* (Ottawa: Indian and Northern Affairs Canada, 2010), Retrieved from [www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cwbdck\\_1100100016601\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cwbdck_1100100016601_eng.pdf)

Jorgensen, M., *Rebuilding Native Nations: Strategies for Governance and Development*, The University of Arizona Press, 2007

Lerat, H., and Ungar, L., *Treaty Promises Indian Reality Life on a Reserve*, Purich Publishing, 2005

Miller, R. J., *Reserve Capitalism – Economic Development in Indian Country*, University of Nebraska Press, 2013

Moss, W., and Gardner-O'Toole, E., *Law and Government Division, Aboriginal People: History of Discriminatory Laws*, November 1991, Retrieved from [http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm#\(69\)](http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm#(69))

Napoleon, V., *Thinking About Indigenous Legal Orders*, National Center For First Nations Governance, June 2007, Retrieved from [http://fngovernance.org/ncfng\\_research/val\\_napoleon.pdf](http://fngovernance.org/ncfng_research/val_napoleon.pdf)

Newhouse, D., Orr, J., and the Atlantic Aboriginal Economic Development Integrated Research Program, *Aboriginal Knowledge for Economic Development*, Fernwood Publishing, 2013

O'Sullivan, E., *The Community Well-Being Index (CWB): Measuring Well-Being in First Nations and Non-Aboriginal Communities, 1981-2006*, Retrieved from <https://www.aadnc-aandc.gc.ca/eng/1345816651029/1345816742083>

Kim Pemberton, *UBCM workshop highlights need for co-operation between First Nations, municipalities*, Vancouver Sun, September 16, 2013, Retrieved from <http://www.vancouversun.com/life/UBCM+workshop+highlights+need+operation+between+First+Nations+municipalities/8920005/story.html>

Shelly Pikowicz, Lands Advisory Services, Department of Indian Affairs and Northern Development Canada, *Designation Process on Indian Reserve Land*, Retrieved from <http://library.lawsociety.sk.ca/inmagicgenie/documentfolder/AC1424.pdf>

Dr. Tim Raybould, *The Economies of First Nations Governance Investment Capital, Money and Wealth Accumulation*, National Center For First Nations Governance, 2006, Retrieved from [http://fngovernance.org/ncfng\\_research/tim\\_raybould.pdf](http://fngovernance.org/ncfng_research/tim_raybould.pdf)

James I Reynolds, *Acquiring Interests in Reserve Lands, Understanding the Indian Act*, Continuing Legal Education Society of British Columbia, April 1, 2007

Travis Seymour, MNP LLP, *Economic Leakage Studies: Helping First Nations Communities Identify Opportunities for Economic Growth*, Retrieved from <http://nationtalk.ca/story/economic-leakage-studies-helping-first-nations-communities-identify-opportunities-for-economic-growth/>

Colleen Swords, Deputy Minister, and Pamela d'Eon, Acting Chief Financial Officer, *Aboriginal Affairs and Northern Development Canada Financial Statements for the Year Ended March 31, 2014 (Unaudited)*, Retrieved from <https://www.aadnc-aandc.gc.ca/eng/1406647854883/1406647953957>

Gerald Taiaiake Alfred, *Colonialism and State Dependency*, Journal of Aboriginal Health, November 2009

Warren I. Weir, *First Nation Small Business and Entrepreneurship in Canada*, National Center For First Nations Governance, December 2007, Retrieved from [http://fngovernance.org/resources\\_docs/First\\_Nation\\_Small\\_Business.pdf](http://fngovernance.org/resources_docs/First_Nation_Small_Business.pdf)

Jack Woodward, *Native Law*, Carswell, 2015, p.4-20.1 (2012-Rel.3)

Jean Yuen of Boughton Law Corporation, *Conveyance of a Leasehold Interest in First Nation Lands*, Residential Real Estate Conference 2012, Paper 5.1, Continuing Legal Education Society of British Columbia, December 2012

## **Case Law**

*Ballantyne v. Canada*, 2012 FCA 95

*Bastien and Dube v. Canada*, 2011 SCC 39

*Canada v. Robertson*, 2012 FCA 94

*District of Surrey v. Peace Arch Enterprises Ltd. (1970)*, 74 W.W.R. 380

*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73

*Kinooskimaw Beach Assn. v. Saskatchewan (1979)*, [1979] 6 W.W.R. 84

*Obomsawin c. Marcil*, [1987] J.L. No.88-25 (R.L.),

*Oka (Municipality ) v. Simon* 2 CNLR 205

*Sampson v. Locations West Property Management Ltd.* 82 B.C.L.R. (2d) 157

*Southwind v. Canada*, 1998 CanLII 7300 (FCA)

*Taku River Tlingit v. British Columbia (Project Assessment Director)* 2004 SCC 74

*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256

## **Legislation**

*Constitution Act 1867, 30 & 31 Victoria, c. 3 (U.K.).*

*First Nations Fiscal Management Act*, S.C. 2005, c. 9.



*First Nations Land Management Act*, S.C. 1999, c. 24.

*Gitxaala Nation Custom Election Code*, 2009,

<http://gitxaalanation.com/Gitxaala%20Nation%20Custom%20Election%20Code%20dated%20December%202015%2009%20Final.pdf>

*Indian Act*, R.S.C., 1985, c. I-5.

*Land Title Act*, RSBC 1996, Chapter 250.

*Liquor Control and Licensing Act*, RSBC 1996, Chapter 267.

*Motor Vehicle Act*, RSBC 1996, Chapter 318.

*Residential Tenancy Act*, SBC 2002, Chapter 318.

## **Bylaws**

Tk'emlúps te Secwepemc Bylaws, <http://tkemlups.ca/by-laws/>

## **Websites Cited**

Anishinabek Nation Indian Residential Schools Commemoration Project, *About Indian Residential Schools*, <http://www.anishinabek.ca/irscp/irscp-about-residential.asp>

Authentic Indigenous Arts Resurgence Campaign, Retrieved from <http://authenticindigenous.com/>

British Columbia Ministry of Forests, Lands and Natural Resource Operations, *Cheam First Nation Forest and Range Consultation and Revenue Sharing Agreement*, <http://www2.gov.bc.ca/gov/DownloadAsset?assetId=1CA9FCD51C5443B4BED00E3D084B1B5B>

Canadian Revenue Agency, *Information for Indians*, <http://www.cra-arc.gc.ca/brgnls/stts-eng.html#hdng5>

Centre for Constitutional Studies, *Doctrine of Paramountcy*, <http://ualawccsprod.srv.ualberta.ca/ccs/index.php/cd/509-doctrine-of-paramountcy>

Federation of Canadian Municipalities, *Service Agreements*, <http://www.fcm.ca/home/programs/community-infrastructure-partnership-program/program-resources/service-agreements.htm>

Indian Times, *Akwesasne spends \$107.1 million annually outside community: MCA Releases Economic Leakage Study Results*, <http://www.indiantime.net/story/2014/10/09/news/akwesasne-spends-1071-million-annually-outside-community/15520.html>

Harvard Project on American Indian Economic Development  
<http://hpaied.org/>

Nova Scotia Mi'kma Economic Benefits Office, *First Nations Study Purchasing Power of House Hold Spending*, <http://mebons.ca/reports/first-nations-study-purchasing-power-household-spending/>

Pacific Trail Pipelines Aboriginal Skills Employment Partnership, *About Us*  
<http://www.ptpasep.ca/about-ntp-asep-training-society/>

Spirit Works, *About Us*, Retrieved from <http://www.authenticaboriginalproducts.ca/about-us/>

Statistics Canada, *Table 6: Employment and unemployment rates of people aged 25 to 54, by Aboriginal identity, Canada, 2001 and 2006*, <https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-559/table/t6-eng.cfm>

Statistics Canada, *Table 7: Employment and unemployment rates for the First Nations identity population and the Registered Indian population (aged 25 to 54) living on and off reserve, Canada, 2001 and 2006*, <https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-559/table/t7-eng.cfm>

Tahltan Central Council, *Overview of the Tahltan Nation Impact Benefit Agreement Negotiated for the Forrest Kerr Hydroelectric Run-of-River Project*,

[http://www.tahltan.org/sites/default/files/news/IBA%20Summary\\_0.pdf](http://www.tahltan.org/sites/default/files/news/IBA%20Summary_0.pdf)

Union of British Columbia Municipalities, *Local Governments and Native Land Claims*,

<http://www.ubcm.ca/assets/Resolutions~and~Policy/Policy~Papers/1991/Local%20Government%20and%20Native%20Land%20Claims%201991.pdf>