

Additions to Reserve & Treaty Land Entitlement under Framework Agreement

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I was informed by a lawyer that Canada does not "give land" anymore, they just give money. Can this be clarified please?

- I'm just a tech for a community, but Canada doesn't have much land to give, the land has to be purchased from the Provinces
- Here is wording right out of Canada's specific claims policy:
In specific claim settlement agreements, Canada provides financial compensation in exchange for the First Nation providing appropriate releases and indemnities to support finality such that the claim will not be brought against Canada again. The Specific Claims Policy provides that settlements will not lead to third parties being dispossessed. In specific claims where reserve land was illegally taken from a First Nation or was not provided as required, the settlement may include provisions to create reserve land in accordance with Canada's Additions to Reserve (ATR)/Reserve Creation Policy.
- I agree with everyone that it is hard to negotiate a specific claims settlement with a lands component - but not impossible - see the above policy reference - some First Nations have succeeded

First Nation Corporation brought a piece of private land outside of reserve, can we add this land to reserve.

- Happy to discuss further the lands outside reserve bought by a corporation. The lands would likely have to be transferred to ownership in Canada's title and qualify as ATR lands. Location and circumstances of the lands very important on this question. Some lands far outside your traditional territory or province may have to stay as corporate holdings

Can TLE lands be purchased in other provinces, than where the Nation is?

- Depends on your Settlement Agreement. The Settlement Agreement says where lands can be acquired using Trust Property.
- Doig River is about to settle a TLE where new reserves will be created in BC and Alberta
- The ATR policy has wording on location of lands. Pretty much locked down to lands within the province where the majority of your existing reserves are located but there are some First Nations with lands right on borders or who historically have lands in other provinces.
- The new 2016 ATR Policy permits ATR in your traditional territory. Government may try to restrict the ATR to one province, even in circumstances where traditional territory spans provinces. I am waiting for a Band to use the ATR process for lands in another province that are not part of a specific claim.
- Glad to hear Doig River has been able to transcend the provincial boundary - lands all within Treaty 8 as I recall?
- Yes, Doig is in Treaty 8
- Doig's new Alberta reserve will be right on the border, adjacent to a new reserve on the BC side

If the Minister refuses to sign, the ATR is not completed. I have seen delay to ATR because of the Minister not signing. Conversely, if the Minister won't sign the ATR it is also doubtful that the matter would go to Privy Council for an Order in Council.

- Yes, currently the final decision on whether to approve an application for Reserve Creation sits with Canada. It helps to know the ATR application requirements, to plan out your application and have the required resources and supports in place to compete the application. Building positive relations with Canada, at both a technical and political level, will help to advance your application and build support for the reserve creation.

The biggest challenge in Saskatchewan is employee turnover. For some Nations, both the federal and provincial employee are new. The time for them to learn the process and move files forward creates a delay.

- Hundred percent agreed Alvin - I seem to remember Darcy Proulx was helpful in Sask region but I think he has retired now? ATR work in Sask region has slowed since then?
- Darcy Proulx was also good for providing notice of Crown Lands that were being surplus. Since his departure, I have not seen a single notice regarding the Crown's intent to sell lands.
- Darcy Proulx was a great resource from INAC but since he retired, ATR's have slowed to a crawl. I agree with Alvin, employee turnover has been a problem. Have dealt with three different file managers in just under 3 years.
- One way to help mitigate against high staff turnover is to carefully document your ATR process, so that when there is staff turnover you can quickly bring new staff up to speed, on your terms. Additionally, building positive relationships with Canada at technical and political levels can help ensure your ATR application moves ahead.

We never receive notices of Crown Land sales. Who would we give notice to that we want to be consulted?

- We do receive some documentation regarding changes to zoning or work that is being completed but that's not very often.
- Regarding notice of federal Crown Lands, I am just checking with some federal officials - I think there is a Canada Lands Corporation as an agency responsible for federal land disposals but I am a bit out of date on that and I'll try to find out about Ontario as well
- PWGSC (Public Works and Government Services Canada) or its successor sometimes sends notices about surplus federal lands. I have seen a notice from them about RCMP lands in the last two years.
- Canada sends out notices of surplus federal lands to a national network.
For Ontario, the contact person is: [Heather Cullen - Director, Corporate Services](#)
It has been recommended that LED Directors and ATR Managers be added into the distribution list.

What about ATR for lands in US as its within traditional territory?

- The question whether American authorities would recognize US land rights of a First Nation with reserves in Canada would need to be considered by American lawyers with expertise regarding lands recognized as "reservations" and traditional or treaty lands.

In MB the province gets 5 times any tax base loss in SASK its 22 times, so there is no loss because FNs pay for services "in lieu of taxes", and they get compensated accordingly for any proven losses (ex. school taxes portion).

- The tax loss compensation in MB and SASK comes from the TLE agreements right - but for non TLE ATRs in MB and SASK, I assume tax loss and municipal service agreement negotiations remain tough - like Brokenhead faces.
- Yes under the TLE Framework Agreements

- For Specific Claims (non-TLE) the Tax Loss Compensation is often a negotiated amount. The range of the offer has been 3 to 5 times the current Tax. Ongoing, there is often a Service Agreement that replaces the Taxes. That is why relationships with Municipal governments are so important. They can support your ATR process and agree to a reasonable Tax Loss Compensation.
- Yes tax loss must be proven by the municipalities - they commonly lose nothing/zero because payment or fees are paid by FNs in lieu of what the taxes would have been - the TLE agreement(s) capture this, likely be different for general or all other ATRs

Is ISC responsible for ESA's?

- Yes, under the MB TLE FA, Canada is responsible for ESAs, but they conduct them. They are not outsourced (and maybe should be to speed things up) ...BUT they "stale date" after 2 years in MB + 5 years in other provinces
- The 2010 ATR Policy was a checklist inspection completed by DIAND employees. The 2016 ATR Policy requires an ESA. The cost of the ESA is covered for Framework Agreement Bands. But. In my experience, they never paid for the ESA or made money available to complete the ESA.
- The ESA was an accelerated costs of the ATR process borne by the Nation.
- According to the ATR policy, "in the absence of an Agreement or other arrangement providing funding, INAC is not obligated nor prevented by this Policy from providing funding for Reserve Creation activities, including land acquisition, surveys, environmental assessment activities", etc. Having a good technical working relationship with Canada may help you secure funds for Reserve creation related activities, including ESA's.

Excellent information today. One of the requirements as mentioned by Stefanie is a service agreement. It's always better to negotiate a "government to government" comprehensive service agreement, rather than a "developer to govt". The developer to govt is basically paying the full tax amount, without consideration for the FN jurisdiction. The G2G agreement takes the jurisdiction (land laws, fiscal laws, etc.) of each the city and the FN into account and generally results in better fiscal relationship for the First Nation. The G2G would consider the services required, cost to deliver the services by the city, the proportion of taxes that pay for the services and then applies that formula to the Municipal Portion of the local tax to be collected by the FN. There are some of these G2G agreements existing, BC and MB but of course would be great to see more

- First Nations Tax Commission has a suggestion that any Service Agreement is a "Fee for Service" arrangement rather than a comprehensive agreement. Some Municipalities are receptive to this "a la carte" method, whereas others hold fast to the 1990s style MSAs that impede development.
- Yes. The dated TLE Framework Agreements cause any Bands that sign Adhesion to the Framework to be undercompensated. Since they have to accept land valuations from the 1990s.
- or additional resources on establishing First Nation-Municipal Service Agreements, see the "[Service Agreement Toolkit](#)" published by the Federation of Canadian Municipalities.

Has anyone done ATR within an urban area?

- Yes, there a number of urban ATR/TLE in MB and Sask
- This has been a valuable session for me - thank you to all of our presenters! I'm about to enter into the ATR process - in an urban area - and this information is definitely helpful! I'm in the Province of BC

Great discussion, a great benefit of Land Code is faster ATR "process", we are open to some creative ideas from you the FNs