

Additions to Reserve - Should You?

By Beverley O'Neil, Ktunaxa Nation

In Canada 2.6 million hectares existing in 2407 Indian Reserves account for less than 0.2 percent of the land base. There has been little change in this number since McKenna and McBride conducted their surveys of Indian reserves almost a century ago. This resulted in many First Nations losing more of their precious land, and then after that, the World Wars and numerous public expropriations stripped away even more land to what it is today. Can 'Additions to Reserve' (ATR) return the land back to First Nations?

ATR is not a new option for increasing First Nations' land base. This process has been around for decades; however, there have been few First Nations that have had the ability to exercise this option. Since the McKenna-McBride Commission of 1912, few First Nations have entered the process. I don't believe that it hasn't been without a strong desire by the First Nations to do so, but more so the absence of First Nations engaging in this process has been due to the lack of resources by First Nations (financial and human).

In 1992, Saskatchewan First Nations struck an agreement called Treaty Land Entitlement (TLE) with the federal government settling a shortfall of acres from the original treaties. However, this success was not achieved with some concessions or compromise. The basics is that "all First Nations must purchase land up to the original shortfall in acres, then after they can use the money for economic development, infrastructure or anything else that would benefit the community." Land within municipal boundaries requires the approval of the municipality to be released from municipal taxes after seven years. Some municipalities have actually been ecstatic about this! Municipal representatives such as Ben Webber, Mayor of the City of Yorkton, sees ATR in a municipality as an economic benefit. In his City and Cities in Saskatchewan that have supported ATRs, an observable increase in Aboriginal employment

has resulted as well as an injection into the local economy. There has been no effect negative effect to the municipal tax base.

Well then why should a First Nation add land to reserve? Well, there are a few reasons (other than the obvious that the land is still ours) – a need for more land for housing, economic activities for business, and access to natural resources. Very much like the TLE, the present ATR process requires that where the land in question is a part of a municipal land base, the First Nation must discuss the ATR with the municipality for services and the potential loss of municipal taxes. After all, the land itself is within the municipal tax base and as such the municipal authority must be respected (I'm being facetious on this). This is somewhat humorous when you consider Delgamuukw essentially determined that "a particular kind of Aboriginal right, being a right to the land itself" exists and it "includes the right to choose to what uses land can be put (not restricted to traditional uses), and includes exploitation of mineral rights".

On the other side of this issue, there is no requirement for Municipalities (or other regional governments) to gain the support of or negotiate with First Nations when the Municipality desires an expansion of their boundaries or access to resources. When an ATR is requested within a Municipal base then (I understand) the First Nation must expend it's resources for these negotiations (i.e. spend their own money, time, and people). And, I believe it is also fair to conclude the end result of these negotiations will be a 'grant' in lieu of taxes paid by the First Nation at a similar tax rate that would have been collected from any other payee. So, the Municipality gains... there are no revenue or jurisdictional loses (due to their own bylaws and whatever is negotiated). As for the First Nation... they have been in the process for 3 to 6 years, paid for the negotiations and all the administration costs for such a transfer, paid

grants to the Municipality, is without access to the resources within the land (i.e. water, timber, minerals), and still there is little, if no jurisdictional authority, over the new reserve lands. Meanwhile, the Provincial government continues to implement their laws and collect taxes (sales taxes, issue levies, etc) on this land (except from the registered Indian component), and the federal government holds the land 'in trust' for the Indian Band. Where is the First Nation's governance in this?

Despite all this, there is optimism. It is possible for registered Indians and First Nations to enjoy the few benefits that an Indian Reserve offers, and several First Nations in Canada have proceeded with the process of ATR. For the individual registered Indian (Note: I am referring to registered Indians), employment income could be earned tax exempt as long as Revenue Canada Interpretation and court rulings continue to permit this (Note: interpretation of Indian Tax exemption is continuously changing). As well, the registered Indian can continue to purchase goods and services Federal and Provincial sales tax free. And, the First Nation can administer any authorities they have gained over the land and activities on it. The Kamloops Indian Band is one such Band that will put this theory to test when it engages in

ATR to add the newly purchased fee simple land of the Harper Ranch to its' reserve base. If successful, the result will be doubling the reserve thus creating the largest Indian Reserve in British Columbia, and an increase of tax revenue to the Band. Just over a year ago the Band entered into an agreement with Revenue Canada on sales taxes – it was the monies earned in this arrangement that generated enough revenue for the Band to purchase the Ranch. For the Kamloops Indian Band the ATR will only contribute to their vision of self-sufficiency.

It may not be beneficial for every First Nation to engage in this process. Without First Nation jurisdiction of sales and income taxes or other governmental authorities such as what the Kamloops Indian Band has been able to acquire, ATRs can be costly to a the Band. This doesn't, however, mean First Nations should not acquire land outside the reserve base. The Westbank Indian Band purchased fee simple land that was later used for collateral for banks when they needed financing for on-reserve developments. Dave Monture, Administrator for the Shuswap Tribal Council believes the ATR is worthwhile. "The authority and taxation issues can be worked out after." The priority should be to regain our land.

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