

First Nations Land Management Regime: Pros and Cons

From the Yellowhead Institute Special Report, *The Rise of the First Nations Land Management Regime in Canada: A Critical Analysis* by Shalene Jobin & Emily Riddle

PROS



Economic Benefits

Under the FNLMA regime First Nations are able to collect land revenues directly (except oil and gas royalties). First Nations are able to make their own decisions about land use, providing greater authority and gaining economic control.



Community Accountability

Laws created under the FNLMA regime are approved by the community (in a process set out in their land code). Though decision-making processes can vary, land management is determined at the community level, not by the Minister of Crown-Indigenous Relations and Northern Affairs Canada.



Increased Efficiencies

In a review of the FNLMA regime by KPMG, a key indicator of success was determined by respondents to be increased efficiency in land management related activities compared to when under the Indian Act. While under the *Indian Act*, permission from the Minister of Crown Indigenous Relations is required to allow commercial development on reserve land, the FNLMA allows First Nations to act at the “speed of business”, set terms for licensing, zoning etc, opening up reserve land to further development. KPMG found that on average leases and permits could take 584 days under the Indian Act and are now taking on average 17 days under a land code.



Increased Control

Communities have more control over how and when development on reserve lands takes place including resource development under the FNLMA regime. As such, companies or industry need to work directly with a First Nation and abide by the procedures and policies set out in their Land Code before they proceed with any project on-reserve. The federal government is removed from this process and First Nations are recognized as the decision-maker over reserve lands and resources.



Matrimonial Real Property

Approximately 37 communities have developed matrimonial real property rules as a result of ratifying a Land Code. Unless a community develops matrimonial real property rules under the Family Homes on-reserves and Matrimonial Interests of Rights Act or the FNLMA Regime, First Nations must by default operate under the provisional federal rules.



Reserve Land Base Cannot Shrink

Under FNLMA, a First Nation's reserve land base cannot shrink. Though, a First Nation is still able to add to existing reserve or create new reserves through the Additions to Reserve process. First Nations can decide whether or not to include or exclude new reserve lands under their land code.



Potential for New Job Creation on Reserve

It was reported that with the 32 communities surveyed an approximate 4,000 jobs were created on reserve. Though the nature of these jobs were not noted for all communities, those that were noted were often temporary construction or industry jobs.

CONS



No Land Back

The FNLMA Regime is merely about gaining relative control over reserve lands and does not deal more substantively with our territories and redistribution of land and resources, which is necessary for us to truly self-governing peoples.



Increased Cost and Efforts to Develop Laws and Policies

First Nations who have ratified a Land Code have critiqued the cost and effort bore solely by the First Nation to develop land policies and laws. Operational funding to support the implementation of a Land Code and corresponding laws is generally agreed to every five years for a fixed amount, so it is not guaranteed that a First Nation will always be able to access this funding or to what extent.



Aftermath of the Indian Act System

First Nations must bear the increased burden of dealing with the aftermath of legacy issues of the Indian Act system, and without an actual redistribution of land or resources through the FNLMA regime (the expectation is that First Nations support members through economic activities exclusively on reserve lands). Further, the regime operates within the governance system created by the *Indian Act*, which does not necessarily correspond to Indigenous legal systems.



Negation of a Fiduciary Responsibility of the Crown

Through the FNLMA Regime, the federal government offloads fiscal, fiduciary, and environmental responsibilities. For example, a First Nation assumes liability and responsibility for any environmental issues that occur after a Land Code takes effect. As such, higher insurance costs are required to cover extended liabilities with regards to environmental management.



Environmental Liability

Though the federal government is technically responsible for decisions affecting reserve lands before the implementation of the Land Code, First Nations assume liability for environmental issues and contamination that occurs after the Land Code takes effect.

ADDITIONAL NOTES:

- The FNLMA regime is rooted in a neoliberal framework that pushes First Nations towards a certain type of economic development, including increased resource extraction, and subjects First Nations to be increasingly under the logics of capitalist market forces. First Nations need to be aware of how the increase in market control may negatively impact their lands and nations.
- While the KPMG review found that the Framework Agreement generates positive benefits for Canada (contributing to the Canadian economy), there are no studies that prove whether it has reduced poverty on reserve or whether increased overall wealth of those First Nations has contributed to better socio-economic indicators, such as health, language renewal, or cultural revitalization.