
Voting in Local Government Elections and Referenda by Residents Living on Indian Reserves

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*For Discussion Purposes Only — Without Prejudice
(This discussion paper is intended to stimulate further debate
on the issues and does not present final, defined positions.)*

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1 INTRODUCTION

In April 2011, the *Lower Mainland Treaty Advisory Committee* (LMTAC) released an updated version of its backgrounder titled *Democracy and First Nation Self-Government: Considering Rights of Representation for Non-Member Residents in First Nation Jurisdictions*. The backgrounder examined the representation rights provided to non-Aboriginals, and non-member Aboriginals, living on Indian Reserves and *Treaty Settlement Lands* (TSLs). While the focus of the original discussion paper was on the “taxation without representation” of non-Aboriginals living in First Nation jurisdictions, the purpose of this paper is to examine the issue of “representation without taxation” of both Aboriginals and non-Aboriginals with respect to their ability to participate in local government elections and referenda. This paper explains how the historical, geographic, and jurisdictional circumstances have led to the current situation where federal lands are located within local government boundaries¹ and residents living on Indian Reserves are able to vote in municipal and regional district elections and referenda.

While current provincial policy indicates that Indian Reserves will not be counted as part of future municipal boundaries, via expansions or new incorporations, the current situation where some Indian Reserves in British Columbia (BC) are already counted as part of local government boundaries have implications with regard to local government elections and referenda.

According to the *BC Voters Guide*, residents of Indian Reserves, both Aboriginal and non-Aboriginal, are entitled to vote in the elections of municipalities and regional districts in cases where the Indian Reserve is located within municipal or regional district boundaries.² The ability of these residents to participate in municipal elections and referenda is a concern to local governments as they are not subject to local government regulation and do not pay local government taxes³ resulting in “representation without taxation.”⁴

Furthermore, legislation such as the *First Nations Commercial and Industrial Development Act* (FNCIDA) and *First Nations Certainty of Land Title Act* (FNCLTA), which are designed to attract commercial, industrial and residential development on Indian Reserves, will exacerbate the issue of “representation without taxation”, as large-scale market residential developments on Indian Reserves are expected to result in a significant increase of the non-Aboriginal populations living on Indian Reserve lands. As the numbers of non-Aboriginals living on Indian Reserves continues to grow, the populations will soon make-up a significant portion of eligible voters in local government elections and referenda, without paying local government taxes. The *BC Voters Guide* indicates that residents of Indian Reserves can vote in municipal elections and referenda when the reserve is located within municipal boundaries. The historical, geographic, and jurisdictional contexts discussed in this paper provide an explanation for how federal lands, in this case Indian Reserves, are located within municipal boundaries.

¹ While the historical and geographic context discussions will touch on the physical location of Indian Reserves, the focus of this paper and the concerns of local governments are related to the jurisdictional overlap of federal lands (Indian Reserves) being contained within local government boundaries. The concerns are NOT related to the physical location of Indian Reserves within or next to municipalities.

² http://www.municipalelections.com/voters_guide.htm

³ Non-Aboriginals living on Indian Reserves pay property taxes to the Indian Band, but these taxes are not remitted to the local government. It should be noted that the provincial government vacated this tax room to participating Indian Bands under the *Indian Self-Government Enabling Act* of 1990. Indian Bands exercising property taxation powers have exempted Aboriginal members from such taxes.

2 HISTORICAL CONTEXT

Many Indian Reserves were established in BC before municipalities existed in the province, and before modern municipal boundaries were developed. For instance, the *City of New Westminster*, the oldest city in Western Canada, was not incorporated until 1860; the *City of Vancouver* was not incorporated until 1886; and regional districts were not created in BC until 1965.⁵

Indian Reserves in BC were created in the late 1850s and 1860s by the colonial government, after BC was proclaimed an official British colony on November 19th, 1858.⁶ The *terms of union* established when BC joined Canada, in 1871, divided the authority between the two levels of government.⁷ The federal government held responsibility for First Nations and the trusteeship and management of lands reserved for First Nations.

In 1876, the *Indian Reserve Commission* was established to determine Indian Reserves in BC.⁸ The *Commission* was authorized to create reserves to be used for the benefit of First Nations. Dominion crown lands were to be used to add land to reserves while any land removed became provincial land. The decisions of the *Commission* were made without consent from First Nations. Both the federal and provincial governments have played a role in shaping the current layout of Indian Reserves. For example, through use of the *Dominion Indian Affairs Settlement Act* of 1919 and the *British Columbia Indian Lands Settlement Act* of 1920, the provincial and federal governments expropriated more than 35,000 acres from reserves in BC.⁹

Therefore, the historical actions of the federal and provincial governments, including the removal of reserve land and altering of reserve boundaries, contributed to the current situation where Indian Reserves are contained within local government boundaries.

3 GEOGRAPHIC CONTEXT

Many First Nations in BC were situated in areas that were attractive to settlers. As such, cities were developed close to Indian Reserves and, over time, the cities expanded next to or around the reserves. At that time the various orders of government were not as concerned with the jurisdictional overlap that resulted from such practices. Similarly, as colonial settlement began, some First Nations in BC also migrated to areas adjacent to the new immigrant settlements; for example, the establishment of permanent (year-round) settlements by the *Squamish Nation* on the north shore of Burrard Inlet, and the relocation by the *Kwantlen First Nation* from the vicinity of New Westminster to the vicinity of Fort Langley.

Furthermore, as development near reserves expanded, the *Indian Reserve Commission* began to expropriate large portions of land in order to help foster such development. As Aboriginal rights and title in BC have never been addressed, the expropriation of Indian Reserves has resulted in various forms of compensation to affected First Nations. In certain cases, parts of the expropriated land have been returned to First Nations as reserve land. For example, in 2002 and

⁵ Local Government Knowledge Partnership, University of Victoria, *40 Years: A Regional District Retrospective*, 2009.

⁶ Union of BC Indian Chiefs, *Background on Indian Reserves in British Columbia*,

<http://www.ubcic.bc.ca/Resources/ourhomesare/teachers/files/Background%20on%20Indian%20Reserves%20in%20British%20Columbia.pdf>

⁷ Aboriginal Affairs and Northern Development Canada, <http://www.ainc-inac.gc.ca/ai/mr/is/abr-eng.asp>

⁸ Dennis F. K. Madill for Research Branch, Corporate Policy, Department of Indian and Northern Affairs, 1981, <http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/C-B/treC-B-eng.asp>

⁹ Union of BC Indian Chiefs (UBCIC).

2003, the *Squamish Nation* won several court and appeal cases resulting in the return of former reserve land in Kitsilano that had been expropriated by the *Commission* in 1886 and 1902 and given to the *Canadian Pacific Railway* (CPR).¹⁰

The impacts of the historical and geographic context on how Indian Reserves came to be contained within local government boundaries have been well documented. While the context behind the modern physical location of Indian Reserves is important to the discussion, local government concerns do not stem from the physical location of Indian Reserves, but rather the jurisdictional location.¹¹ Particularly, the question of how Indian Reserves, as federal lands that are under federal jurisdiction, can be counted as part of local government boundaries with regard to municipal and regional district elections despite being completely outside of local government jurisdiction in all other matters, deems closer examination. The concerns around this jurisdictional “overlap” are discussed in the following section.

4 JURISDICTIONAL CONTEXT

In 1988, there were 45 scenarios of Indian Reserves being located within the boundaries of municipalities within BC.¹² In situations where non-Aboriginals leased parcels of land on Indian Reserves, BC local governments and other taxation authorities had the ability to tax such residents in the same manner as off-reserve properties. In 1988, Section 83 of the *Indian Act* was amended to provide Indian Bands the ability to collect property taxes from populations living on Indian Reserves. The amendment to the *Indian Act* did not remove the power of provincial governments and municipalities to tax non-members living on Indian Reserves.

In 1990, the BC provincial government passed the *Indian Self-Government Enabling Act*. The *Act* removed the ability of local governments and other provincial taxing authorities to implement taxes on Indian Reserves in cases where the First Nation had undertaken taxation powers. This was done to achieve harmonization with the 1988 *Indian Act* amendment and to avoid a situation of double taxation. As a result, this “clarified that municipalities do not have jurisdiction over First Nations reserves, whether or not the reserve is by legal description geographically located within municipal boundaries.”¹³

As a consequence, this led to many municipalities entering into agreements with First Nations to provide services to reserve lands, in exchange for direct payment, without careful consideration of the legal implications; that is, the federal legislative barriers to servicing agreements with First Nations, especially as they relate to financial and environmental joint and several liabilities, and regulatory bylaw enforcement on Indian Reserves.

As noted above, Indian Reserves (as federal lands) are not part of local government jurisdictions. However, when it comes to voting in municipal elections and referenda, Indian Reserves that are located within municipal boundaries are counted as part of the electoral area. Both the federal and provincial governments appear to recognize the “gap” that now exists with respect to having federal land located within municipal boundaries.

¹⁰ Squamish Nation, <http://www.squamish.net/mediacentreandarchives/newsarticles.htm>

¹¹ The historic and geographic discussions around the physical location of modern Indian Reserves have been provided for context only.

¹² Robert L. Bish and Eric G. Clemens, *Local Government in British Columbia* (Fourth Edition), Union of British Columbia Municipalities, 2008, page 28.

¹³ Bish and Clemens, 2009, page 28.

The provincial government recognizes that there are multiple implications with respect to having Indian Reserves contained within defined local government boundaries; in fact, as a matter of provincial policy, municipalities incorporated since 1990 specifically exclude Indian Reserves from municipal boundaries. For example, one of the criteria set-out by the *Ministry of Community, Sport and Cultural Development* for municipal boundary expansions states that “Indian Reserves will not be within municipal boundaries.”¹⁴ The recent incorporation of the *District of West Kelowna* in 2007 is an example of this principle put into practice. The boundaries for the new municipality excluded the established reserves of the *Westbank First Nation*, notwithstanding that the new municipality surrounds the reserve lands.

In the case of the federal government, the *Payment in-Lieu of Taxes* (PILT) program provides comparable financing to local governments, in exchange for services, due to the fact that federal land is exempt from taxation. In the case of third-party leaseholders on federal land, PILT is not eligible unless the lease is for less than one year. However, the third party leaseholders are required to pay property taxes directly to the taxing authority. With regard to Indian Reserves, no programs such as PILT are available. Rather, local governments and First Nations may enter into service agreements under which First Nations pay agreed upon fees to the local government in exchange for services provided.

It also should be noted that when the *Tsawwassen First Nation* finalized its treaty, the *Treaty Settlement Land* (TSL) was removed from the municipal boundaries of the neighbouring *Corporation of Delta*. Tsawwassen TSL did remain within the regional district boundaries of *Metro Vancouver* only because the *Tsawwassen Final Agreement* contained specific provisions for the *Tsawwassen First Nation* to become a member of the regional district on the effective date. In contrast, the *Yale First Nation Final Agreement* removed Yale TSL from regional district boundaries unless the *Yale First Nation* decides to become a member of the regional district at a future date.

The containment of Indian Reserves within local government boundaries has broader implications for municipal and regional district elections and referenda. The existing jurisdictional overlap creates a situation where both Aboriginals and non-Aboriginals residing on Indian Reserves can participate in local government elections and referenda even though the Indian Reserves are outside regulation and taxation authority of the local government.

Historically, the situation did not appear to be of large concern for local governments as the number of non-Aboriginals living on reserves was relatively small. However, these populations have significantly increased in recent years, and will continue to grow as First Nations pursue on-reserve economic development projects, including market residential housing. In fact, the population of non-Aboriginals living on Indian Reserves in BC has more than doubled between 1986 and 2006, from 11,000 to 26,000.¹⁵ In 2006, for instance, there were 22 Indian Reserves within *Metro Vancouver* boundaries that collectively accounted for more than 7,000 non-Aboriginal and Aboriginal residents.¹⁶ Within the *Metro Vancouver* area, the following jurisdictions have two or more Indian Reserves within their boundaries: the *City of Vancouver*, the *District of North Vancouver*, the *Township of Langley*, the *City of Maple Ridge*, and GVRD Electoral Area A.

¹⁴ Local Government Department, *Ministry of Community, Sport, and Cultural Development, Municipal Boundary Extensions*, http://www.cscd.gov.bc.ca/lgd/boundaries/municipal_extensions.htm

¹⁵ BC Stats

¹⁶ Statistics Canada, 2006 Community Profiles.

The *Squamish-Lillooet Regional District* (SLRD) has a total population of approximately 35,225 of which approximately 3,000 (over 8%) are residents living on Indian Reserves;¹⁷ whereas, the *Sunshine Coast Regional District* (SCRD) has a total population of 27,759 with 850 (3%) residents on Indian Reserves.¹⁸ However, it should be noted that almost 830 (close to 98%) of these residents live on Sechelt land, which forms the *Sechelt Indian Government District*, and is a full member of the SCRD regional district.

The implications that the growth of non-Aboriginal populations on Indian Reserves has for local government elections and referenda are discussed in the next section.

5 VOTING AND REPRESENTATION ON INDIAN RESERVES

Non-Aboriginals living on Indian Reserves pay property taxes to the Indian Band, in cases where the Indian Band exercises its authority to collect property taxes under either the Section 83 amendment to the *Indian Act*, or the *First Nations Fiscal and Statistical Management Act* (FNFSMA). These property taxes are not remitted to the neighbouring local government or other taxing authority, such as *TransLink*,¹⁹ or the Province in the case of school taxes. Instead, local governments must recover relevant costs and fees through service agreements with neighbouring First Nations.

However, if the Indian Reserve is located within the boundaries of a municipality, or regional district, both non-Aboriginal residents and Aboriginal members are allowed to vote in municipal elections and referenda. The *BC Voter's Guide* states the following in its *Frequently Asked Questions* section:

*If the reserve is within a municipality and you are otherwise eligible to vote, you can vote in the municipal election. If the reserve is not within a municipality but within a regional district and you are otherwise eligible to vote, you can vote for the electoral area director in the election held by the regional district. This applies to non-aboriginal leaseholders as well.*²⁰

This means that non-Aboriginals living on-Reserve can participate in local government elections and referenda even though they do not pay local government taxes. As these populations grow, residents living on Indian Reserves could make-up a significant proportion of eligible voters and be the recipient of services provided by the neighbouring municipality and paid for by tax-payers living off-reserve.

Different rules on voting eligibility apply on TSL where neither Aboriginal members nor non-Aboriginals can vote in municipal elections, as TSL are removed from municipal boundaries. In the case of the *Tsawwassen First Nation*, for instance, the TSL remained within regional district boundaries because the Tsawwassen treaty contained provisions for the *Tsawwassen First Nation* to become a member of the *Greater Vancouver Regional District* (GVRD), known as *Metro Vancouver*, on the treaty effective date. In the *Yale First Nation Final Agreement*, *Treaty Settlement Lands* were removed from the regional district boundaries, subject to the *Yale First Nation* becoming a member of the *Fraser Valley Regional District* (FVRD).

¹⁷ Squamish-Lillooet Regional District and 2006 Census

¹⁸ 2006 Census

¹⁹ In the *Metro Vancouver* regional district, hospital taxes have been replaced with *TransLink* taxes.

²⁰ http://www.municipalelections.com/voters_guide.htm

This means that residents living on Yale TSL are not able to participate in regional district elections, while residents on Tsawwassen TSL participate as any other regional district member. However, if the Yale First Nation joins the regional district, such as the case of the *Tsawwassen First Nation*, relevant taxes collected from both Aboriginals and non-Aboriginals would be remitted to the regional district, as with any other member municipality.²¹ Therefore, joining a regional district by a First Nation would address the issue of “representation without taxation” within the context of regional districts.

6 IMPLICATIONS

The containment of Indian Reserves within local government boundaries has significant implications for municipal and regional districts in the Lower Mainland; especially, as they relate to the ability of on-Reserve Aboriginal and non-Aboriginal residents to participate, as voters and potential candidates, in local government elections and referenda.

The most pertinent example is that of Electoral Area B, within the *Squamish-Lillooet Regional District* (SLRD), where 66% of the population (1,144 of a total 1,719) live on Indian Reserves.²² This means that residents on Indian Reserves in SLRD Electoral Area B hold a majority vote in the election of their regional director, even though they do not pay regional district taxes.

Another example worth examining is the *District of West Vancouver*, which currently has a population²³ of 42,121 of which 3,140 (7.5%) presently live on the *Squamish Nation’s* Capilano Indian Reserve No. 5, which is contained within the municipality’s boundaries. If the *Squamish Nation* pursues the development of residential market housing on its reserve lands as proposed, the proportion of residents living on-Reserve and eligible to vote in *District of West Vancouver* municipal elections and referenda could increase to 30% within 25 years.²⁴

A situation could result in other jurisdictions where the population of an Indian Reserve, including both Aboriginal and non-Aboriginals, can account for a plurality, or potentially a majority, of future eligible voters. In such a case, the residents on an Indian Reserve would have a controlling vote on a number of critical issues affecting taxpayers residing in the municipality without paying taxes to the latter. This situation is more likely as First Nations pursue large-scale on-Reserve market residential developments, resulting in an even larger non-Aboriginal population living on-Reserve.

In some regional districts, the unincorporated Electoral Areas may have Indian Reserves with sufficient on-Reserve populations to influence the results of elections for the Electoral Area Directors for the respective areas. As a consequence, some Electoral Area Directors sitting on a regional district board and voting on budgets, community services and regulatory bylaws could be, in fact, elected by voters who do not pay taxes to the regional district and are not subject to regional district bylaws.

²¹ In the case of Aboriginal members, there is normally a 12 year transition period before property taxes are to be collected.

²² Squamish-Lillooet Regional District and 2006 Census.

²³ 2006 Census.

²⁴ The 30% figure is based upon the current West Vancouver population. *Metro Vancouver’s Draft Regional Growth Strategy* (January 2011) projects the population of West Vancouver to increase by approximately 11,000 by 2031. Such an increase could either partially off-set the potential growth of residents on reserve, or account for a portion of the residents moving to the reserve.

Furthermore, regional districts use *Weighted Votes* to decide money matters, including the adoption of the annual and five-year financial plans. In this case, each Electoral Area Director receives a weighted vote based on the population in their electoral area. Therefore, in certain cases, an electoral area with an Indian Reserve could receive a higher weighted vote than other Electoral Area Directors based upon a larger segment of the electoral area population, both Aboriginals and non-Aboriginals, living on-Reserve that do not pay regional district taxes.

Some regional districts have adopted practises, under section 797.3 of the *Local Government Act*, requiring a referendum of either the entire regional district population, or that of effected municipalities and electoral areas, with regard to current or potential regional district services. Such a practise would allow residents on Indian Reserves to affect regional district servicing decisions while not contributing taxes to such services. An example of a regional district referendum is when in 2005, *Metro Vancouver* (then the Greater Vancouver Regional District) held a referendum with regard to establishing a fire suppression service on Barnston Island. The referendum was defeated. Furthermore, in the past five years, the Squamish-Lillooet Regional District has held referenda pertaining to service establishment and requisition increases involving museums, pools, fire protection, and economic development services.

7 CONCLUSION

The circumstance of having Indian Reserves, which are federal lands under federal jurisdiction, counted as part of local government boundaries with regard to local government elections and referenda, has created a situation of “representation without taxation” which is contrary to the democratic principles that describe local governance in British Columbia.²⁵ While treaties provide a solution to the issue, not all First Nations are likely to pursue treaties.

As a consequence, as First Nations pursue large-scale on-Reserve market residential developments, leading to increasing non-Aboriginal populations living on-Reserve, the implications for affected local governments and taxpayers will be exacerbated. As such, this issue will necessitate further consideration and examination of potential solutions.

8 RECOMMENDATIONS

1. Regarding Indian Reserves located within municipal boundaries, it is recommended that the Province amend municipal boundaries to exclude Indian Reserves in recognition of the absence of municipal regulatory authority over Indian Reserve lands and land use, and absence of municipal taxing authority over Indian Reserve lands and improvements.
2. Regarding Indian Reserves located within regional district boundaries, it is recommended that the Province officially exclude Indian Reserves from regional district boundaries until the First Nation joins and participates in the regional district on the same basis as their neighbouring local governments.

These recommendations are consistent with both BC provincial policy to specifically exclude Indian Reserves from municipal boundary expansions, and with the provincial policies of Alberta, Saskatchewan and Manitoba, as summarized in Appendix ‘A’. The purpose of these

²⁵ Robert L. Bish and Eric G. Clemens, *Local Government in British Columbia* (Fourth Edition), Union of British Columbia Municipalities, 2008.

recommendations is to achieve consistency with such policies by redressing the existing jurisdictional anomalies (“jurisdictional overlaps”) within BC.

APPENDIX A: OTHER JURISDICTIONS IN WESTERN CANADA

MANITOBA

The Manitoba *Municipal Act* (assented to in 1996) states in section 2:

Indian Reserves excluded

- 2 Despite any Act of the Legislature,
- (a) land within an Indian Reserve is not part of the area of any municipality;
 - (b) persons residing within an Indian Reserve are not residents of any municipality; and
 - (c) any description of the boundaries of a municipality or the area within a municipality is deemed to provide that land within an Indian Reserve is excluded from the municipality.

The Manitoba *Local Government District Act* was amended in 1996 to include the following in section 1.1:

Indian Reserves excluded

- 1.1 Despite any Act of the Legislature,
- (a) land within an Indian Reserve is not part of the area of any local government district;
 - (b) persons residing within an Indian Reserve are not residents of any local government district; and
 - (c) any description of the boundaries of a local government district or the area within a local government district is deemed to provide that land within an Indian Reserve is excluded from the local government district.

The Government of Manitoba includes the following in its FAQs section with regard to municipal elections:

9. I am a member of a First Nation, living on reserve. Can I vote in a municipal election?

Persons residing within a First Nations reserve are not residents of any municipality, and are therefore not qualified to vote in a municipal election. First Nations reserves are excluded from municipal boundaries, as set out in the Municipal Status and Boundaries Regulation (567/88 R). However, if you reside on a First Nations reserve, but own property in a municipality, you are entitled to vote as a non-resident property owner.

SASKATCHEWAN

The Saskatchewan *Municipalities Act* states in section 67 (5)

(5) For the purposes of this Act:

- (b) a rural municipality is deemed not to include within its boundaries any area included in an Indian reserve.

ALBERTA

According to the Municipal Affairs department, Indian Reserves may form part of *Rural Municipalities* which are most commonly referred to as Municipal Districts or Counties, defined as:

“ A municipal district (M.D., also called a county) is a government form in rural areas of the province. It includes farmlands as well as unincorporated communities such as hamlets and rural residential subdivisions.”²⁶

According to the Municipal Affairs Department, Indian Reserves that form part of *Rural Municipalities* may have the opportunity to vote in the Municipal District elections. However, further research has shown that common practice appears to be for Municipal Districts to remove Indian Reserves from electoral “wards” via electoral boundary bylaws that are permitted by Section 148(2) of the *Municipal Government Act*.

For example, *Bylaw 1000/03: Municipal Electoral Boundaries* of Sturgeon County states:

“The number and description of each ward shall be as described herein and as per attached Schedule “A”, and shall exclude any and all incorporated municipalities and Indian Reserves situated therein;”

²⁶ http://www.municipalaffairs.alberta.ca/am_types_of_municipalities_in_alberta.cfm