

Understanding Urban Reserves: Special reference to Kapyong

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The RADY JCC is located on original lands of Anishinaabeg, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis Nation.

It is important to respect the Treaties that were made on these territories, to acknowledge the harms and mistakes of the past, and to dedicate ourselves to move forward in partnership with Indigenous communities in a spirit of reconciliation and collaboration.

Without tangible steps toward reconciliation, such words increasingly common are public events remain meaningless and risk becoming platitudes that breed more resentment

Urban reserves offer a way to move beyond the sentiments expressed here.

Is this your worst fear for Kapyong lands?



Let me show you why this will not happen.

But first we need history and context



This treaty medal shows the “nation-to-nation” partnership that underlies the creation of urban reserves.

Overview of Aboriginal demographics: Manitoba

Aboriginal identity	Number	(%)
Total – Population by Aboriginal identity	1,240,695	100.0
Aboriginal identity	223,310	18.0
Single Aboriginal response	220,470	17.8
First Nations (North American Indian) single identity	130,505	10.5
First Nations single identity (Registered or Treaty Indian)	121,180	9.8
First Nations single identity (not a Registered or Treaty Indian)	9,325	0.8
Métis single identity	89,360	7.2
Inuk (Inuit) single identity	610	0.0
Multiple Aboriginal identities	2,020	0.2
Aboriginal identities not included elsewhere	815	0.1
Non-Aboriginal identity	1,017,390	82.0

1/5 of Manitobans report an Aboriginal identity

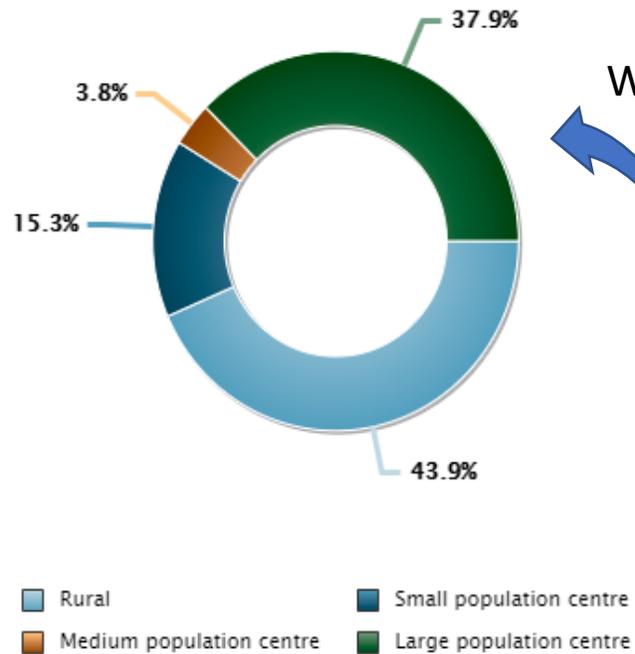
1/10 of Manitobans report being a registered or Treaty Indian

1/14 of Manitobans report being Metis

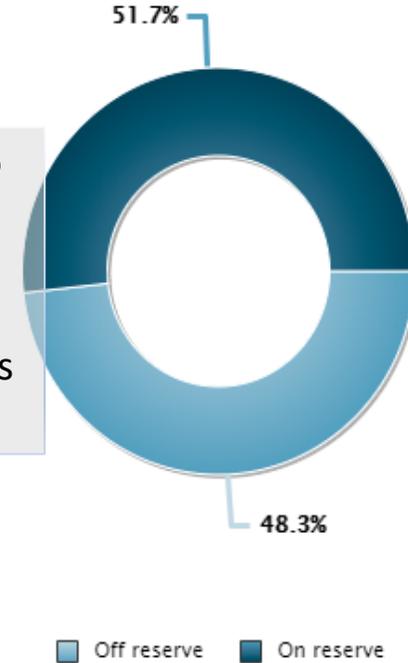
Winnipeg has the highest proportion Aboriginal population of major cities in Canada

The Aboriginal population is becoming urbanized

Distribution of the Aboriginal population by population centre size, Manitoba, 2016



Distribution of the First Nations population with registered Indian status by residence on or off reserve, Manitoba, 2016



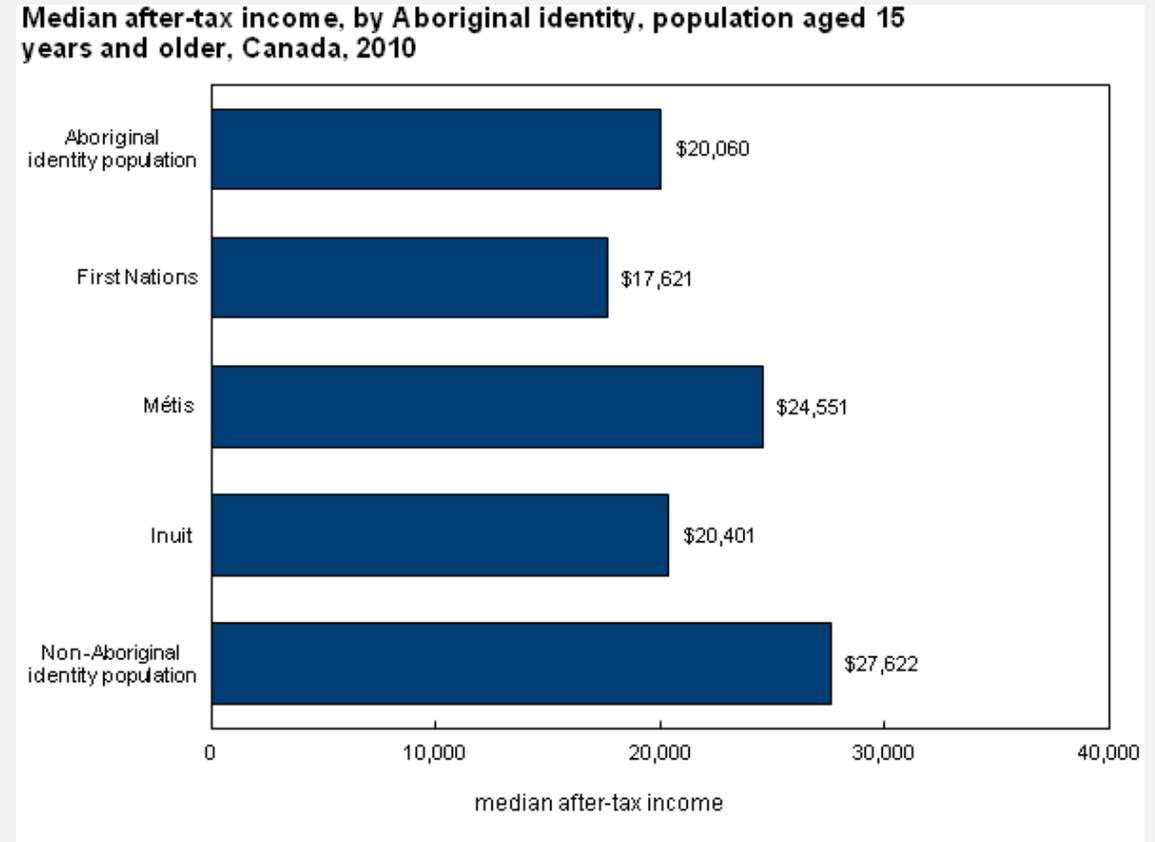
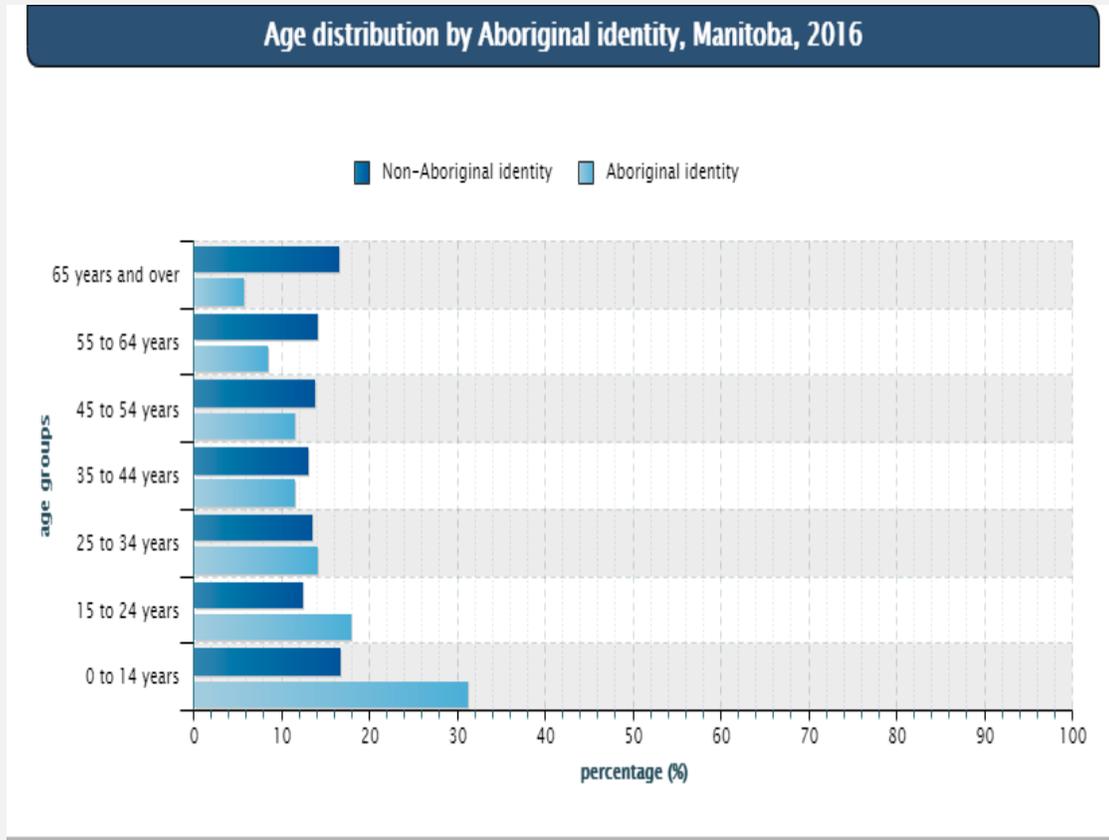
Winnipeg

A regular migration to and from remote reserves is an important feature for Aboriginal populations in Manitoba

Most reserves are non-urban and many are more than 1 hour from Winnipeg.

Source: Statistics Canada

The Aboriginal population is young and poor



Source: Statistics Canada

A quick tour of government Indigenous policy: 1763 - 1960

It all started with King George (III)

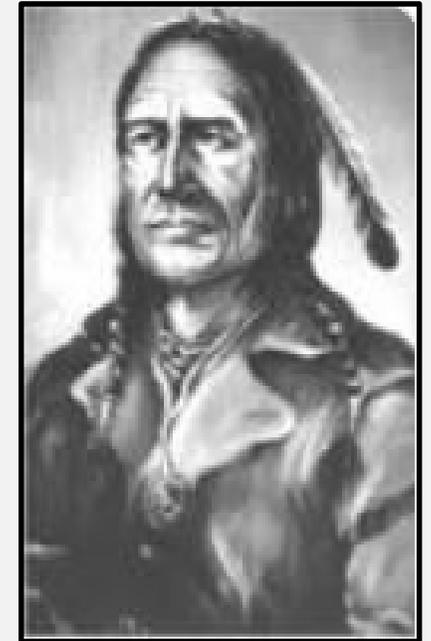
- **1763** Royal Proclamation defined the relationship between settlers and the Indigenous population in North America as ***nation-to-nation***.
 - It limited westward settlement.
- **1776** The American Revolution saw the separation of treatment of the Indigenous populations of North America
 - The subjugation of Indigenous populations was faster in the US due to aggressive military expansion in the west.
- Early years witnessed a decline in Indigenous population in Canada through war, disease, and famine.
 - The principles of ***Doctrine of Discovery*** and ***terra nullius*** governed the expansion of European settlement in Canada



The strategy of Britain in early Canada (pre-1812) was to seek cooperation with the indigenous population due to the difficulty in maintaining supply lines, the need to increased military capacity to repel US expansion, and to maintain the fur trade.

Canada and the Indian Act – 100 years of decline

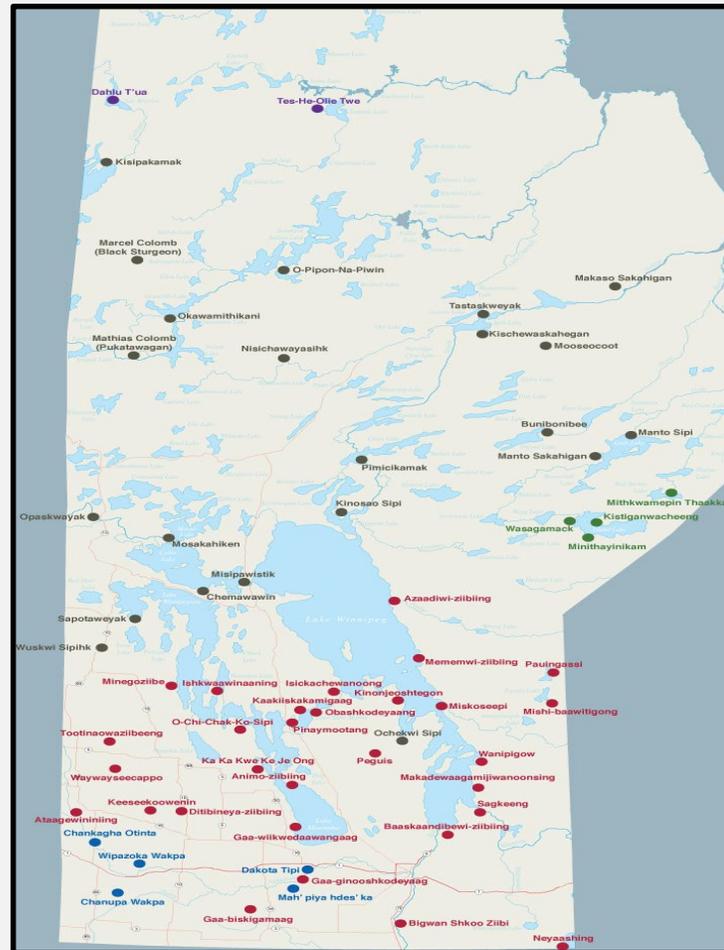
- **1867** the British North America Act made the Indigenous population of Canada wards of the Federal government and set the framework for negotiating treaties .
- **1876** the Indian Act eliminated the rights of Indigenous persons entirely
 - Population decline, isolation not assimilation, loss of rights, creation of reserves
 - Treaty violations over the next decades resulted in most of the land initially granted to First Nations effectively falling under the control of non-Aboriginal persons and governments.
- **1900 - 1950** Aboriginals excluded from Canadian society (no vote, wards of the state, limited capacity to gain private wealth, and “confined” to reserves)



Chief Peguis

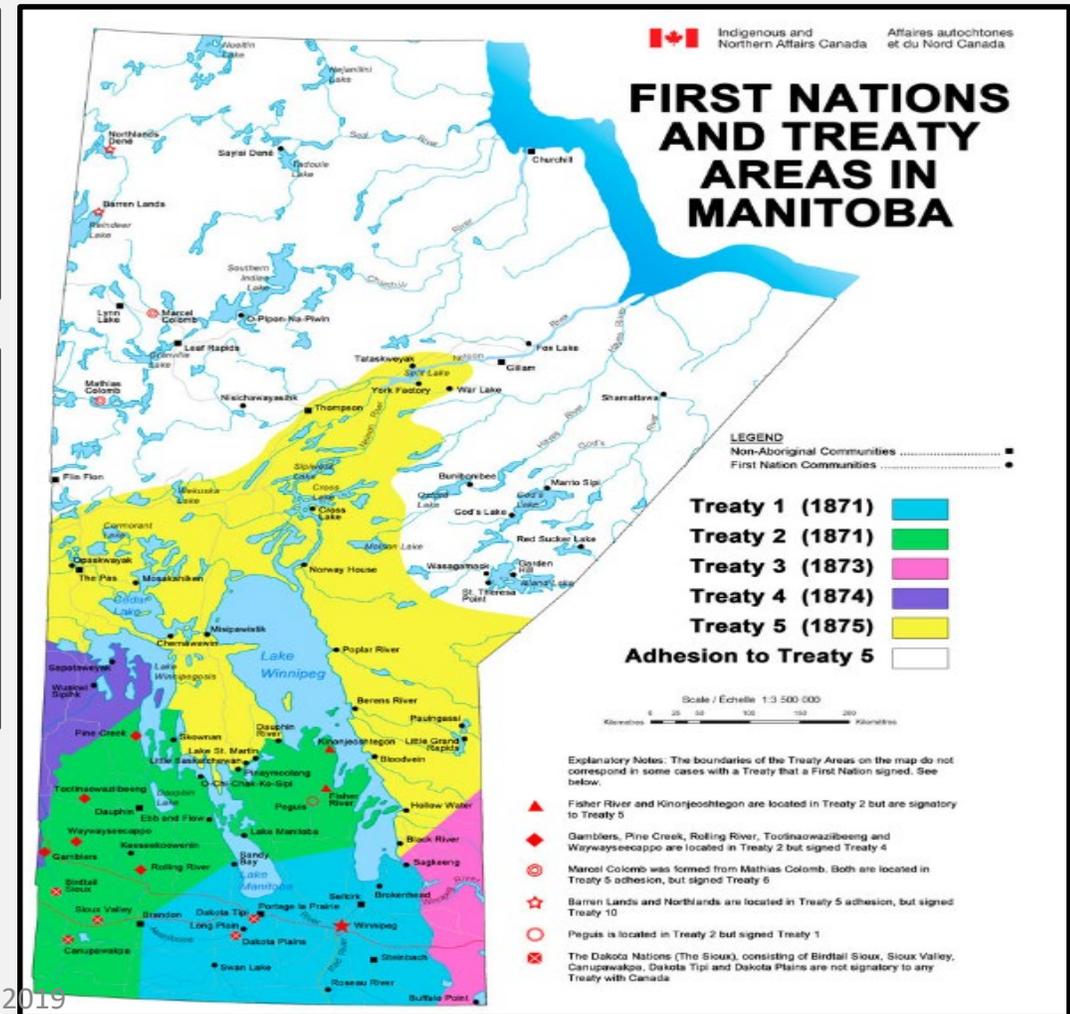
The five treaties that established the relationship between Canada and First Nations in Manitoba were negotiated between 1871 and 1875

Manitoba's Aboriginal population is either dispersed in rural areas or concentrated in Winnipeg and other urban centres



Manitoba is entirely covered by treaties.

The treaties apply to every resident of Manitoba, Indigenous or not.



A Quick Tour of Indigenous Rights: 1950 - 1970

- **1920 – 1960** Residential schools reflected a deeply misguided attempt to support indigenous students to “leave” the reservation by education. The result backfired spectacularly.
- **1940 – 1960** The expansion of the social welfare state increased dependency, without increasing opportunities for self reliance.
- **1967 Hawthorne Report** advocated increased on-reserve spending to upgrade quality of life/health, promote training and employment, encourage Aboriginal persons to leave the reserve. Also advocated for greater provincial responsibility in funding social and health services for Aboriginal persons.
- **1970 White Paper** issued by the Liberal government was an attempt to fundamentally redraw the nature of Aboriginal government:
 - Remove all bases for discrimination
 - Recognition of Indian culture
 - All services to be unified across Canada
 - Those most remote be helped the most
 - All laws be observed
 - Control of Indian lands be transferred to Indian Peoples

Many Aboriginal leaders opposed the plan (Harold Cardinal). The federal government had not accommodated those who wished to remain in the communities with current approaches to governance.

The White Paper assumed that individual Aboriginal persons wanted individual rights, which was (is) a deep mistake

Pierre Trudeau lost interest and was more consumed by broader constitutional issues.



Pierre Trudeau



Reconciliation

- **2009 – 2015 Truth and Reconciliation Commission** – appointed in response to court decisions on litigation brought by various Aboriginal groups against churches and governments involved in residential schools
- Issued a range of recommendations, most relevant for urban reserves are:

Reconciliation must inspire Aboriginal and non-Aboriginal peoples to transform Canadian society so that our children and grandchildren can live together in dignity, peace, and prosperity on these lands we now share.

We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the *Doctrine of Discovery* and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.



Senator Murray Sinclair

Four critical ideas

1. **Aboriginal governance is communal.** An Aboriginal person has individual rights as a Canadian under the Charter, but as a member of a First Nation, his/her property rights and even voting in band elections reflects historical band practice.
2. First Nations have a **government-to-government (nation-to-nation)** relationship with the federal and provincial governments.
3. It is the **Supreme Court** that has enabled the extension of Aboriginal lands and it is the courts that have final say in any relationship between Aboriginal and settler society.
4. **Land is fundamental** to First Nations' identity.

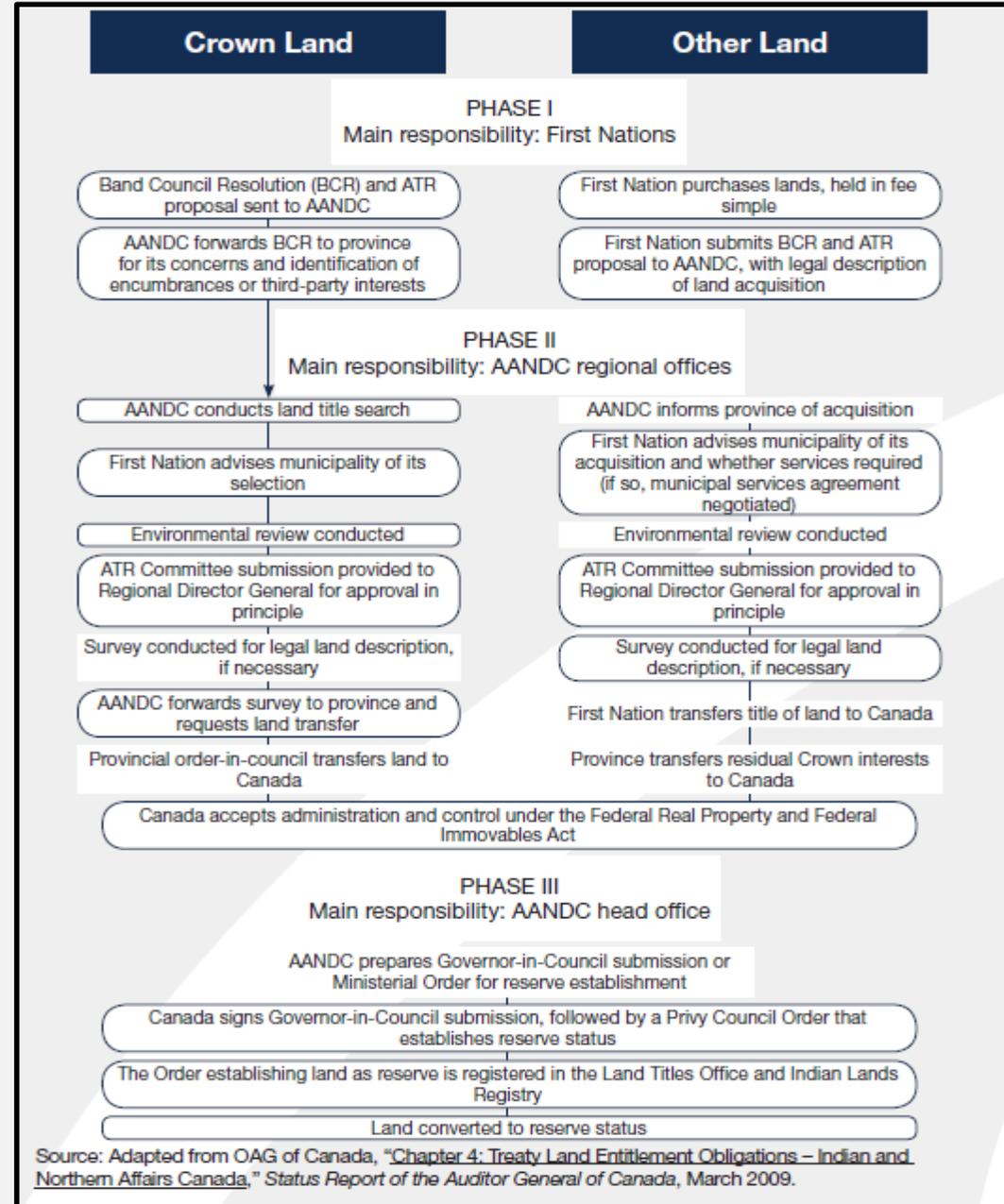
This brings us to urban reserves

Additions to Reserve Lands

- A process where a First Nation acquires land and seeks to have it designated as a “reserve” under the Indian Act.
- Many scholars and the courts agreed that First Nations were deprived of lawful lands when original reserve boundaries were developed.
- **1992-97 *Treaty Land Entitlement***: First Nations and the Federal/Provincial governments signed agreements to resolve outstanding land claims.
- FNs received funding to acquire lands, or in some cases Crown lands were transferred directly (e.g. Kapyong)
- Most of the land transferred thus far has been agricultural with some (increasing) urban areas.

“Under these agreements, Canada and Manitoba committed to adding up to 1.4 million acres to reserve and to pay \$190 million for land purchases and processing costs. Manitoba's primary obligation is to provide over 1.2 million acres from unoccupied Crown land. The balance will be acquired from private land owners who are willing to sell.” *Source: Treaty Land Entitlements in Manitoba – see handout*

The Additions to Reserve (ATR) Lands process



The ATR process is complex and takes several years

What is an urban reserve?

“An urban reserve is land within a city which has been purchased on the open market by a First Nation and granted reserve status by the Federal Government. Land does not become a reserve just because it is owned by a First Nation. Reserve status is obtained by going through a process which results in a Federal designation of the land as reserve.”

Source: City of Bridges: First Nations and Metis Economic Development in Saskatoon.

An (urban) reserve has a unique status in law.

- The most common forms of land ownership are fee simple and public (government)/Crown land.
- Fee simple is the common form of land ownership for residential and commercial uses.
- Crown land is often used for recreation (cottage rental) and is a major source of provincial revenue derived from leasing mineral and other natural resource rights.
- Even those who own property in fee simple, are subject to **eminent domain**, where government may expropriate for public purpose (road, transmission line, etc.).
- First Nations (bands) and Aboriginal persons may purchase land in fee simple for residential or business purposes.
- Some First Nations have elected to transfer lands held as fee simple to reserve status.

Advantages of Urban Reserve	Advantages of fee simple
Tax advantages which can be a competitive advantages in setting up or attracting business.	The process of buying and selling lands is straightforward. It is hard (impossible) to sell even a portion of reserve land unless it converts to fee simple.
Federal business assistance (loans) can be easier to get.	Creating a reserve under ATR is complex.
FN employees pay no income tax for income earned on any reserve.	Third party investment and the creation of partnerships with non-aboriginal investors is easier since partners can have a joint interest in the land.
Not clear that reserve land is subject to eminent domain.	Reserve land is hard to use as collateral for bank loans.

Case Study: Saskatoon

- Saskatchewan has made significant progress in defining and working with Urban Reserves.
- Saskatoon has a well developed policy for supporting First Nations' and Metis economic development.
- Typical land uses include:

Industrial Grouping (NAICS)	Examples
Retail trade	Gas stations, convenience stores, etc.
Accommodation and food services	Restaurants, hotels
Construction	Construction companies
Finance and Insurance	Banks and Non-bank financial institutions
Art, entertainment and recreation	Casinos, Golf courses, etc.
Transportation	Trucking and transportation companies
Public Administration	Provincial government services, education institutions
Professional, scientific and technical services	Doctors, dentists lawyers, consultants, etc.

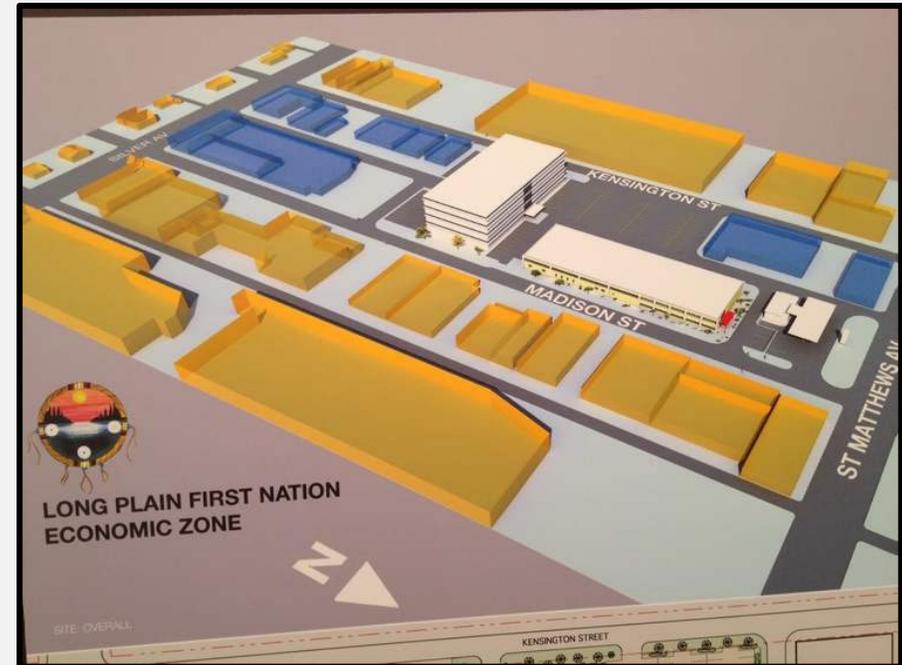
Currently Manitoba has eleven urban reserves

1. Opaskwayak Cree Nation (adjacent to the Town of The Pas)
2. Swan Lake First Nation's urban reserve land (within the Rural Municipality of Headingley and adjacent to the City of Winnipeg)
3. Roseau River Anishinabe First Nation's urban reserve land (adjacent to the City of Winnipeg)
4. Sapotaweyak Cree Nation's two parcels of urban reserve land (both located within the Town of Swan River)
5. Nisichawaysihk Cree Nation's urban reserve land (within the City of Thompson)
6. Birdtail Sioux First Nation's urban reserve land (located within Foxwarren in Prairie View Municipality)
7. War Lake First Nation's 40 parcels of urban reserve land (located in Ilford)
8. Peguis (1075 Portage)
9. Long Plain First Nation (adjacent to the City of Portage la Prairie)
10. Long Plain First Nation (Madison Ave.)
11. Seven First Nations (Kapyong)

Urban Reserves in Winnipeg – Long Plain First Nation



Long Plain's Madison site near Polo Park has a gas station, education (Yellowquill College), and local businesses (not necessarily First Nations owned).



Urban Reserves in Winnipeg – Peguis First Nation



Plans include a strip mall, Cannabis cultivation, office leasing, and a restaurant.



Kapyong

- First opened in WWII.
- Downsizing the military in the 1990's resulted in eventual closure in June 2004, but used for limited training for local militia.
- In 2007 the 160 acre area was to revert to Canada Lands Corporation, but the Treaty 1 bands asked the courts to block this transfer.
- The federal government appealed, but in 2015 the Harper government decided not to continue its appeal.
- The taxpayer spent \$15 - \$20 million between 2004 and 2015 to maintain the vacant barracks.
- The City of Winnipeg lost tax equivalent payments.



In April 2018, Treaty 1 Bands (Long Plain First Nation, Brokenhead Ojibway, Peguis First Nation, Roseau River Anishinabe First Nation, Sagkeeng First Nation, Sandy Bay First Nation, and Swan Lake First Nation) signed an intent to use the ATR process to transfer the Kapyong Barracks land to an urban reserve, jointly managed by the seven bands.

Kapyong: Current plans

Current plans call for low density housing, offices, sports facilities, retail, and cultural.

The goal is to generate net revenue for the seven bands.

This can only occur when land is used and its “highest and best use”.

Residential, commercial, and retail activities must be at current market prices.

Since the land cannot be owned by private individuals (including Status Indians), use will be under various forms of lease arrangements.



Kapyong: Municipal Development and Services Agreement (MDSA)

- Bands with urban reserves enter into time limited agreements (5 – 10 years) with the urban government.
- These agreements outline the services to be delivered by the city (water, sewer, animal control, building permits, police, fire, emergency response, transit, etc.).
- The Bands that have the urban reserve do not pay property or school taxes, but remit an annual amount equivalent to the services received from the city.
- The MDSA acknowledges the zoning of the City and the Band(s) undertakes to pursue compatible development.
- The urban reserve will tax activity on its land to generate revenues back to the band(s) and to compensate the city for services.

Kapyong: FAQ

Question	Answer
1. Will the management of Kapyong reserve be free to develop their land in any way?	<i>Development will be constrained by the MDSA and the agreement to ensure compatibility with adjacent use. The owners will seek to maximize revenue, which will mean that commercial/residential opportunities will need to attract non-Aboriginal clients.</i>
2. What is the time horizon for development?	<i>160 acres in a high land value area of Winnipeg will take time to develop. Capital may be challenging to raise. Significant development may take a decade.</i>
3. What tax regime will apply?	<i>Status Indians who work in Band owned businesses on the reserve will not be liable for income tax. Status Indians also do not pay GST/PST for goods purchased from as Band owned business. Non-Status persons (non-Aboriginals, Metis, Innu and non-status Aboriginal persons all pay taxes.)</i>
4. Will the City's power of eminent domain apply? Can the city expropriate urban reserve land?	<i>Uncertain.... Which means that widening of Kenaston may require a separate negotiation and clauses in MDSA.</i>
5. What if the management of the urban reserve wishes to undertake development that residents in the area find incompatible?	<i>This will be the real test for the MDSA. If negotiation fails, then the courts will be asked to decide. This should be avoided by all parties.</i>

Kapyong: Some ideas for development

1. Life lease housing

- a. A life lease offers the “purchaser” an interest in the property. For a up-front payment, the purchaser acquires the right to live in a home for a specified time (50 years), or until death.
- b. The life-lease can be passed on through a will, but only the interest, not the right to reside in the residence.
- c. The interest can be sold, but not the right to live in the property.
- d. This is very popular with empty nesters over 55.
- e. The Sponsor (usually a non-profit, but in this case the Bands that control the urban reserve) manage the property much like a condo.

2. An Aboriginal owned residential school

- a. Many Aboriginal young people find it challenging to come to Winnipeg to acquire post-secondary education.
- b. A joint venture between the reserve and post-secondary educational institutions could offer transitional education to support the acquisition of advanced training.

3. Casino

- a. This would require provincial willingness to share gaming revenues.
- b. It is not clear that this location could support a casino.

4. Multi-denominational religious centre.

Conclusion

- The development of Kapyong Barracks as an urban reserve should be welcomed.
- It develops prime real estate and increases cash flow to the city and to the seven First Nations.
- It represents a tangible step in reconciliation
- Provided land use is compatible with zoning and development is not competitive with other uses (e.g. retail will be tough given the outlet mall and the proximate strip mall.), this can be a win-win.
- Strategic partnerships with non-Aboriginal business will hasten economic development and build ties between First Nations and the general Winnipeg Population.

Caveats (1)

Caveat 1: The seven first nations must create an Economic Development Corporation (EDC), independent of the political leadership. Once the urban reserve has been fully sanctioned under the ATR, this EDC needs to have the authority to negotiate with City of Winnipeg and enter into agreements with lenders (Banks and Credit Unions), non-Aboriginal corporations and other institutions (e.g., universities and colleges). The goal of the EDC is to maximize net revenues back to the seven First Nations. Failure to create such an independent entity will create uncertainty and slow development.

Caveat 2: Each of the seven First Nations will determine how net revenues will be distributed within the group. If the funds flow to a few select “shareholders”, many band members will not experience the economic benefits of such participation in the urban economy. Migration from rural reserves will accelerate as the “best and brightest” leave.

Caveats (2)

Caveat 3: Will the City of Winnipeg receive fees for services that are equivalent to the property tax they would otherwise have received if the land were just sold to private developers (the foregone property tax revenues)?

The extent to which the foregone property tax exceeds the fees for services is the extent to which Winnipeg tax payers are subsidizing the urban reserve.

It is important that Kapyong pay its own way. First, this will demonstrate that First Nations organizations can participate in the modern urban economy. Second, if the subsidy from Winnipeg to the urban reserves is too “large”, support for this form of reconciliation may wane.

Caveat 4: To maximize economic value to First Nations *and* to City of Winnipeg residents requires that Kapyong be developed to highest and best use. This means, any development that does not reflect market lease values or returns, will require subsidies from the general taxpayer to the First Nations EDC.

For example, low income housing will generate below market lease values, which will require subsidies from the general taxpayer through federal/provincial governments. It will be difficult to position low-income housing close to high-income housing the surrounding residential/commercial area, which reflects the high income nature of the neighbourhood. Attempting to position lower income uses, will attenuate the net income to the seven participating First Nations who will require the general taxpayer to make up the difference. Inserting non-compatible land use in the Kapyong development will compromise long term property tax revenue to the city.

Caveats (3)

Caveat 5: The typical time horizon of 10 years for a Municipal Services Development Agreement may be too short to create certainty. A need exists to allow both parties to renegotiate, but the second round of agreements will need to be longer (at least 20 years)

Caveat 6: The idea of “nation to nation” is not universally accepted. Some social scientists such as Alan Cairns and Tom Flanagan argue that this idea while promoted by First Nations leadership and lawyers, has little basis in historical fact. These scholars maintain that for the “average” Indigenous person, long-term economic benefits will be located in the urban economy, by participating in the professions and STEM (science, technology, engineering, mathematics) occupations and generating income and wealth on the basis of education and entrepreneurial ventures just like non-Indigenous persons.

Further Reading

Cairns, Alan (2005) *First Nations and the Canadian State*, Institute for Intergovernmental Relations, Queens University.

Flanagan, Tom (2000) *First Nations, Second Thoughts*, McGill-Queens University Press

Gibson, Gordon (2009) *A New Look at Canadian Indian Policy: Respect the collective, respect the individual*, Vancouver, Fraser Institute.

Government Of Canada (2015) *Truth and Reconciliation Commission of Canada*, <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>

Municipal Development and Service Agreement – Peguis First Nation (1075 Portage Ave.)

<http://clkapps.winnipeg.ca/DMIS/ViewPdf.asp?SectionId=506101&isMobile=yes>

Treaty Land Entitlements in Manitoba

<https://www.aadnc-aandc.gc.ca/eng/1305306991615/1305307177471>

Saskatoon *City of Bridges: First Nations and Metis Economic Development in Saskatoon*

<https://sreda.com/isl/uploads/2016/06/City-of-Bridges-First-Nations-and-Metis-Economic-Development-in-Saskat-.pdf>