



# Okanagan Indian Band PROPERTY TAXATION ON RESERVES CONSULTATION MEETING 2

## Session #2 “Sovereignty”

Below is a synopsis of the comments made by guest speakers at the second consultation meeting on the issue of Property Taxation on Reserves. The topic of the second meeting was “sovereignty.”

Indian Bands can enact property tax legislation under the *Indian Act* or the *First Nations Fiscal Management Act* (FMA).

### What we heard:

Robert Janes (JFK Law)

- Why tax? OKIB currently pays for services that are used by non-Band members (i.e. uses ISC funding, leaves less money to provide services to Band members); there is no legal obligation to provide services, property tax is not a fee for service-it is a tax; and taxes increase an Indian Band’s authority.
- Nothing forces OKIB to beyond property taxation; it doesn’t need to go down the self-government route; it’s a sliding scale, but OKIB should have a plan, doesn’t recommend adopting a land code.
- All governments negotiate tax agreements amongst themselves (e.g., Canada & US, US and Mexico; European nations; etc.)
- To assert and protect ‘sovereignty’ OKIB should pass own property tax law that is based on Inherent right and the Indian Act (or the FMA). Courts will enforce Indian Act/FMA; and if the law is challenged, there is a history of OKIB passing its own (i.e. inherent right-based) property tax law.
- Courts are not the place to assert sovereignty, better to do it yourselves.
- Aboriginal Title and Aboriginal Title rest with the “Nation” and not Indian Bands; there is nothing that a Band can do to abrogate or derogate aboriginal rights or aboriginal title.

Russ Diabo

- OKIB needs to see the ‘big picture’. *Guerin*, a 1984 Supreme Court of Canada case, started it all; the SCC held that Canada owes a fiduciary duty to Indian Bands. Soon after 1984, the federal government began trying to off-load their duties to Indian Bands: surrendered v designated lands (the Kamloops amendment). Recently, we saw the Justin Trudeau’s government dividing DIAND into two new departments: Indigenous Services Canada (ISC) and the Crown Indigenous Relations department. ISC transfers payments to Indian Bands so they can provide and administer programs while CIR takes over when an Indigenous Nation negotiates a treaty.
- The federal government’s method is to have ISC provide less and less funding to encourage Indian Bands to take on more and more authority. There is a sliding scale towards self-government; property tax, then Land Codes, Membership Codes, privatized

land on reserves and eventually, Canada hopes that Nations will move towards self-government (i.e., negotiate a treaty and be endowed with the 'powers of a natural person'; in other words, the First Nation government would become like a municipal government).

- Indian Act Bands need to plan their own path to sovereignty. Russ has developed a presentation on how to develop a strategic self-determination (i.e., exercising inherent rights) plan; the plan could be used for litigation or education.

#### Bruce McIvor (First People's Law)

- In a perfect world OKIB could pass its own laws, but reality is that you must use the existing system and take the province's authority over property tax on reserve.
- You need to use the courts to enforce your laws; therefore, suggests that OKIB make a 'hybrid' law; a law based on 'Inherent right' and the Indian Act. Such a law would be an expression of sovereignty.
- The Indian Act has designated reserves; therefore, property tax won't affect sovereignty.
- There are lots of restrictions on how you can spend ISC funding, not so with property tax revenue.
- Agrees with Russ Diabo's point that Canada is off-loading its responsibilities, but Indian Act bands need property tax revenues to obtain and grow sovereignty.