

**Brief of Dr. James N. Tanner for the Standing Committee on Indigenous and Northern Affairs,
June 2, 2023**

This timely topic, restitution of lands, is the focus of a publication which I am in the process of completing as I write this brief. I believe that this publication-book can aid the Committee in its work and therefore I will provide a brief summary of the contents and recommendations for your review.

Relevant to the results, this research for my work started in 1973, the year of the *Calder* decision from the Supreme Court, on a trip to Inuvik at the beginning of the pipeline and Arctic oil and gas lease discussions. This long journey has pushed me to learn about the First Peoples in Canada, about their values, spirituality, and economies. The journey included over 20 major land use studies, many reports, and negotiations, settlements and economic development projects in B.C., Alberta, N.W.T., Inuvialuit, Saskatchewan, Manitoba, and Ontario with many different groups of Indigenous Peoples speaking different languages, living in different environments within this amazing country.

As I have worked, the legal environment has changed and there has been a rebirth of Indigenous culture with a resounding acceleration in political power, excellence, and economic growth and capacity. I just listened to my long-time friend, Chief Allan Adam, sending a video announcement out to his evacuated community, calming their fears, reassuring them about their houses, showing the brave firefighters and being a wonderful leader of that community. There are many like him across Canada now, who understand the statements made by the Royal Commission on Aboriginal People (RCAP) on renegotiating treaty, who understand first-hand how the treaties were made and violated, who are taking their place in history as the United Nations Declaration on the Rights of Indigenous Peoples declares the doctrine of discovery void.

The evolution of land use studies over the last 50 years has also been a process of increasing excellence culminating in reports like Nta'tugwaqanminen, Our Story, Evolution of the Gespe'gewa'gi Mi'gmaq. This report was done including 66 advisors and researchers, 8 staff members, groups of student and other employees of the First Nations, and some 72 Elders and Knowledge-Keepers. It is truly an excellent work showing how their lands were used and how they should be treated in the future.

Out of the over 20 publications done by my firm, the most recent publication by the University of Regina, Owóknage: The Story of Carry The Kettle Nakoda First Nation Čeǵá K'iǵna Nakóda Oyáde was also controlled and vetted by the First Nation, including many Elders and Knowledge Keepers, and many experts in archaeology, anthropology, history, and law. This is the excellence coming out of many Indigenous communities. These publications discuss how their lands were used and how they were taken improperly and how they should be used in the future. Every story, every Indigenous group is different. But one relationship is the same, and that is the importance of their lands to their culture, self-determination, self-governance, language, and health. Many of the traditional economies have been destroyed, all have been impeded. Getting lands back will not bring back the past, but when approached using the two-row wampum spirit of cooperation, as intended in the early treaties in Acadia, after the Pontiac War with the Treaty of Niagara, and during the Numbered Treaties, a solution can be reached which is true to their treaty expectations. This is where the work merging economic development with traditional knowledge and culture and other capacities helps produce a vibrant solution for Indigenous Peoples in Canada. But every group is different.

My original task in the oil sands was to estimate losses due to treaty violations, infringements of Aboriginal rights, and other impacts. Over the years and different projects, the solutions changed from cash payments to joint ventures, to interpreting agricultural benefits as economic benefits, to beginning businesses. The expressed desire of the Cree and Saulteaux who participated in the Treaty with Lord Selkirk, of July 18, 1817, which was improperly replaced, was to accept a meager annual payment or quit-rent on lands in expectation that the Indigenous Peoples would share the wealth that the Selkirk settler would bring in technology and good-will, in trade and businesses shared with them.

Part of the consistencies between pre-contact Nations was their rules for sharing lands and resources. This historical truth is reviewed in many ways in the publications mentioned above. This is the fundamental guide which could be used by the Committee as a bridge to the settlement of the relationship between Canada and Indigenous Peoples. It is part of the two-row wampum philosophy, and it comes from Indigenous international law.

As an economist I share the initiatives of those who promote a consensus of convergence on settlements of claims and violations of treaty and Aboriginal rights. This consensus, in my view, can be best characterized as re-instating the loss of capital; the land was their capital asset, and it was confiscated. Obtaining all fee simple lands may not give them the capital they need. Some lands they need returned. See the work done on core areas of comprehensive traditional land use studies. However, control over the lands, as a keeper of the lands, is even more consistent with their traditional role. They need to be the “administrator” of large portions of Crown lands. For Nations like Carry the Kettle Nakoda First Nation, this is

why the sale of grazing lands by the government of Saskatchewan is so critical. These lands are their last remaining opportunity, and they don't need to own them, just administer them.

The role of the treaty right to agricultural benefits in northern Alberta was a victory for both INAC and Indigenous Peoples. In this agreement benefits were acknowledged to be economic benefits to a new economy. Outside of maintaining their culture and language and traditional practices, economic development in an environmentally friendly manner is the goal of every band I worked with. This must be the framework of the "land back" initiative as well.

The solution for each and every Indigenous group will be different because each is in the midst of their own journey. Some are already very economically successful but may require traditional or spiritual lands. Some require land as capital, to replace an economic base taken from them. Some require more control over their core areas and environmental concessions to regain their health. Aamjiwnaang First Nation comes to mind. Shoal Lake Cree Nation is another. The First Nations affected by the oil sands need special environmental considerations on their lands. This is land back too. The question is what was the expectation of the Indigenous Peoples when they agreed to share their lands and resources? This is what needs a fulsome understanding because my experience is that most Indigenous People are realistic about what that deal was, and it does not involve taking **all** their lands back. It is sharing the wealth of the lands and resources proportionately with Settler Canadians for the most part on the basis of population. This is truly sharing – is it not? The main difference is that the lands will also have to be protected beyond what settler society has allowed – and this is part of what the Indigenous People are providing to other Canadians, a healthier environment.

Summary

1. Indigenous Peoples require lands which allow them to maintain their culture and language and traditional spiritual expression. These lands may be reserve lands, or environmental control over their core areas as defined by their practices.
2. They also require replacement of their capital base which was confiscated by either the doctrine of discovery or bad treaty interpretation. Because the lands, their capital base, was not individually owned in the Settler sense, so too must their new capital base have collective ownership and control. It may not be land, but it must have the permanency of land. Those bands who already have a substantial capital base may need collective structures to maintain the permanency or also participatory protection of cultural and spiritual lands.

Solutions must be based upon simple principles that are easily understood and accepted by both parties. The solution described above has those characteristics or potential. As I have said above, I have spent ½ of the last 50 years working on this topic and I am publishing a book on the topic as we talk. I am not familiar with the history of your process but the solution for which you search could be the catalyst which launches the convergence of reconciliation in Canada. I am willing to do whatever I can to help you with this goal as this has been my *métier*, my focus for so long now.

Respectfully,

James N. Tanner, PhD.