

30 June 2023

Ms. Vanessa Davies, Clerk
Standing Committee on Indigenous and Northern Affairs
131 Queen Street, Room 6-17 / 131, rue Queen, pièce 6-17
Ottawa, ON K1A 0A6 Via: INAN@parl.gc.ca



RE: OLTA on Private Lands, Indigenous Land Trusts, and Restitution to Indigenous Communities

Dear Ms. Davies and Committee members,

On behalf of the Ontario Land Trust Alliance (OLTA), we are writing to bring a land trust and “private” land perspective to your study of land restitution to Indigenous communities¹. It is a crucial time to foster “land back” and right relations, both with Indigenous peoples and with the land, and such initiatives align with commitments on UNDRIP and the TRC and MMIWG calls to action and justice².

Land trusts are typically not-for-profit, charitable organizations committed to the long-term conservation of natural and/or cultural heritage. They work with landowners and community members to obtain funds and land donations (and sometimes purchases) within the existing state legal system. To succeed, land trusts rely on not-for-profit and charitable status, donation incentives and funds, land title and conservation agreements, and public volunteer support. A charitable tax receipt helps donors reduce federal and provincial income taxes and acts as an important incentive to foster gifts of land, money, cultural or other items. Since 1995, 225,000 ha of ecological lands worth over \$1 Billion have been voluntarily donated to land trusts and others by generous Canadians through the Ecological Gifts Program. This does not include other types of donations or purchases. Tens of thousands of volunteers across the country also leverage valuable time, expertise, and private funds. This work comes at a most

¹ For example, see discussion in: Larry Innes, Ian Attridge and Skeena Lawson (2021), [Respect and Responsibility: Integrating Indigenous Rights and Private Conservation in Canada](#).

² For example: UNDRIP Arts. 5, 8, 10-12, 18, 24-26, 28-29, 33-34, 38-39; TRC Calls 43, 47, 52; MMIWG Calls 1.2v, 1.4, 2.5, 7.4, 15.4, 16.20, 16.41, 17.25, 18.2.

opportune time of enormous inter-generational wealth and land transfer, but also when philanthropic support for Indigenous causes and organizations is weak and needs substantial enhancement³.

In this context, here we recommend shorter-term measures for reforms of federal not-for-profit, charitable donation, land holding and disposition processes to support land restitution to Indigenous communities. We recognize that the state legal system, and concepts of “ownership”, “acquisition”, and buying back lands, are typically quite foreign and problematic to Indigenous worldviews. Land trusts and associated land donation tools thus can be seen as interim measures towards developing a more pluralistic legal system that upholds Indigenous legal orders and enables other pathways to restitution. Increasingly, Indigenous communities are identifying the land trust model as a useful way to move towards land restitution and to revitalize Indigenous governance, culture, use, and care for lands and waters. This arises from both Indigenous communities and individuals themselves forming land trusts and also from a growing number of settlers and organizations who wish to act as allies to support truth, healing, reconciliation, restitution and self-determination efforts. Currently there are about a dozen Indigenous land trusts plus 150 other land trusts across the country⁴, with more forming. Both Indigenous Land Trusts and conventional land trusts can play important roles in moving lands into Indigenous community care for Indigenous purposes, such as to renew land relationships, and for conservation, harvesting, educational, cultural, and ceremonial access and use⁵.

If lands are returned to Indigenous governments and organizations, they may be held as a potential Addition to Reserve or as private fee simple lands. Each of these has advantages, limitations, and implications: the former can take decades to become part of reserves owned in trust by the federal

³ Globally, intergenerational transfer of US\$30 trillion is expected over the next decade ([Financial Post, 2022](#)), yet Indigenous organizations receive only \$1 for every \$178 (0.5%) granted to non-Indigenous recipients in Canada ([Redsky et al, 2021](#)).

⁴ For example: [Sespite'tmnej Kmitknu Conservancy](#), [Mno Aki Land Trust](#), [All Our Relations Land Trust](#), and members of the [Quebec](#), [Ontario](#), [British Columbia](#), and [national](#) land trust alliances.

⁵ With successes and challenges, see recent examples in: [B.C.](#), [Alberta](#), [Saskatchewan](#), [Manitoba](#), [PEI](#), and [Nova Scotia](#).

government, while the latter pay ongoing property taxes. The following recommendations are intended to help streamline and reduce time and costs for both processes and to also address legal barriers faced by Indigenous and allied land trusts.

1. Revise the *Canada Not-for-Profit Corporations Act* to recognize/enable Indigenous governance.

The CNCA follows a traditional, perhaps colonial, approach to governance practices. Indigenous governance traditions will vary among Indigenous Nations but may be less hierarchical, more relational and reciprocal, and involve collective, consensus and other approaches. Further, an increasing variety of alternative governance models are being considered in not-for-profits, some of which may work well for Indigenous-led organizations. A review and revision of the CNCA to enable more flexible, Indigenous-inclusive approaches to not-for-profit governance requirements would make forming and operating Indigenous-led land trusts more streamlined and culturally concordant.

2. Revise the *Indian Act* to specify that Indigenous governments have capacity to hold land title.

The *Indian Act* and its interpretation by the courts have not recognized “Indian” Bands as having the legal capacity to hold title to land, resulting in doubt, litigation on interpretation, and convoluted and costly organization structures⁶. It would be more efficient to enable Bands to broadly hold fee simple (ownership) interests in lands as do other governments and organizations. This would streamline and save costs to acquire lands for consideration as Additions to Reserve (such as through land claims settlements) or to foster off reserve “land back” of ancestral territories. Revisions to clarify Band capacities in the *Indian Act* would address practical land restitution matters yet may not address more foundational issues of Aboriginal title and sovereignty.

⁶ See: *Indian Act*, s. 2(1) (Band is a body of Indians); *Afton Band of Indians v Nova Scotia (AG)* (Bands not corporations), *Lac des Mille Lacs First Nation v Canada (AG)* (not a legal entity), *Keewatin Tribal Council v. Thompson (City)* (recognizing trusts); [Roine and Turner \(2023\)](#). Note that the [Framework Agreement on First Nation Land Management](#) (ss. 12.2 and 12.4), under the associated Act, authorizes land code First Nations to hold title to “reserve land or lands set aside to which a land code applies”. However, this still may not clarify application to off reserve “private” lands of Indigenous community interest.

3. Develop enhanced tax incentive(s) to foster donations of land/funds for Indigenous purposes.

There are several tax incentives in the *Income Tax Act* which facilitate donations of lands for public purposes, including the Ecological Gifts and Cultural Gifts programs and measures to enhance donations of Canadian lands by foreign residents. However, there are no specific programs that provide equivalent support for donations of lands for Indigenous purposes to Indigenous organizations. Donations to Indigenous organizations are some of the lowest in the charitable sector. Thus, to leverage land back by generous Canadians, a new or a revised existing⁷ program could be developed with integrated, streamlined measures and wider criteria to ensure minimal costs for recipient Indigenous communities and organizations. Targeted funding for Indigenous land trusts would also assist.

4. Prioritize/streamline federal land dispositions to Indigenous governments/agencies/land trusts.

A variety of laws and policies⁸ provide procedures for the disposition of surplus federal lands and interests. While Indigenous interests are considered in the process, the legislation could make Indigenous interests and organizations more a priority and streamline land acquisition processes (and reduced prices) to foster land restitution. This would increase the availability and suitability of lands and reduce overall timelines and costs for Indigenous communities and land trusts.

5. Provide exemptions/payments for property and other taxes for Indigenous purpose lands.

Lands donated or purchased (such as through land claims settlement payments) by Indigenous governments and organizations will remain subject to provincial property, school, land transfer, probate, and other taxes, with the first of these not applicable if they become federal lands for a reserve. Property taxes in particular act as a financial and political barrier (and in some ways an affront) to lands returned to Indigenous communities and organizations. While typically within provincial jurisdiction, the federal

⁷ For example, formalizing in administrative policy the eligibility of donating cultural lands and keystone species habitats, and explicitly enabling Indigenous harvesting, cultural and ceremonial uses within the [Ecological Gifts Program](#).

⁸ For example, the *Federal Real Property and Federal Immovables Act*, *Financial Administration Act*, and associated policies.

government could arrange with provinces and territories for tax exemptions, cash in lieu payments, or federal purpose designation. For example, in Ontario, the Boy Scouts, cemeteries, mining buildings, theatres, and amusement rides are all exempt from property taxes -- but not Indigenous-held lands⁹.

Other means to streamline and support Indigenous and conventional land trusts' work towards "private" land restitution might also be contemplated. We would be most willing to further explore possibilities with the Committee and bring our expertise and experience to the study. We particularly encourage Committee engagement with Indigenous nations, communities and land trusts, the [Conservation through Reconciliation Partnership](#), its [IPCA Knowledge Basket](#), the Indigenous Land Trust Circle, [Nature Conservancy of Canada](#), the [Yellowhead Institute](#), and others to explore how, with some federal changes, land trusts can leverage Canadians' interests in land restitution to Indigenous communities.

Summary of Recommendations:

1. Revise the *Canada Not-for-Profit Corporations Act* to better recognize/enable Indigenous governance.
2. Revise the *Indian Act* to specify that Indigenous governments have capacity to hold land title.
3. Develop enhanced tax incentive(s) to foster donations of land/funds for Indigenous purposes.
4. Prioritize/streamline federal land dispositions to Indigenous governments/agencies/land trusts.
5. Provide exemptions/payments for property and other taxes for Indigenous purpose lands.

Ontario Land Trust Alliance

Ontario Land Trust Alliance (OLTA) is a registered charity focused on providing community, knowledge sharing and support to land trusts and other groups committed to land conservation across Ontario.

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⁹ *Assessment Act* (Ontario), sections 3 to 6.1, among other types of exempted lands.