



Doane
Grant Thornton

Navigating risks for Indigenous communities

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Meet your presenter



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Agenda

- 1 First Nations business development – Success factors
- 2 Estate matters – Indigenous context

01 First Nations business development – Success factors

**“
I can confidently say that my
best friends besides my wife
are my lawyer and my
accountant. Good business
requires good relationships.
”**

Chief Terry Paul



First Nations investments – Examples



Membertou & Qalipu First Nations partner with Horizon Maritimes to acquire St. John's Shipyards in September 2024



Mi'kmaq First Nations partnering with Premium Brands to acquire and take private Clearwater Seafoods in 2021 for \$1.0 billion

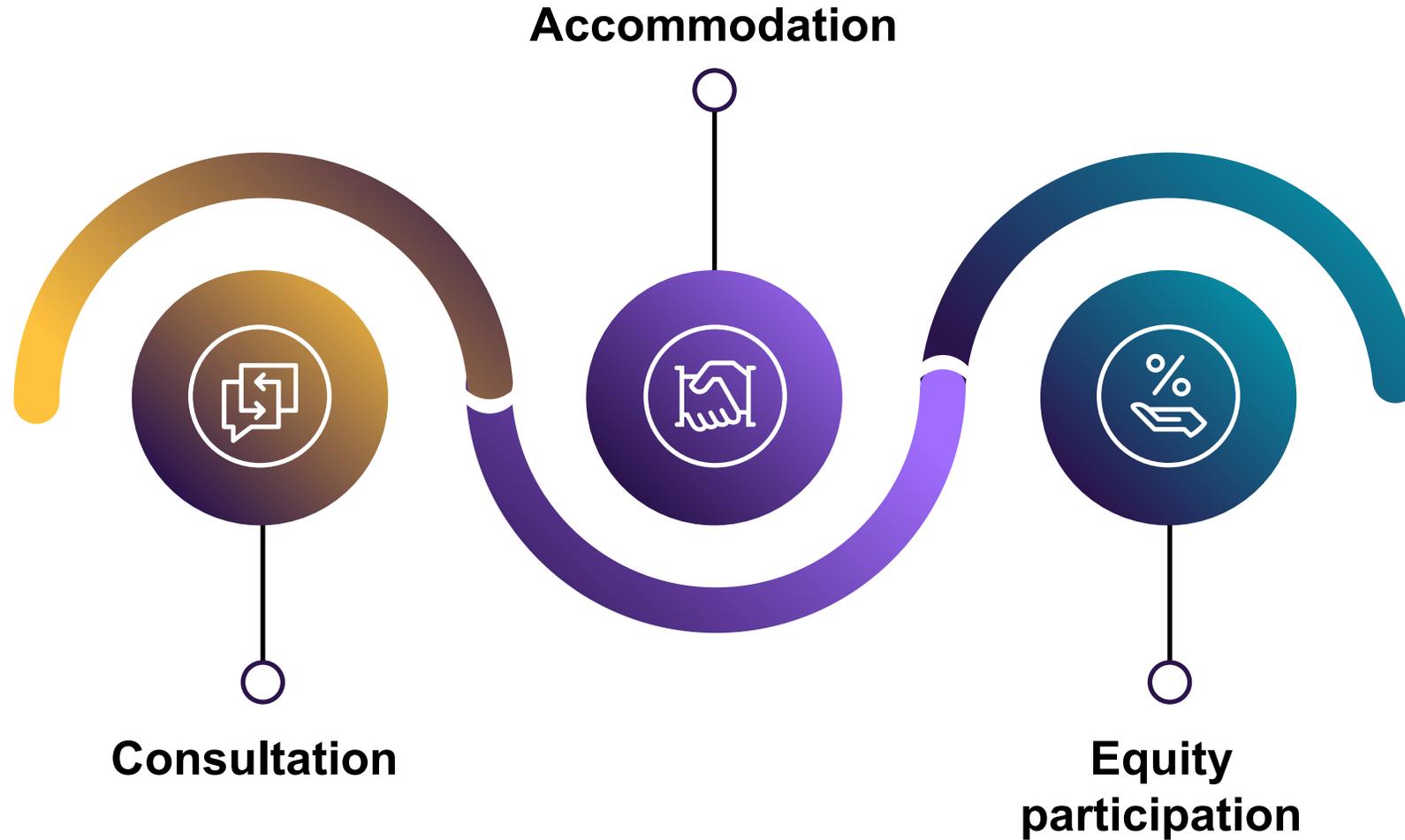


Enbridge Partners with 23 First Nation and Métis to acquire an 11.57 per cent interest in seven Enbridge-operated pipelines in the Athabasca region of northern Alberta for \$1.12 billion in 2023



Fort McKay First Nation has built a group of indigenous owned business and partnerships in Alberta across the oil & gas sector, including logistics, transportation, mechanical, civil construction and infrastructure services. Partnering with companies such as Graham Construction, Imperial Oil and other major businesses.

Evolution of First Nations investment



Context

Evolving Indigenous business investment & ownership

Evolution of First Nations in economy / projects – bystanders to consultation to a critical business partner.



Why?



Monetary benefits

- First Nations increased access to capital



Non-monetary benefits

- Make businesses more competitive to meet evolving procurement requirements (public & private)
- “ESG” – internal, investors - natural resource protection
- Local perspective
- Political capital & reach

Investment opportunities for First Nations risk profile



Consultation



Accommodation



Equity participation

Being prepared – Establish objectives

- Establish Objectives: **Being clear on what you want to achieve**
 1. Meaningful cashflows back to communities
 2. Participate in growth in equity value
 3. Key role in governance of the business
 4. Social benefits for the communities
 5. Meaningful role in businesses and resources that impact your communities and lands



Being prepared (continued)



- **Use Screening Criteria:**
Establish Screening Criteria to help focus on good opportunities and avoid opportunities that don't achieve your objective
- **Dedicate resources:**
Create dedicated members of your team that can help develop, track and execute on opportunities
- **Measures:**
Establish measures to make sure your investments are working for you
- **Communication & Reporting:**
Establishing good reporting and communication between the businesses and communities

Acquisition processes & opportunity types

Types of processes: Competitive vs One-on-one

- Businesses are often sold in competitive processes where the seller seeks to drive value by creating competition. These processes are highly structured, so there's a need to be ready for them.
- It also happens in one-on-one negotiations if the seller and acquirer see a unique fit. This is the preferred way to buy a business, as it reduces the pressure and competition. First Nations often bring unique attributes to a business that warrant a one-to-one approach.

Types of opportunities: New projects vs Acquisitions

- New project involve the creation of a new business or asset (such as a power generation facility, transmission line, manufacturing facility, etc.)
 - Projects have development risk, as its not always clear if it can be successfully built and established.
 - Cash returns are often delayed until the project is completed and established.
- Acquisitions involve purchasing existing businesses from current owners
 - Existing businesses normally have established cashflows and track records, so the cash returns are more immediate
 - Risks have been mitigated by the business being established
 - It's important to understand the risks of the existing business

Who's involved



Buyer

- First Nation Leadership
- Legal Counsel – preparation of legal agreements, support negotiations, legal due diligence
- Financial Advisor – analyze investment, support negotiations, financial due diligence, work with lenders, support decision
- Other Due Diligence Providers (i.e. environmental, asset condition, people, matters, etc.)
- Lenders – if you use a lender they will be involved with their advisors to put financing in place.

Seller

- Owner / shareholders of business
- Management of business
- Legal Counsel – preparation of legal agreements, support negotiations, respond to due diligence matters
- Financial Advisor – assess transaction / offer, support negotiation, respond to due diligence matters

Accessing capital and financing

- First Nations have numerous sources of capital today
- First Nations Finance Authority (FNFA) and Canadian Infrastructure Bank (CIB) provide favorable and friendly financing terms to First Nations
- FNFA is a cashflow lender under very favorable terms and can be used to acquire businesses
- CIB is only for new infrastructure projects in a manner at a very low cost of borrowing and with lower risk for First Nations
- First Nations Bank growing across country.
- Chartered Banks indigenous understanding and capability increasing.
- While you may not require a lender, it can still be useful to provide additional discipline to the process and help extend the reach of your capital.



Key legal agreements

Acquisition agreement

Share Purchase Agreement

Asset Purchase Agreement

Internal governance documents

Group of First Nations

First Nation / Consortium +
Non-Indigenous Partner

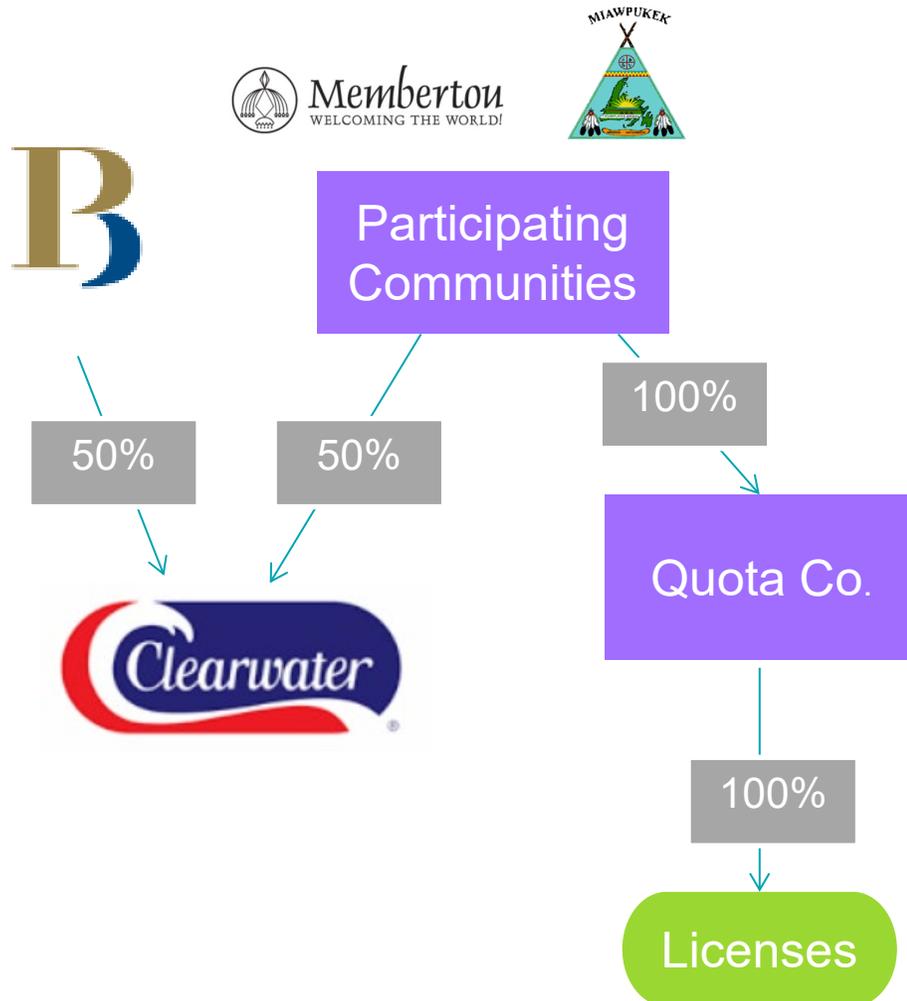
Financing

Borrowing Agreements
with Lenders

Intercreditor
Agreements

Subordination
Agreements

Overview of Clearwater transaction



- The 7 Participating Communities and Premium Brands Holding Corporation (“PBHC”) **each acquired 50%** of Clearwater shares
- PBHC **provided funding** to complete transaction by lending money to Clearwater which was used to buyout shareholders.
- At the same time, all of the Canadian licenses were **transferred** to **Quota Co.**
- **Quota Co. is 100% owned by the 7 Participating Communities.** PBHC has no legal ownership of Quota Co.
- Purchase of the Canadian licenses by Quota Co. was **financed 100% by FNFA.**
- There is a quota lease agreement and management agreement between Quota Co. and Clearwater for the **usage of the licenses** that is sufficient **to repay FNFA debt** and allow Communities to acquire over time a 50% interest in the debt owed by Clearwater to PBHC. This allows the Communities to receive interest income from Clearwater.
- The Communities will receive **50% of all dividends** paid by Clearwater.

Clearwater transaction – Financial summary



To complete the Clearwater acquisition, \$1.007 billion was required to buyout the equity and refinance the existing debt.

| Type | Amount | Source |
|-----------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------|
| Senior Debt | \$251M | Bank |
| Quota Proceeds / FNFA | \$250M | FNFA via Participating Communities funding by quota royalty payments |
| Subordinated Debt | \$450M | Premium Brands (Participating Communities to acquire up to 50% of the subordinated debt via the excess cashflows from quota royalties) |
| Other | \$56M | Cash on hand |
| Total Purchase Price | \$1,007M | |

Based on normalized EBITDA of ~\$98M, this implies an EBITDA multiple of 10.3x.

Key highlights

 **Relationship:** A relationship was developed with the Clearwater founders

 **First Nations partnership needed:** Clearwater recognized they needed indigenous partners. This created negotiating leverage.

 **Go Private:** Clearwater was a public company and became a private company through the acquisition

 **Competitive process:** Competitive process undertaken as a requirement for a public company

 **Partnership:** Mi'kmaq recognized a partner was needed to provide additional capital and bring additional capability

 **Financing:** FNFA financing was accessed to provide capital for Mi'kmaq

 **Governance:** Equal participation in Board of Directors designed to create equal and stable indigenous participation.

 **Importance of structure:** Structure created to be tax efficient and secure quotas to protect asset and Mi'kmaq investment.

Lessons learned

- **Partnerships:** Use Partnerships to bring others to the venture that can use their capabilities, relationships and businesses to improve likelihood of success and reduce risk.
- **Risk:** Identify and understand risk to assess where it can be controlled effectively or where the risk outweighs the reward.
- **Be ready:** Get yourself ready to invest in business opportunities so you can realize good opportunities when they emerge (i.e. confirm community is prepared, secure required advisors, identify the responsible community leaders, build relationships with financing partners, confirm the decision-making process and requirements).



Lessons learned (continued)

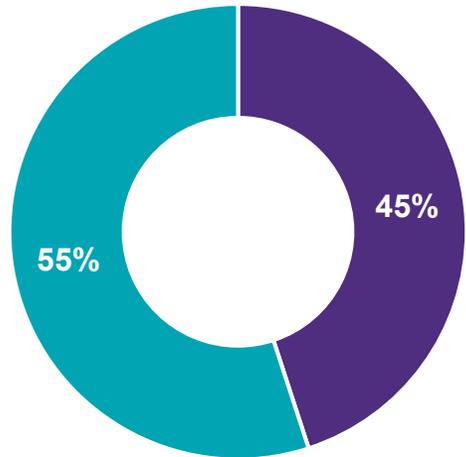
- **Build capability:** Involve your members of your organization in the process to build their skills and knowledge
- **People are key:** It's important to understand the people involved in the business who make it successful to ensure you have the talents you need and your interests are aligned.
- **Closing the deal is the start:** Closing the transaction is a significant milestone, but the real work and opportunity starts once you own the business to realize the opportunity.



02 Estate matters – Indigenous context

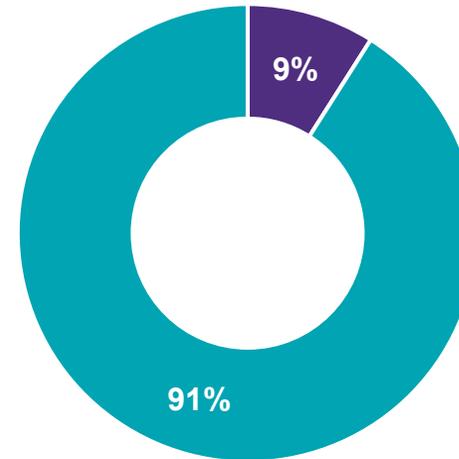
Introduction

Canadians



■ Do not have a Will/POA ■ Have a Will and POA

First Nation individuals on reserves



■ Do not have a Will/POA ■ Have a Will and POA

Terms and related legislation

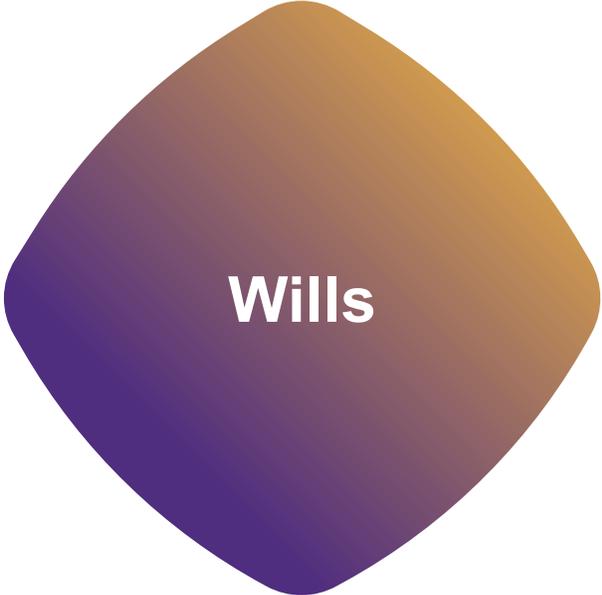
Indigenous – A broad term that includes several groups of people in Canada

Indian – A term used in the *Indian Act* that refers to individuals who can be registered under the Act; not every Indigenous person meets this definition

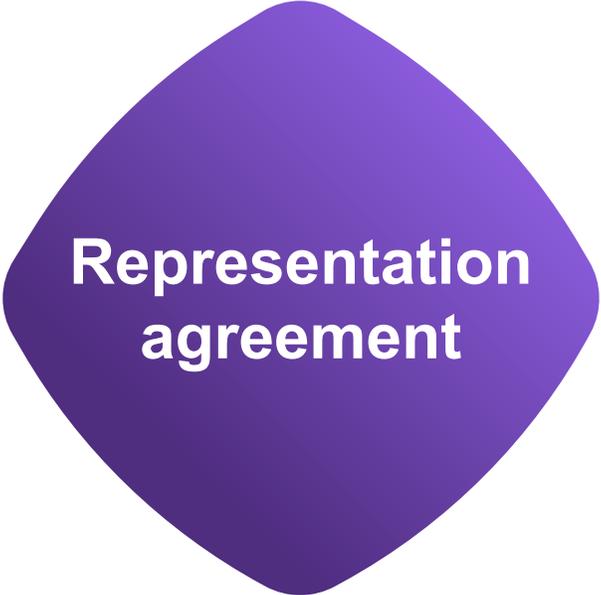
Band – Defined in the *Indian Act*; Bands often perform government and municipal type functions on their lands

First Nation – A term used throughout this paper to refer to individuals who have status under the *Indian Act*, or a nation or community that meets the definition of “Band” under the *Indian Act*

Primary estate planning documents



Wills



**Representation
agreement**



**Power of
Attorney**

Additional estate planning considerations

- Executors and Trustees
- Tax considerations
- Probate



Importance of historical cultural considerations

- Legal recognition and protection
- Cultural preservation
- Navigating Two Worlds
- Community and family welfare
- Blending legal and cultural frameworks



Indigenous Services Canada (ISC)

Mandate

- Work collaboratively with partners to improve access to high quality services for First Nations, Inuit and Metis;
- Improve well-being in Indigenous communities across Canada; and
- Support Indigenous peoples in assuming control of the delivery of services at the pace and in the ways that they choose.

Role of Indigenous Services Canada (ISC)

4 core responsibilities of ISC:

Services and benefits to individuals

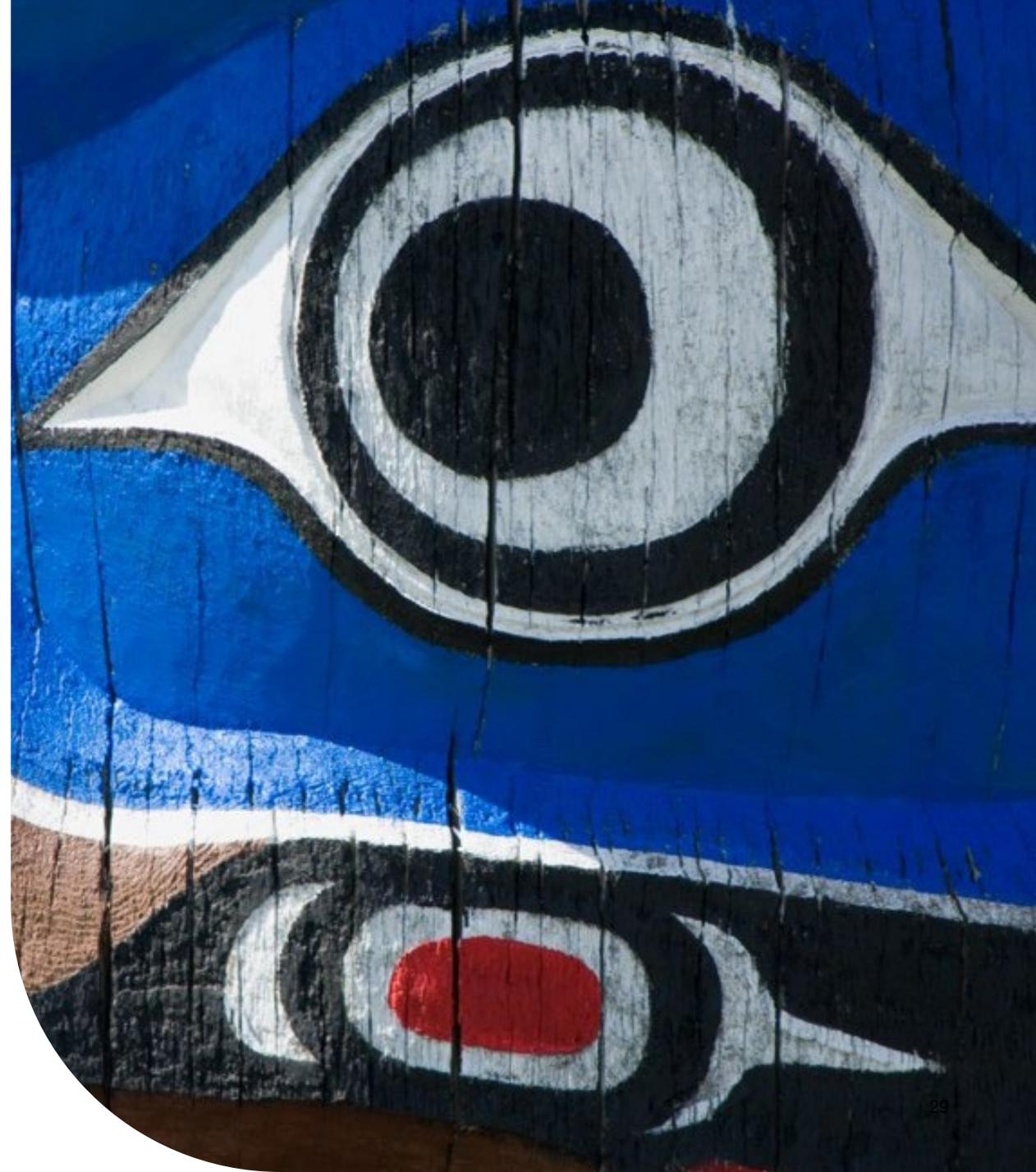
Health and social services

Governance and community development services

Indigenous self-determined services

Indian Act and estate planning

When participating in estate planning with a First Nation individual, it is essential to consider how the *Indian Act*, and the associated jurisdiction of the Minister influences planning.



Ministerial Jurisdiction

Section 42 of the Indian Act:

“all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister and shall be exercised subject to and in accordance with regulations of the Governor in Council.”

General Powers



Land ownership

- Land Codes
- Treaty Lands
- Self-government lands
- Reserve Lands
- Certificate of Possession



Real property interest in reserve land

- Real property rights in reserve land
- Legal title to reserve lands vested in federal or provincial Crown



Certificates of Possession

“the highest form of title an Indian can have to land that is part of an Indian reserve”

Dale v. Paul (2000 AJ No. 751 Alta Master)

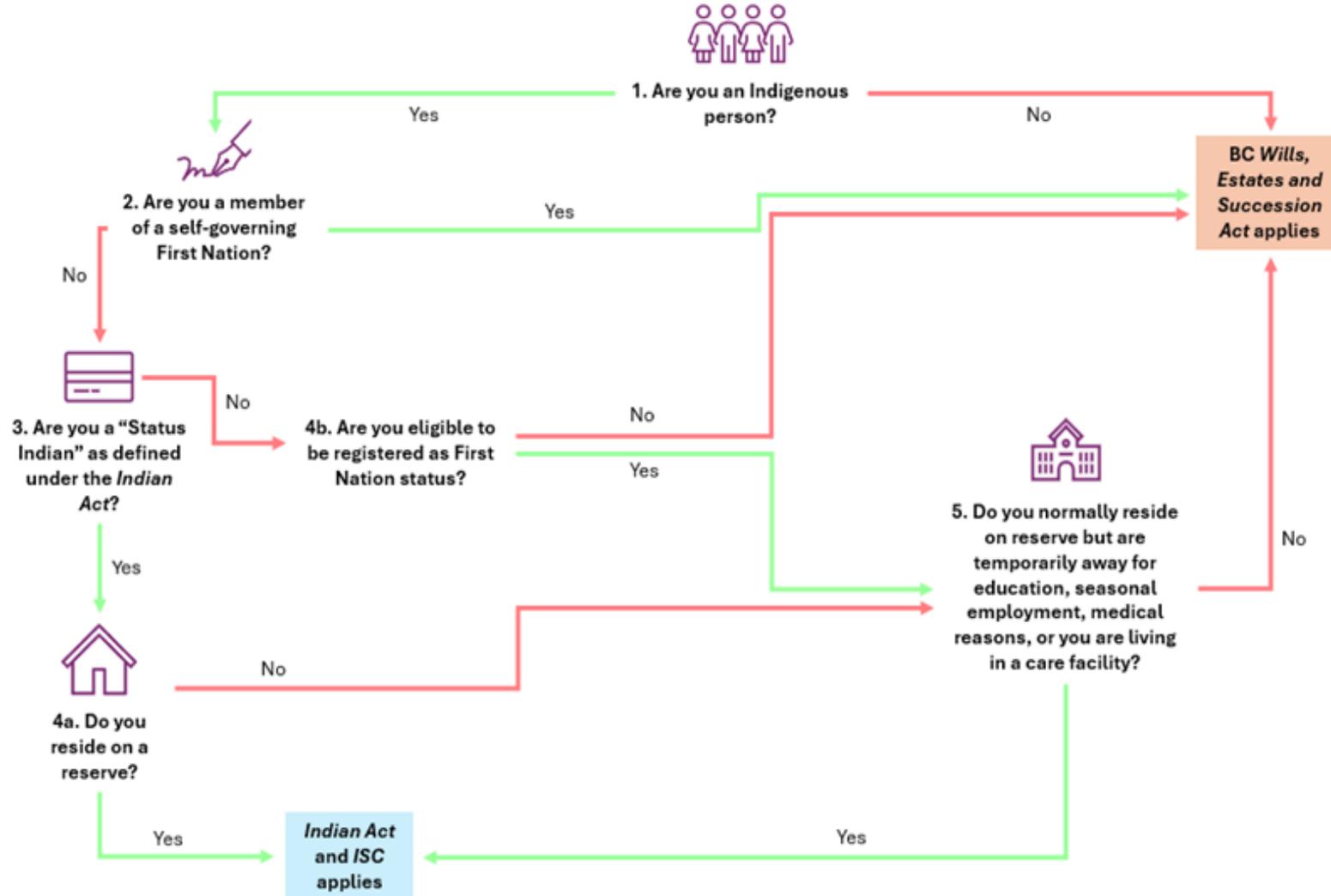
Certificates of Possession (CP)



A CP can be issued to an individual person or to multiple people, as either joint tenants or tenants in common, similar to legal title of non-reserve lands.

A person holding a CP can lease their property, which can include a lease for development of the property, provided the Band Council supports development, and the Minister approves this development lease.

Considerations for on-reserve and off-reserve



Requirements for a Will

Formal requirements for a Will to be valid under the *Indian Act*:

- the Will maker must be at least 16 years of age;
- the Will maker must be ordinarily resident on reserve lands; and
- the Will maker must have status or be entitled to register for status under the *Indian Act*

Income Tax considerations on passing

- What assets are taxable on death?
- Section 87 of the *Indian Act* provides the exemption:
 - A. Personal property; and
 - B. Situs of the property is located on reserve



Situs of property

Whether personal property is “situated on a reserve” depends on its situs. ‘Situs’ is a legal term that is defined as the location of a particular property.

Connecting factors:

1. Location of employment
2. Nature of the property
3. Residence of the deceased
4. Purpose and use of the property

Tax considerations for estates

- Creation of the estate on death and the interplay between the estate and the *Indian Act*
- Estates and trusts are taxable



Taxation of Trusts and Trust Residency

Connecting factors of trust residency include:

1. Trust jurisdiction
2. Trust management
3. Beneficiary locations
4. Underlying property and trust income

Taxation of beneficiaries

Determining the tax treatment of First Nation beneficiaries should include the following factors:

- How the trust was created;
- Where the trust is managed;
- How the trust is connected to the reserve; and
- How the beneficiary would be taxed if the First Nation beneficiary held the income-producing property directly.

Taxation of beneficiaries

- File a T3 Return annually.
- Consider if T3 slips are required.



Practical application

- T1 Return required when capital property disposed
- Common types of income
 - Canada Pension Plan (CPP)
 - Employment income
 - Pension income (including OAS)
 - Investment income
 - Sale of reserve land

Practical application

- **Scenario – Taxable income or exempt on DOD T1?**
 - First Nation individual lived on reserve
 - Final tax return, receives the following types of income
 - Interest earned from a GIC in a bank on reserve
 - Dividends from RBC mutual fund investment
 - CPP income
 - OAS income
 - Employment income
- Paid into CPP plan, working 4 out of 8 years on reserve
- Employment income - worked for a Tribal council, off-reserve

Practical application

Scenario – Taxable income or exempt?

| Income | Taxable | Exempt |
|-----------------------|-------------------------------------|-------------------------------------|
| GIC Interest | | <input checked="" type="checkbox"/> |
| Mutual fund dividends | <input checked="" type="checkbox"/> | |
| CPP | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| OAS | <input checked="" type="checkbox"/> | |
| Employment income | | <input checked="" type="checkbox"/> |

Conclusion

**Holistic
approach**

Collaboration

Respect

Thank you
Questions are welcome



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