

Comparative analysis of land tenure systems in Canada

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Key words: Cadastre, land tenure system, registration of deeds, registration of titles, Torrens, PPP, self-financing, Canada

SUMMARY

Canada has extremely diverse expertise in land management and secure land rights. Every province and territory, the federal government and Indigenous communities have established land registration systems. However, mutual knowledge of land tenure systems used across the various levels of government in Canada is fairly limited. To improve this knowledge, the Canadian Council on Geomatics' Cadastral Forum (CCOG-CF) conducted a comparative analysis of land tenure systems in Canada. This article is based on that analysis, which was realized last year by the representatives of the various governments and conducted with financial support from the Surveyor General Branch at Natural Resources Canada. Our sincerest thanks to them.

SOMMAIRE

Le Canada possède une expertise extrêmement diversifiée en gestion du territoire et en sécurisation des droits fonciers. Chaque province, chaque territoire, ainsi que le gouvernement fédéral et certaines communautés autochtones ont mis en place des systèmes d'enregistrement des droits fonciers. Toutefois, la connaissance mutuelle des systèmes fonciers utilisés dans les différents paliers de gouvernement du Canada est assez limitée. C'est donc pour améliorer cette connaissance que le Forum cadastral du Conseil canadien de géomatique (COCG-FC)¹) a fait réaliser une analyse comparative des systèmes fonciers au Canada. Cette analyse, qui fait l'objet du présent article, a été réalisée l'an dernier par les représentants des divers paliers de gouvernements et grâce à l'appui financier de la Direction de l'arpenteur général de Ressources naturelles Canada. Nous les remercions sincèrement.

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1. LAND TENURE SYSTEMS IN CANADA

In Canada, the first land tenure systems began in 1627 when the Compagnie des Cent-Associés (company of one hundred associates) established the seigneurial system along the St. Lawrence River.

Starting in the second half of the 18th century, the first land registration systems had begun to appear in most Canadian provinces. In Canada, the primary objective was not taxation, as in Europe, but rather to protect rights and prevent fraud.

Canada is the second largest country on earth, after Russia, covering an area of 10 million square kilometres. It is a confederation of ten provinces and three territories.

The *Constitution Act, 1867*¹ distributes legislative powers between the federal and provincial governments.

The powers extended to the federal government are listed in section 91, while Section 92 sets out the powers of the provinces with respect to:

- the management and sale of the public lands belonging to the province and of the timber and wood thereon;
- property and civil rights in the province.

The *Constitution Act, 1982* recognizes and affirms the existing Indigenous and treaty rights of the Indigenous peoples in Canada, including any rights that exist by way of land claims agreements or may be so acquired.



1.1 Registration of deeds/registration of titles

Internationally, two main types of land registration systems have evolved: registration of deeds and registration of titles. These two systems are used in Canada.

1.2 Registration of deeds

In a deed registration system, a copy of all documents that affect the property must be published at the land registry office to be enforceable against third parties. A deed registration system does not guarantee the title. It only provides access to a transaction history. It is necessary to study the chain of title to clearly define all the rights and restrictions that may apply to a property.

Registration of titles

In a title registration system, each parcel is identified on a plan or map, and the rights associated with it, as well as the owner's name, are recorded in the land register. Under this system, land ownership can be guaranteed, but not its extent. Anyone who suffers a loss because of an error related to the validity or accuracy of a title in the land register is compensated, even if the error was not made by those in charge of the register, for example in the event of fraud.

The Torrens system

The Torrens system is a land title registration system designed by Australian statesman Sir Robert Richard Torrens.

The Torrens system operates according to three principles:

1. Mirror principle: the title fully and accurately reflects all the current facts of the title. In general, a title identifies the current owner and all registered interests such as mortgages, reserves, easements and builders' liens.
2. Curtain principle: The current certificate of title contains all the information about the title, which mean an interested party, such as a potential buyer, does not need to worry about past property transactions. It is not necessary to check the history of a property to verify the validity of the title.
3. Insurance principle: An insurance fund is established to compensate any person who suffers a loss because of an error related to the validity or accuracy of a title. In the Torrens system, the land title registry guarantees the accuracy of each land title so that if an error occurs, compensation is available.

The Torrens system was first established in southern Australia in 1858 and was quickly implemented in the other Australian states⁵ and in New Zealand in 1870. Surprisingly, the Torrens system was established on Vancouver Island (then a British colony) in 1861, even before it was deployed across Australia.

2. Provincial land tenure systems

2.1 British Columbia – Torrens Title Registration System

In British Columbia, the land registration system is based on the principles of the Torrens system. It forms the basis for all real estate activities in the province, except for most indigenous lands including Nisga'a Nation lands.

Under the *Land Title Act*,² an insurance fund is established to compensate persons who are victims of an error, omission or fraud.³

The vast majority of registered parcels are surveyed and represented on a survey plan that is registered and preserved by the Land Title and Survey Authority (LTSA). All parcels registered in the land title registries have a unique parcel identifier (PID). The PID corresponds to the concatenation of a parcel letter or number, the registration number of the plan that created the parcel, and a reference to the part of the province where the parcel is located through a lot or district section and a township or land district number.

2.1.1 Land Title and Survey Authority

The Land Title and Survey Authority (LTSA) is an independent Crown corporation responsible for managing land title and survey systems for public and private lands in British Columbia. Its mandate, duties and performance standards are set out in the Land Title and Survey Authority Act⁴ and in an operating agreement⁵ with the province. This agreement, signed in 2005, has an initial term of 60 years, which may be extended by 60 years with the written agreement of the parties.

The LTSA provides three main services:

- Land titles: Ensure the ongoing integrity of the land title registration system.
- Surveys: Maintain the quality of the province's survey system for public and private lands.
- Crown grants: Issue rights documents on Crown land that is transferred to the private domain.

The LTSA's main land registry is the electronic land title registry. The LTSA also keeps paper registries but they are no longer used for new entries, with the exception of underground rights. LTSA also manages the Condo and Strata Assignment Integrity Register.

2.1.2 British Columbia Treaty Lands

British Columbia continues to negotiate agreements with First Nations in the province. These agreements include all fee simple⁶ transfers to First Nations, and these transfers are recorded in the Crown Land Registry. First Nations choose to register their land either in British Columbia's land tenure system or a federally recognized land tenure system. To date, the Nisga'a Nation is the only First Nation that has set up its own land tenure system.

2.2 Alberta – Torrens Title Registration System

Alberta's land registration system was introduced in 1887 when Alberta and Saskatchewan were not yet provinces⁷ but were part of the Northwest Territories.

Alberta's first titles were recorded and maintained under the former Book system. The Book system was replaced with a new system called the Loose Title system, first in Calgary in 1973 and in Edmonton in 1975. Under this system, titles were issued in triplicate: the original certificate of title was kept in the land titles office; the duplicate certificate of title (or DCT) was issued to the owner of the land (unless it was mortgaged, in which case the duplicate certificate was not released until the mortgage was discharged); and the third copy was forwarded to the appropriate municipal authority to update its tax records.

This system was replaced by the Land Titles system, and the approximately 1,300,000 documents were scanned and entered into the Alberta Land Titles Automation (ALTA) system. Under this system, each title is assigned a unique title number, and each parcel of land contained within each title is assigned a unique Land Identification Numeric Code (LINC). The LINC is a 10-digit number with no particular meaning (location, value or otherwise) in the following format: 0000 000000 . This number can be found

on real estate listings, land titles and some contracts. The LINC is not intended to replace the legal description but may be used to supplement it. The contents of the ALTA represent the legal and guaranteed title at all times. The ALTA database contains over 32 million land titles and related documents, 3 million of which correspond to live land titles in Alberta.

The registration system is administered by the Land Titles and Surveys Branch of Service Alberta under the Land Titles Act⁸. Under this system, the registrar of titles is the custodian of all original land titles, documents and cadastral survey plans and is legally responsible for the validity and security of all information recorded on land titles. The government guarantees the accuracy of titles through application of and internal compliance with laws arising from a multitude of statutes and court decisions.

There are two land title and survey offices, one in Edmonton and the other in Calgary.

2.3 Saskatchewan – Torrens Title Registration System

As in Alberta, the land tenure system used in Saskatchewan was implemented in 1887.

The Office of Public Registry Administration (OPRA), which falls under the authority of the Ministry of Justice, was created in 2013 and administers the Land Titles Registry, Land Surveys Directory, Corporate Registry and Personal Property Registry. OPRA is responsible for registers, performing official statutory functions and overseeing the agreement with Information Services Corporation (ISC). Originally established as a Crown corporation, ISC was privatized in 2013 and is the government's service provider for public registry operations (a public-private partnership or PPP). ISC's role as a service provider is to manage these registers within the limits of existing legislation and policies defined by the government and OPRA's statutory officers.

Under current legislation, the Government of Saskatchewan retains responsibility for registries. The province maintains ownership of all information, records and data in the registries. The government and the designated officials are responsible for defining directions and approving technological changes in the registries.

The Land Titles Registry issues land titles and registers transactions involving titles, including changes in ownership and other land rights. Land Titles Registry revenue comes from registration, search and maintenance fees. Fees are either flat rates or based on value and calculated as a percentage of the value of the land or registered property. Approximately 84% of land titles transactions in the Province were submitted online in 2020.

The Land Surveys Directory registers survey plans and creates a representation of parcels in the cadastral system. The cadastral designation is based on the Dominion Land Survey's division of the territory into townships. Townships are divided into sections, quarter sections, legal subdivisions, parcels, blocks and lots for both private and public lands.

2.4 Manitoba – Torrens Title Registration and Deeds System

Manitoba has two land registration systems: the land registry system under the Registry Act⁹, established in 1870, and the Torrens registration system under the Real Property Act.¹⁰ The majority of the province is governed by the Real Property Act. However, some lands, particularly in northern Manitoba, are still administered under the Registry Act.

2.4.1 Registry Act

The land registry system was implemented in Manitoba in 1870 under the Registry Act. The basic book used to register ownership under this Act is the Abstract Book, which contains a summary of the ownership of these buildings, under the old registration system.

The summary serves as a history of land ownership but does not guarantee its legal ownership. It is up to a lawyer to determine whether the ownership chain is legal and sufficient to transfer ownership to a new buyer. Ownership of an asset is transferred from one party to another by execution of a deed, whether or not it is registered in a registry office.

2.4.2 Real Property Act

The Real Property Act is intended to provide a means of registering land interests under the Torrens system of land title registration, which has existed in Manitoba since 1885. The Act applies the principle that the land title register is the only source of information for buyers, and the government ensures that no interest other than those listed in the registry can affect the land. Essentially, the government certifies the land title to the party named on the certificate of title during registration with the registry office. Under this Act, registration of land ownership is mandatory. Today, 95% of properties in Manitoba are registered under the Real Property Act.

A public-private partnership (PPP) was established in 2013 between the Government of Manitoba and Teranet Manitoba to operate Manitoba's land title registries and the Personal Property Registry.

The Office of the Registrar-General of Manitoba was created to provide general oversight of Teranet Manitoba as a service provider and to ensure that land registration systems and the Personal Property Registry are provided in accordance with applicable legislation.

Teranet Manitoba electronically registers and stores titles and other land rights under the Real Property Act. The company also operates the old land registration system (The Registry Act). Both systems are electronic.

Electronic registration of land tenure documents (eRegistration) has been in place since 2017. However, both systems still include paper documents. Paper documents are typically scanned when required for a transaction or subdivision.

Electronic registration has been mandatory since 2018 for law firms and financial institutions, as well as individuals and businesses that register more than 100 documents per year. Survey plans do not need to be provided at registration, but parcels must be uniquely identified.

In Manitoba, lots are uniquely identified on the subdivision plan by lot (numeric only), block (optional) and plan number. Parcels on condominium plans must be identified by a letter, e.g., parcels A to Z (designations with I and O are not permitted; if additional parcels are required, they must be identified by letters A1 to Z1, A2 to Z2 and so on.).

2.5 Ontario – Title and Deed Registration System

There are two land registration systems in Ontario: the old deed registration system and the new title system.

2.5.1 Deed Registration System

The system for registering deeds is governed by the Registry Act.¹¹ Deeds are registered in relation to a geographical entity (for example, lot and concession). Under this registration system, the government does not guarantee title or ownership, only that the registry is properly created and that documents are properly registered in it. Thus, if the format of the documents submitted meets the specifications, they are registered.

2.5.2 Land Titles System

The land titles system is governed by the Land Titles Act,¹² adopted in 1885. In the land titles system, “the land registrar shall, in the required manner, create and maintain an index in automated form known as the parcel register and enter every instrument that affects a property in the parcel register under the property identifier assigned to that property.”¹³

With the automation and conversion project completed, land title searches, registration and property mapping are now computerized.

With this system, the government issues a declaration of ownership and guarantees the title status, with some exceptions. However, the boundaries or extent of the parcel are not guaranteed. Only active documents are registered on a parcel title.

2.5.3 Public-Private Partnership (PPP)

In the 1980s, the Ontario government passed legislation to automate the land registration system. In 1984, the Land Registration Reform Act¹⁴ provided for the establishment of a legal electronic registry. In 1987, land registry officials realized that POLARIS would cost more than expected, would require a great deal of additional staff and would take a long time to complete. Given the state of the economy and strong pressure on public spending, this level of investment was clearly untenable, so the government decided to get the private sector involved.

Between 1991 and 2010, the Ontario government entered into PPP agreements with Teranet Inc.¹⁵ to modernize the land registration system. The most recent agreement ends in 2060 and includes commitments from Teranet to ensure that Ontario’s land registration system remains modern, user-friendly, reliable and secure. Under this agreement, the government will continue to monitor the registration system.

The position of Electronic Land Registration Services Commissioner was created under the Electronic Land Registration Services Act, 2010¹⁶ to oversee and regulate financial and operational relationships between the government, Teranet and third-party service providers.

2.6 Quebec – Deed Registration System

Quebec’s land rights registration system is unique. Unlike other Canadian provinces and territories, the Quebec registration system includes a cadastre. This particularity stems from the fact that Quebec is the only Canadian province where most of the population has French roots and the only province where private law is codified.¹⁷

The Civil Code of Québec calls for a system of publication of rights based on the cadastral plan, which is constantly updated. The cadastral plan is the physical basis for the land book, which is itself the legal basis for the publication of rights.¹⁸ Every immovable in it is assigned a number and depicted graphically

with its measurements, area and boundaries, as well as its location in relation to the other immovables surrounding it.

The cadastral plan is the foundation for all real property rights. It serves as the basis for publication of these rights and is presumed accurate.¹⁹ However, this is a simple presumption that can be overturned by evidence to the contrary. The cadastre indicates the boundaries of a property but does not determine them. However, this is an important factor to consider when establishing boundaries. Moreover, article 977 of the Civil Code of Québec stipulates that: “*The limits of land are determined by the titles, the cadastral plan and the boundary lines of the land, and by any other useful indication or document, if need be.*”²⁰

The Quebec cadastre does not grant real property rights. However, since it sets out published land rights, it helps protect citizens who hold those rights.

The cadastral reform that has provided the province with a reliable, complete and up-to-date cadastral map for some 4 million parcels covering private lands is 99.7% complete. The Quebec cadastre is fully computerized and can be consulted online.²¹

An operational link between the cadastre and the land register makes it possible to synchronize registration of transactions.

With the changes implemented during the Quebec cadastral reform, lots are numbered consecutively (1 000 000, 1 000 001, etc.), georeferenced and represented in a continuous order on a comprehensive plan.

The cadastre (mainly private lands), the land register, the Register of the domain of the State (mainly public lands), public lands surveys and geospatial information are under the same administrative authority—the land infrastructure and geospatial information sector of the Ministère des Ressources naturelles et des Forêts. All of these activities are self-funded by the Territorial Information Fund.

2.7 New Brunswick – Title and Deed Registration System

In New Brunswick, the land registry is managed by the Registrar General²² of Service New Brunswick. Until fairly recently, New Brunswick used a deed registration system under the Registry Act.²³ In 1981, the government passed the Land Titles Act to provide a registration system conferring evidentiary value to land title. The land registration system uses a unique eight-digit parcel identifier (PID) number to register titles or related deeds of land. Under the land registration system, title is guaranteed by the province in the manner set out in the Land Titles Act. This system guarantees individuals and companies’ rights to a parcel of land (title) but does not guarantee its extent (boundaries).

Since the Land Titles Act was passed, migration to land titles has been mandatory for transfers, including mortgages starting at \$5,000, although voluntary migration is also possible, as an owner can voluntarily transfer their property to this system at any time. To determine title, a citizen may request a Certificate of Registered Ownership (CRO) for the parcel. Although the CRO contains a description of the parcel, the description does not specify the boundaries of the land. In order to determine the boundaries of their property, owners must call on the services of a land surveyor.

2.8 Prince Edward Island – Deed Registration System

In 1763 France ceded the Island to Great Britain, under the jurisdiction of Nova Scotia. Later, the Island (known as the Island of St. John) was divided into three counties, each with a townsite and 67 lots (townships). The Island separated from Nova Scotia in 1769 and the name changed to Prince Edward Island in 1799.

The Land Purchase Act dated 1867 ended the tenure system of 1767 and in 1873 the Province of Prince Edward Island was formed and became part of the Dominion of Canada. After 1873, the records are arranged by county.

Under the Registry Act²⁴, the Registrar provides a public office for registering and filing real estate documents such as deeds, mortgages and subdivision plans.

Each parcel in Prince Edward Island has its own six-digit parcel identifier (PID). The title of ownership is registered for all parcels in GeoLinc Plus, an online system that provides access to assessment, tax, registry and property mapping information for any parcel of land in the province. Parcel registry information registered after 1971 can be found in GeoLinc Plus. The owner's name, street address or parcel number are required to obtain information on the property. The mapping component of GeoLinc Plus allows users to view a property's size, shape and property assessment. It also indicates the file numbers of the survey plans filed for each parcel of land.

2.9 Nova Scotia – Title and Deed Registration System

The deed registration system was introduced in Nova Scotia in 1758.²⁵ However, the Land Registration Act²⁶, which came into effect in 2005, changed Nova Scotia from a deed registration system based on the name of the parties to a title registration system based on the parcels. Under the title registration system, the registered owner is, by law, the definitive owner of the parcel.

Property Online (POL)²⁷ provides online access to land ownership and related information collected through Land Registration Offices across the province. Lawyers and land surveyors working in the title registration system must subscribe to POL to submit requests for registration or information on parcels.

In the old registry system, ownership can only be determined after a review of all relevant title documents deposited at the Registry of Deeds. Lawyers then give their opinion as to who owns and has legal rights in the property (opinion on title). After a parcel is converted to the Land Registration System, there is no need to do an historic review of title—a person wishing to know who owns a parcel of land simply has to do a quick check in the system database to see who is listed as the registered owner.

Any parcel of land that is sold, subdivided (comprising three or more parcels in total) or mortgaged must be converted to the land titles system. In addition, any person who owns a property may voluntarily convert their property to the land titles system.

All historical books, plans and indexes have been converted to electronic format.

2.10 Newfoundland and Labrador – Deed Registration System

In Newfoundland and Labrador, the registry of deeds is established under the Registration of Deeds Act²⁸ and the Conveyancing Act.²⁹ It contains the private property and land transaction registries and is under the authority of Service NL. Service NL is a department of the Government of Newfoundland and

and Labrador that provides services in the areas of public health and safety, environmental protection, occupational health and safety, consumer protection, vital statistics and commercial affairs.

Deeds registered from 1825 to 1981 can only be searched on site at the Registry of Deeds through a paper-based index and a bound volumes manual system. Registry records from 1982 to present can be searched electronically via the Companies and Deeds Online (CADO) system, either at the Registry's office or online³⁰.

Clients can also access two other land registries from the Registry of Deeds:

- The Registry of Mechanics' Liens³¹, which contains lien claims on real property for work carried out or to be carried out, or materials placed or supplied or to be placed on a particular property;
- The Registry of Condominiums is governed by the 2009³² Condominium Act and contains all declarations, amended declarations, descriptions, amended descriptions, court orders, by-laws, notices of liens and other documents presented for registration under the Act.

Newfoundland and Labrador does not require land to be registered, and no complete land registry exists for the province.

3. TERRITORIAL LAND TENURE SYSTEMS

3.1 Nunavut – Torrens Title Registration System

Nunavut separated from the Northwest Territories (NWT) to become its own territory in 1999. It was a condition of the Nunavut Agreement, a modern treaty between the Inuit and the Government of Canada.

The land registration system used in Nunavut is based on the Torrens system, introduced in 1887 when the Northwest Territories included Nunavut, Alberta and Saskatchewan. The Land Titles Act establishes the system for registering private property and designates the officials responsible for administering the system and the records they are required to retain. Under this system, the government has custody of all original documents, titles and survey plans and is responsible for the validity and security of all information on registered land titles.

The Land Titles Office is responsible for the land registration system in which transfers of ownership, mortgages, leases, easements, cautions, powers of attorney, writs of execution, liens, subdivision plans and condominium plans are registered. An insurance fund is created under the Land Titles Act to compensate persons who are deprived of their lawful right to land because of enforcement of the Act or errors by enforcement officials.

The public can view all registered documents, plans and titles held in the Land Titles Office by submitting an application to the Office.

3.2 Northwest Territories – Torrens Title Registration System

The land registration system used in the Northwest Territories (NWT) is based on the Torrens system. The Land Titles Office maintains the computerized land registry based on registered plans of survey. The registry provides records of all surveyed land in the NWT and any rights or charges registered against those lands. The Surveyor General Branch, Natural Resources Canada (SGB) manages the Canada Lands Survey System (CLSS) and the Canada Lands Survey Records (CLSR). The CLSR is a digital repository of plans provided by Canada Lands surveyors in analog and digital formats.

The Department of Lands manages and administers use of public land in the NWT. This includes maintaining an online Geospatial Information System (GIS) that provides both geospatial and descriptive information for each parcel of land in the NWT.

3.3 Yukon – Torrens Title Registration System

On April 1, 2003, Yukon became the first of the three Canadian territories to assume responsibility for land and resource management. On that date, amendments to the federal Yukon Act came into effect, based on the Yukon Northern Affairs Program Devolution Transfer Agreement³³ between the federal government, the Government of Yukon and signatory Indigenous groups. Prior to Yukon devolution, the Government of Canada, through the Department of Aboriginal Affairs and Northern Development, governed most natural resources in the territory.

The land registration system in Yukon³⁴ is based on the Torrens title registration system. The Land Titles Act³⁵ establishes the system for registering title to private land and specifies the officials responsible for operating the system as well as the registries they must maintain. The territorial government has custody of all original documents, titles and survey plans and is responsible for the validity and security of all information on registered land titles.

Yukon's Land Titles Office has switched to a fully digital land registry. The previous manual system of day books, land registers and registered plans is currently being converted to digital based on requirements and available time. The Land Titles Office ensures their plans correspond to the SGB's plans and has adopted their digital plans as the official version. This data is then linked to the CLSS's GIS via a PIN code.

The SGB manages the CLSS and the CLSR. The CLSR is a digital repository of plans provided by Canada Lands surveyors in analog and digital formats. The SGB has implemented a GIS, which incorporates Yukon Land Titles Office information into parcel attributes.

Yukon's Land Titles Office has made provisions so that First Nations can use its system. They use cadastral data from the CLSS's GIS.

4. LAND TENURE SYSTEMS ON INDIGENOUS LANDS

4.1 Reserves (Indian Act) – Deed-like Registration System

Under section 18.1 of the Indian Act³⁶, "*Reserves [are] to be held for use and benefit of Indians. Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.*"

4.1.1 Reserve Land Register

Section 21 of the Indian Act states: "*There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve.*"

Information from the Register can be accessed online through the Indian Land Registration System (ILRS) on the Aboriginal Affairs and Northern Development Canada (AANDC) website.

These documents include the Certificate of Possession (CP), which is the highest form of documentary land holding evidence available to an individual member of a First Nation. This document is permanent, as it can be inherited or transferred to other members of that First Nation. However, there are restrictions on the transfer. For example, the CP cannot be transferred to an individual who is not a member of that First Nation. The land that is subject to the CP must be marked out on a survey plan. Upon approval, the subdivision is registered in the Register and the data is recorded in the ILRS.

4.2 First Nations Land Management Regime – Deed-like Registration System

In 1991, a group of First Nations chiefs approached the Government of Canada with a proposal to opt out of 44 provisions in the Indian Act on land, the environment and resources. As a result of this proposal, the Framework Agreement on First Nation Land Management¹⁸ was negotiated by 13 First Nations and Canada in 1996, and later ratified in 1999 by the First Nations Land Management Act.³⁷

Under this Act and the Framework Agreement, land administration is transferred to First Nations once their land codes come into effect. This includes the authority to enact laws with respect to land, the environment and resources.

To date, 102 First Nations³⁸ have ratified their land code and adopted their own land governance. In addition, over 90 First Nations have taken steps to develop or implement their own land code.

The Framework Agreement on First Nations Land Management, enacted by the First Nations Land Management Act, provides for establishment of the First Nation Land Registry System by the federal government. This system makes it possible to register interests on First Nations lands. The First Nations Land Registry maintains an inventory for each reserve and each individual parcel of reserve land for each First Nation subject to the Act.

4.3 IA and IA-N Cree and Naskapi Lands – CRINA System – Deed-like Registration System

The James Bay and Northern Quebec Land Claims Agreement (JBNQA) provides for different land regimes: categories IA–IA-N, IB–IB-N, II and III.

IB–IB-N lands are under provincial jurisdiction, ceded by letters patent to landholding corporations in full ownership. Category II lands are under provincial jurisdiction with certain exclusive rights for the Cree and Naskapi Nations. Category III lands are Quebec public lands. These lands are subject to land laws (cadastre and registration) applicable to public lands in Quebec and the land tenure system (cadastre, land register, Register of the domain of the State).

Category IA and IA-N lands are under the jurisdiction of the Government of Canada, which administers, manages and controls the lands under the James Bay and Northern Quebec Native Claims Settlement Act.²¹ The Canada Lands Surveys Act applies to Category IA and IA-N lands.³⁹

The SGB maintains a registry with two types of geospatial information on IA and IA-N lands. One type indicates registered rights and interests with geographical mapping for each community, as extent has not been systematically documented through land surveys. The second type uses an official survey to show the lots created. The SGB has an obligation to produce and maintain registration plans for each Cree or Naskapi community.

Note that the CRINA system identifies rights and not lots. It is a ‘dual system’ requiring that in order to be valid, a registration must be made by the central land registrar and the local land registrar.

Inuit of Nunavik, Quebec – Deed Registration System

Inuit in Quebec reside in Nunavik, the northernmost region of Quebec, covering an area of 500,000 km². Nunavik Inuit have different origins than other Indigenous peoples in Quebec and are therefore not subject to the federal government's Indian Act⁴⁰

With the James Bay and Northern Quebec Land Claims Agreement (JBNQA), which was signed in 1975, the Quebec government established a new territorial regime that respects Indigenous rights and traditions while allowing Quebec to develop the territory, annexed to Quebec in 1912.

The JBNQA provided the Inuit of Nunavik with regional and local political institutions with concrete powers. Communities participate in managing the land and control the vast majority of services provided in their territory. Several areas are affected by this Agreement, including education, health and social services.

After considering the implementation of an independent land tenure system, Inuit authorities chose to create a cadastre of their lands to make it easier to use the existing land tenure system. In 2017, the Government of Quebec created approximately 4,000 lots in the Quebec cadastre, distributed across 13 of the 14 Inuit villages. This provided Nunavik with an official land tenure infrastructure and made the Quebec cadastre and land register accessible to Inuit land corporations and northern municipalities, as well as their residents and investors. This system responded to requests from Nunavik's main stakeholders, including Makivik Corporation, the Kativik Regional Authority and the main owners of these private lands, namely the Nunavik landholding corporations.

Today, these local landholding corporations can act as owners and independently manage their Category I lands under the JBNQA, without assuming the operating and maintenance costs that would have been incurred if they had implemented a land tenure system independent from the Quebec system.

4.4 Nisga'a Nation – Torrens Title Registration System

Nisga'a Nation applies a Torrens titles system to register the rights for land whose fee simple title was granted to a third party by the Nisga'a Nation. The Nisga'a land titles system is completely separate from the ILRS and the registration systems used in British Columbia.

The Nisga'a titles system allows for a full range of transfers, including unrestricted fee simple transfers. Like other Torrens systems, it guarantees title of ownership and maintains an insurance fund.

The system is established by law. The relevant legislation, including the Nisga'a Land Title Act, the Nisga'a Property Law Act, the Nisga'a Partition of Property Act, and the Nisga'a Law and Equity Act, is designed to provide certainty about ownership of Nisga'a fee simple land equal to the certainty provided by a provincial government.

The land title registry is computerized, but original paper documents must be submitted.

4.5 Westbank First Nation – Deed-like Registration System

Westbank lands are "lands reserved for the Indians" under the Constitution Act, 1867 and are reserves set aside by the Crown for the use and benefit of the self-governing Westbank First Nation (WFN). Title of ownership to all Westbank lands will continue to be held in the name of the Crown for the use and benefit of Westbank.

However, unlike most First Nations in Canada, WFN lands are not governed by the Indian Act but by the WFN First Nation Self-Government Agreement.⁴¹ This Agreement was ratified in 2003, and self-government was implemented in 2005.

Use and development of WFN land is subject to the Westbank First Nation Constitution (Land Rules).⁴² Under these rules, the Westbank Lands Office is responsible for administering the lands and receiving, verifying and transmitting legal documents that affect or purport to affect Westbank Lands, for the purpose of registering, maintaining and protecting documents relating to Westbank Lands. Documents are maintained in the Self-Governing First Nations Land Register (SGFNLR). The SGFNLR contains information for self governing First Nations that wish to use it.

There is no land title to these lands. Land registration is carried out by the WFN under the authority of the Westbank Chief and Council of Westbank.

5. OUTLOOK

To our knowledge, this is the first comparative analysis of land tenure systems in Canada. This analysis is evolving, and it will always be possible to supplement it by adding or updating information from the various jurisdictions.

BIOGRAPHICAL NOTES

Daniel Roberge, QLS (roberge_d@hotmail.com)

Mr. Roberge worked in the private sector prior to joining the Government of Quebec, where he has held various leadership positions, including Head of the Cadastre Division and Director of the Office of the Surveyor General of Quebec. He worked for the World Bank Group from 2013 to 2016. He was Chair of Commission 7 from 2011 to 2014. Since 2017, he is an international land administration consultant.

Jean Gagnon, NBLs, CLS (jean.gagnon@canada.ca)

Mr. Gagnon holds a bachelor's degree in geomatics and survey engineering from the University of New Brunswick. He is a member of the Association of New Brunswick Land Surveyors and the Association of Canada Lands Surveyors. Mr. Gagnon is currently the Surveyor General of Canada Lands and the Commissioner for Canada on the International Boundary Commission.

Christian Lord, QLS (christian.lord@mern.gouv.qc.ca)

Mr. Lord holds a bachelor's degree in geodetic sciences from Université Laval. He has been a member of the Ordre des arpenteurs-géomètres du Québec (Quebec association of land surveyors) since 1985. He spent the first half of his career in a private company. Over the past 19 years, he has held various leadership positions in the Direction générale de l'arpentage et du cadastre (land survey and cadastre branch).

¹ Formerly known as the British North America Act.

² Part 19.1 – Land Title and Survey Authority Assurance Fund.

³ Over the past 10 years, more than 8.5 million land transactions have been carried out in the land register, and there are only two cases where an owner lost their title because of fraud. The owners concerned received

compensation from the Assurance Fund corresponding to the amount of their loss.

⁴ Part 19.1 – Land Title and Survey Authority Assurance Fund.

⁵ <https://ltsa.ca/wp-content/uploads/2020/11/Operating-Agreement.pdf>

⁶ The term applying to the total ownership of land and all of the buildings on it (Black's Law Dictionary, Ed. Vol 7, p. 630).

⁷ Alberta and Saskatchewan became provinces of Canada in 1905.

⁸ RSA 2000, c L-4

⁹C.P.L.M

v. R50.

¹⁰ C.P.L.M. v. R30.

¹¹ <https://www.ontario.ca/laws/statute/90r20>

¹² <https://www.ontario.ca/laws/statute/90i05>

¹³ R.S.O. 1990, c. L.5, s. 141 (5); 1998, c. 18, Sched. E., s. 153 (4).

¹⁴ R.S.O. 1990, c. L.4.

¹⁵ Teranet is owned by OMERS, the Ontario Municipal Employees' Retirement System..

¹⁶ R.S.O. 2010, c. 1, Sched. 6

¹⁷ The **Civil Code** of Québec is inspired by the French **Civil Code**, also known as the **Napoleonic Code**, while the rest of Canada is governed by the common law legal system.

¹⁸ Commentaires du ministre de la Justice – *Le Code civil du Québec*, Volume II, p. 1910 .

¹⁹ *Civil Code of Québec*, art. 3027.

²⁰ *Civil Code of Québec*, art. 977.

²¹ <https://appli.mern.gouv.qc.ca/infolot/>

²² <https://www2.snb.ca/content/snb/en/sites/land-registry.html>

²³ <https://laws.gnb.ca/en/showpdf/cs/R-6.pdf>

²⁴ *Registry Act*, c. R-10. https://www.princeedwardisland.ca/sites/default/files/legislation/r-10-registry_act.pdf

²⁵ *An Act for Confirming Titles to Lands and quieting possessions Stat. 32nd, Geo. 2d, Cap 2, SNS 1758-1804*, which ratified and confirmed the resolution or act of the Governor and Council concerning land registration, February 3, 1752.

²⁶ *Land Registration Act*. Chapter 6 of the Acts of 2001. <https://nslegislature.ca/sites/default/files/legc/statutes/land%20registration.pdf>

²⁷ www.nspropertyonline.ca

²⁸ *Registration of Deeds Act*, SNL2009 Chapter R-10.01.

<https://www.assembly.nl.ca/Legislation/sr/statutes/r10-01.htm>

²⁹ *Conveyancing Act*. RSNL1990 Chapter C-34.

<https://www.assembly.nl.ca/Legislation/sr/statutes/c34.htm>

³⁰ <https://cado.eservices.gov.nl.ca>

³¹ <https://www.gov.nl.ca/dgsnl/registries/deeds/deed-mech-lien/>

³² <https://assembly.nl.ca/Legislation/sr/statutes/c29-1.htm>

³³ <https://www.rcaanc-cirnac.gc.ca/eng/1297283624739/1537898777456>

³⁴ <http://www.justice.gov.yk.ca/prog/lsto/>

³⁵ *Land Titles Act*. 2015, SY 2015, c. 10.

³⁶ *Indian Act*, LRC (1985), c. I-5.

³⁷ *First Nations Land Management Act*, S.C., 1999, c. 24

³⁸ 2021–22 Annual Report of the
Lands Advisory Board, page 5.

<https://labrc.com>

³⁹ R.S.C. 1985, c. L-6, s. 24.1

⁴⁰ R.S.C. 1985, c. I-5

⁴¹ <https://www.wfn.ca/docs/self-government-agreement-english.pdf>

⁴² <https://www.wfn.ca/docs/wfn-constitution.pdf>