

# What is a Reserve?

***Text comes from First Nations & Indigenous Studies Program at the University of British Columbia<sup>1</sup>***

- An Indian Reserve is a tract of land set aside under the Indian Act and treaty agreements for the exclusive use of an Indian band. Band members possess the right to live on reserve lands, and band administrative and political structures are frequently located there. **Reserve lands are not strictly “owned” by bands but are held in trust for bands by the Crown. The Indian Act grants the Minister of Indian Affairs authority over much of the activity on reserves.** This overarching control is evident in the Indian Act’s definition of Indian reserves:

*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.*

- The Indian Act further sets out the degree of control and authority that the Minister of Indian Affairs has over the use of reserve lands. For example, the Indian Act states that “No Indian is lawfully in possession of land in a reserve,” and that the Minister must approve any certificates of possession or similar forms of property ownership for on-reserve band members. The Indian Act further states that “the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.”

## Reserves and traditional territory

- **A reserve is not to be confused with a First Nation’s traditional territory.** Although reserve borders were imposed on First Nations, many First Nations have continued hunting, gathering, and fishing in off-reserve locations that they have used for many generations. In addition, important ceremonial sites may be located outside a reserve but continue to be significant for a band’s cultural and spiritual practices. When a First Nation describes its traditional territory, it is describing this larger land base that it has occupied and utilized for many generations, before reserve borders were imposed and drawn on maps. When a First Nation expresses concern about impacts to its traditional territory, its members are likely referring to the far reaching consequences for the

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<sup>1</sup> Hanson, Erin. “Reserves.” Indigenous Foundations. University of British Columbia. Accessed February 11, 2020. <https://indigenousfoundations.arts.ubc.ca/reserves/>.

nation's socio-economic, spiritual, and cultural health. When issues of Aboriginal title are discussed, this generally refers to the use and enjoyment of traditional territories.

- The reserve system undermined Aboriginal peoples' relationship to their traditional territories but did not destroy it. As noted above, for many First Nations, off-reserve locations continue to serve as sites of economic, cultural and spiritual practices. The relationship to traditional territory also remains significant for many First Nations who have lost access to it, even if they are unable to continue such practices in those locations.

## **Understanding the difference between elected and traditional Indigenous leadership**

***Text comes from a CBC report filed by Angela Sterritt<sup>2</sup>***

*How does band leadership [on a reserve] work?*

A First Nations community has an election for chief and council — based on the number of members they have — every two years. Band council leadership is not a traditional form of government. Rather, **they are creations of the Indian Act.**

**While people in the community elect a band council, it is accountable to the federal government.**

Bands were introduced by the federal government in 1876, as part of a post-Confederation assimilation policy.

"The federal government thought the way communities were governing themselves was backwards," says Bob Joseph, the founder of Indigenous Corporate Training, which helps companies and organizations work better with First Nations.

"It was a direct imposition on already self-governing Indigenous communities," Joseph said.

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<sup>2</sup> Sterritt, Angela. "When Pipeline Companies Want to Build on Indigenous Lands, with Whom Do They Consult? | CBC News." CBCnews. CBC/Radio Canada, January 10, 2019. <https://www.cbc.ca/news/canada/british-columbia/when-a-pipeline-wants-to-build-whose-in-charge-1.4971597>.

*How does a community decide who is in charge?*

Every community is different, but Joseph says, for the most part, band councils sort out responsibilities normally taken care of by the federal government, like health care and education.

Wet'suwet'en hereditary Chief Na'mocks, one of the leaders protesting the pipeline, describes his authority as taking care of the land and rights and title to it.

**"Elected chiefs and councils only have jurisdiction within the boundaries of the reserve** that they're elected to serve and they are supporting the pipeline," Chief Na'Moks said.

**"We have 22,000 square kilometres that we are accountable for,"** he added.

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Powers of the Council laid out in the Indian Act as of February 2020

81 (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;
- (b) the regulation of traffic;
- (c) the observance of law and order;
- (d) the prevention of disorderly conduct and nuisances;
- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;
- (f) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works;
- (g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone;
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
- (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;

- (j) the destruction and control of noxious weeds;
- (k) the regulation of bee-keeping and poultry raising;
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;
- (m) the control or prohibition of public games, sports, races, athletic contests and other amusements;
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;
- (o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;
- (p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;
- (p.1) the residence of band members and other persons on the reserve;
- (p.2) to provide for the rights of spouses or common-law partners and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;
- (p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;
- (p.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and
- (r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.