



Making Your Lands Instruments Work in Harmony



Your General Guide to
Lands Instruments on
Reserve



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Agenda

I. Leases on Band Land

- i. Leases on Designated lands
- ii. Leases of Agricultural Use

II. Permits under section 28(2) of the *Indian Act* and easements under section 35

I. Lands set aside under section 18(2) of the Indian Act

II. Leases and Permits on Locatee Lands

- I. Leases and Permits on Locatee lands

I. Questions and Discussion



Leases on Band Land

Leases on Designated Lands

- Designated lands are lands that members of a First Nation have agreed to lease for the purposes set out in the designation through a referendum vote and accepted by a ministerial order. Sections 37- 41 of the Indian Act
- Terms such as rent and use of Leases issued on designated lands must be in accordance with the designation document.



Leases on Band Land

Leases on Designated Lands

- Types of leases that require a designation include leases for industrial, commercial, residential, or any kind of economic development project requiring exclusive use by any corporation, band corporation, or individual.





Leases on Band Land

Leases for Agriculture use

- This type of lease is appropriate for the grazing of livestock and the growing of agricultural crops. However, most grazing and cash crop arrangements are now dealt with through the use of s. 28(2) permits.
- Uncultivated or unused, band land may be leased for agricultural or grazing purposes, for the benefit of the First Nation pursuant to ss. 58(1)(c) of the *Indian Act*.
- The land must be leased for **agricultural or grazing purposes only**





Permits Section 28(2) of The *Indian Act*

- A permit allows the permittee to use and occupy specific reserve land by authorizing non exclusive use in land for a limited time.





Instruments on Band Land

- Subsection 18(2) of the *Indian Act* authorizes the use of reserve lands for certain types of purposes that benefit the First Nation as a community, and are for the general welfare of the First Nation members.
- Lands that are designated for leasing can not be set aside under this section



Instruments on Band Land

- To confirm that the proposed use of the reserve lands falls within the scope of subsection 18(2), the use must fit within one of the two categories mentioned in the statute:
 - a listed use: the purpose must be one of the uses specifically listed in the *Indian Act* i.e. schools, band office, health projects; or
 - for the general welfare of the band: these types of purposes are ones that benefit the First Nation as a community, and are available to all members of the First Nation.





Locatee Lands

Section 18(2) of the *Indian Act*

- Individuals with lawful possession in the land to be used must be fairly dealt with, i.e. fair compensation must be paid for the lands taken. If possible, compensation should be determined by mutual agreement. In cases where agreement can not be reached, the First Nation can present a case to the Minister and the Minister may determine compensation





Leases and Permits on Locatee Lands

Leases and Permits on Locatee Lands

- The department administers the leasing of allotted lands on behalf of the Locatee under ss.58(1)(b) and ss.58(3) of the *Indian Act*
- The Lessee and the Locatee are responsible for agreeing on the essential terms and conditions in the Lease. These elements include the identity of the Lessee, the proposed use of the lands, the duration of the Lease and the benefit to the Locatee.
- The *Indian Act* does not specifically provide for the band's consent to Locatee Leases under ss.58(3). The Department, however, recognizes that the band has an important interest in the use and development of reserve lands, including those lands the band has allotted to its members.



References

- All of the information presented in this workshop have been extracted from the department's online resources.
- For more information on leasing policy and processes, please visit the links below:
 - <https://www.aadnc-aandc.gc.ca/eng/1374091139187/1374091182369>
 - <https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>
 - *The Indian Act* <https://laws-lois.justice.gc.ca/eng/acts/i-5/>



Questions and Dialogue

