

## Indigenous

# How Georgina Island First Nation took back control of lands and resources

Under the Indian Act, 'It was like our community got pushed aside to the kiddie table,' says former chief

[Charnel Anderson](#) · CBC News · Posted: Sep 15, 2019 4:00 AM ET | Last Updated: September 15



Sylvia McCue, the present-day land manager on Georgina Island First Nation, was part of the team that developed the First Nation's Land Code in the 1990s. (Charnel Anderson)

In the early 1990s, Maurice Sandford attended a meeting where soon-to-expire leases for cottage lots on the Chippewas of Georgina Island First Nation were to be reviewed. The lots were parcelled out along the shoreline of Snake Island, a small island roughly 100km north of Toronto on Lake Simcoe, where Sandford, a retired firefighter, has been vacationing since 1983.

PG 1 To view the article:

<https://www.cbc.ca/news/indigenous/georgina-island-first-nation-land-code-1.5281769>

Sandford was part of the Snake Island Cottagers Association. At the meeting, he met with representatives from the Department of Indian Affairs and Northern Development to discuss the leases. Sandford recalls seeing Georgina Island First Nation council and band members sitting at the back of the room.

"They just didn't have any say in it," says Sandford. "And it was strange, how we're talking to these people at the front that really had no vested interest, other than they're government employees."

This frustrated the then-chief of Georgina Island, Bill McCue.

"It was like our community got pushed aside to the kiddie table," says McCue. "I had no input into what was being negotiated on our territory, and I felt that's wrong."

In 2001, after decades under the Indian Act's land management regime, the First Nation was finally able to control its own leases — and land, and natural resources — through the Framework Agreement on First Nation Land Management.

## Land management under the Indian Act

Under the Indian Act, First Nation land is managed by the federal government. This means the government is responsible for everything from approving leases to collecting rent to ensuring that leaseholders are following the rules. The problem is the Crown isn't always the most qualified candidate for the job.



"Indian Affairs has never really been in a position to be a proper steward of reserve land," says Meko Nicholas, the executive director of the First Nation Land Management Resource Centre, also known as LABRC, an organization that assists First Nations in their pursuit of land management.

Meko Nicholas is the executive director of the First Nation Land Management Resource Centre. (Submitted by Meko Nicholas)

PG 2 To view the article:

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"If you're not on reserve and you're not seeing what's going on day-to-day, it's hard to make judgment calls the way the people who live there can."

While Georgina Island was operating under the Indian Act's land management regime, cottagers on Snake Island had been using DIY septic systems that were leaching waste into Lake Simcoe — the same lake that residents drink from.

"The cottagers were using 45-gallon tanks, and they'd put an axe through it, and that was their septic system," says Pat Big Canoe, a long-time councillor for Georgina Island First Nation.

Big Canoe says the First Nation sent photos to Indian Affairs that showed the sewage leaking into the lake. According to Big Canoe, Indian Affairs did nothing to remedy the problem.



Pat Big Canoe has been a councillor for Georgina Island First Nation for nearly 30 years. (Chanel Anderson)

PG 3 To view the article:

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The Indian Act permits Canada to act on behalf of First Nations. As much as they may have wanted to, Georgina Island First Nation couldn't force cottagers to install proper septic tanks, nor could they cancel an offending cottager's lease—under the Indian Act, only Indian Affairs is authorized to enforce First Nation land management rules and regulations.

Indian Affairs also managed the funds generated from Georgina Island's leases. In order to get their money, the First Nation had to issue a document detailing a council decision, called a Band Council Resolution, requesting their funds. They had to tell the government what they wanted to use the money for, too.

"They would say, 'You can't use it for debt. You can't use it for education.' They would have a whole series of things you couldn't use it for," says Big Canoe.

"Mind you, it was the band's own money they were holding ... They treated you like you were minors, and that you couldn't spend your own money. It was terrible, really."

Problems like the ones Georgina Island faced are not uncommon for First Nations operating under the Indian Act's land management regime. Some First Nations yearned for land management authority, and beginning in the late 1980s, Canada introduced a series of initiatives aimed at increasing the land management capacity of First Nations.

The 53/60 Delegated Authority Program was the first of these initiatives, which allowed First Nations to manage land transactions (like leases), and exercise the minister's decision-making authority as it related to reserve land. Still, Canada overruled many of the decisions made by participating First Nations, says Meko Nicholas.

The early '90s brought the Regional Land Administrative Program, but there were issues with that, too — [a 2002 evaluation](#) found both programs "failed to adequately address the complex nature of reserve land management."

PG 4 To view the article:

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The proposed solution: the Reserve Land and Environment Management Program, known as RLEMP. Created in partnership with First Nations, RLEMP was more comprehensive than its predecessors, which have been wound-down in favour of this model. The program has three tiers, designed to incrementally increase the First Nation's capacity for managing its own lands.



Cottages on Georgina Island in Lake Simcoe. (Charnel Anderson)

The final step of RLEMP used to be Delegated Authority, before that program was discontinued. Now, ideally, RLEMP concludes with the First Nation joining the Framework Agreement on First Nation Land Management.

## **The decision to sign on**

Bill McCue was introduced to the Framework Agreement on First Nations Land Management by a group of chiefs, shortly after becoming a chief himself in 1993. The Framework Agreement promised to relieve First Nations of some of the constraints posed by the Indian Act, and give them more control over their land, which piqued McCue's interest.

PG 5 To view the article:

<https://www.cbc.ca/news/indigenous/georgina-island-first-nation-land-code-1.5281769>

"I asked them to come and do a presentation to our council and community . . . because I thought this is something we need," says McCue.

"I wanted an option to take our community out of the Indian Act, because it definitely wasn't working for us."

Signing onto the Framework Agreement on First Nations Land Management would allow Georgina Island to develop a comprehensive, personalized law called a land code, which replaces dozens of sections of the Indian Act and enables First Nations to take back control of their land and natural resources, including minerals, forestry, agriculture and water.



Georgina Island First Nation has hundreds of cottage leases on its three islands: Georgina, Fox, and Snake. (Chanel Anderson)

But McCue admits he was initially "leery" of the Framework Agreement because "it was something no one had done before," and he wasn't quite sure where it would lead his community. McCue says others were uneasy about the Framework Agreement, too.

PG 6 To view the article:

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"Folks in Ontario and the [Assembly of First Nations] weren't really comfortable with it. They were comfortable being under the Indian Act," says McCue.

"From the cradle to the grave, the Indian Act is in your face," says Meko Nicholas, who grew up in Tobique First Nation, northwest of Fredericton, N.B.

"So you start to remove sections of the Indian Act, and people start to worry. Well, what's in place of that? Can we trust our own people to make the right decisions? That's a big decision for any community to make," says Nicholas.

Past attempts to abolish the Indian Act, such as the 1969 White Paper (formally known as the "Statement of the Government of Canada on Indian Policy, 1969") have faced major opposition from First Nation groups. In addition to dismantling the Indian Act, the 1969 White Paper (as well as later initiatives, like the First Nation Property Ownership Initiative which emerged in the mid-2000s) proposed privatization of reserve land, which critics feared would lead to the erosion of the First Nations land base.



Cottagers have been vacationing on Snake Island for more than a century. (Submitted)

PG 7 To view the article:

<https://www.cbc.ca/news/indigenous/georgina-island-first-nation-land-code-1.5281769>

Some groups worried the Framework Agreement on First Nations Land Management could lead to privatization of reserve land. However, unlike the proposed First Nation Property Ownership Initiative, under the Framework Agreement, there is no change in the title or status of reserve land— reserve land remains held by the Crown, protected under Section 91(24) of the Constitution.

For Bill McCue, the benefit of being able to manage his community's land outweighed his fear of "moving forward into the unknown." He says council was also receptive to joining the Framework Agreement because of the "tribulations" they faced in dealing with the federal government.

## Developing a land code

As one of the first communities in Canada to develop and ratify a land code, Georgina Island received a lot of support from the chiefs who developed the Framework Agreement, as well as the First Nations Lands Advisory Board. "If we had fears, they would help us move forward," says McCue. (Today, LABRC supports First Nations in land code development, but it didn't exist when Georgina Island joined the Framework Agreement.)

Despite limited resources, Georgina Island had two staff members dedicated to developing the land code. Following community consultations, Pat Big Canoe and Sylvia McCue worked with lawyers from the Lands Advisory Board to draft the rules and regulations in Georgina Island's land code.

"They were right there helping us develop everything, and we kind of just went along for the ride," says Sylvia McCue, the lands manager at Georgina Island First Nation.

In 1996, band members voted overwhelmingly in favour of Georgina Island First Nation's land code, which came into effect in 2001 (following the federal ratification of the Framework Agreement, via the First Nations Land Management Act in 1999).

Today, a First Nation interested in joining the Framework Agreement must express their interest in a Band Council Resolution, and complete a community profile, which is submitted to LABRC and Indigenous Services Canada (ISC). The request is

PG 8 To view the article:

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reviewed by ISC, who determines the community's eligibility based on certain criteria, including their existing land management experience, current economic development pursuits, and more.



This photo of then-Chief Bill McCue and the Minister of Indian Affairs and Northern Development, Ron Irwin, during the signing of the Framework Agreement on First Nations Land Management, hangs in McCue's office. (Submitted by Bill McCue)

If ISC decides the community is ready to take on land management, and there is federal funding available, ISC recommends the First Nation for entry to the Framework Agreement to the minister. The community then signs onto the Framework Agreement, and enters the "developmental" phase. This is when the First Nation begins to draft a land code, consults with community members, and negotiates a funding agreement (known as an Individual Agreement) with Canada. This process takes about two years.

PG 9 To view the article:

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After band members approve the land code through a ratification vote, the First Nation becomes "operational." Management of the community's lands and resources are transferred back to the First Nation, and 40 sections of the Indian Act related to land and environmental management no longer apply.

## Benefits and costs

According to Meko Nicholas, 163 First Nations have signed the Framework Agreement; 88 First Nations across Canada are operating under their own land code, while 31 communities are currently in the developmental stage. More than 40 communities are "inactive," meaning they are not actively developing a land code, perhaps due to changes in leadership or other priorities, says Nicholas.

The price tag associated with developing a land code is a major drawback for some First Nations. Designing and implementing a land code is an intensive, costly process, and while federal funding and other resources are available, it's not enough to cover the entire cost. Passing a land code also means that the First Nation takes on more liability, as the Framework Agreement relieves Canada of its fiduciary duty related to land and environmental management, leaving the First Nation on its own to deal with any problems that occur after their land code comes into effect.

Amendments to the First Nation Land Management Act in 2018 have drawn criticism, as the requirement for 25 per cent of eligible band members to approve a land code was eliminated in favour of a majority vote. The 25 per cent threshold proved challenging for some First Nations with a large off-reserve population to meet.

[But a 2019 report by the Yellowhead Institute](#), a First Nations led-research centre, says the amendment "lowers the obligation of a First Nation to obtain consent from their membership, allowing leadership to significantly alter their governance over reserve lands with the approval of potentially a small portion of those they represent."

PG 10 To view the article:

<https://www.cbc.ca/news/indigenous/georgina-island-first-nation-land-code-1.5281769>



Georgina Island First Nation's wetlands support species like the great egret and snapping turtles. (Charnel Anderson)

The potential economic development spin-offs provided by the Framework Agreement are a major draw for First Nations. [A 2009 report](#) commissioned by LABRC, the Lands Advisory Board and Canada found that many of the 19 First Nations surveyed reported a 40 per cent increase in new business, and have attracted approximately \$53 million in internal investment, and \$48.5 million in external investment since becoming operational.

[A 2013 report](#) commissioned by the same group found that a total of 4,000 jobs have been created by the 32 operational First Nations surveyed. It also found that land management transactions are completed significantly quicker by First Nations with land codes versus under the Indian Act: the 584-day average for the approval of leases and permits under the Indian Act was reduced to an average of 17 days for operational First Nations. Bill McCue calls this "moving at the speed of business."

The Framework Agreement has also been a boon for Canada—a partial benefit-cost study found that five projects created as a result of the Framework Agreement,

PG 11 To view the article:

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including a wind farm, a hydroelectric facility and a casino, may generate anywhere between \$270 million and \$1.4 billion for Canada over the lifetime of the projects.

However, the Yellowhead Institute's critical analysis of the First Nations Land Management Regime proposes "Canada's logic embedded within the First Nations Land Management Regime pushes First Nations toward a certain type of neoliberal economic development," which runs "counter to the tenets of many traditional Indigenous economic philosophies."



A wigwam exhibit along the Sweetgrass Trail is part of a trail system that takes hikers on an historical journey through the interior of Georgina Island. (Chanel Anderson)

The authors of the report question whether the economic development offshoots of the Framework Agreement actually benefit Indigenous people living on reserve, saying "there are currently no studies to prove whether the First Nations Land Management Regime has reduced poverty on reserve or whether increased overall wealth of those First Nations has contributed to better socio-economic indicators, such as health, language renewal, or cultural revitalization."

PG 12 To view the article:

<https://www.cbc.ca/news/indigenous/georgina-island-first-nation-land-code-1.5281769>

## Creating an economy

For Bill McCue, the Framework Agreement is more than just the potential economic development opportunities it presents.

"It's not just there for you to throw up businesses or casinos, or whatever. It's certainty... You're in charge. It's your authority over the lands."

Georgina Island has created a land use plan for its 3,500-plus acres of reserve land, which is a permanent home to less than 200 band members, but supports hundreds of cottagers throughout the summer. The community's plan is guided by objectives like cultural restoration (including preservation of sacred grounds), and environmental protection, as Georgina Island is home to number of species considered at-risk in Ontario, like American ginseng and peregrine falcons.

The land code has also empowered Georgina Island to create environmental laws to protect the reserve's at-risk flora and fauna, and a building code that outlines the requirements for septic systems. The 45-gallon drums used for waste on Snake Island have since been overhauled.

In addition to being able to issue leases, Georgina Island now deals directly with cottagers, too: the First Nation collects rent, sends arrears notices and can cancel a lease if the leaseholder doesn't follow the rules. The relationship between the First Nation and the Snake Island Cottagers Association has also improved.

"It's like night and day," says Maurice Sandford. "It's more of a direct relationship...we can see somebody in front of us and ask them questions, and we're getting good answers."

PG 13 To view the article:

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Bill McCue stands outside the First Nation Lands Management Office, part of the Island View Business Centre on Virginia Beach Marina. (Charnel Anderson)

In 2016, the First Nation built the Island View Business Centre on the mainland at the Virginia Island Beach Marina. There is a smoke shop, a gas station and a restaurant with views of Georgina Island in the distance, across the lake. These businesses and the First Nation's leasehold properties "generate quite a bit of revenue" that goes back to the community, says Bill McCue.

"We are creating an economy which is almost self-sufficient, without the need of departmental funding from Canada," says McCue. "But having said that, we're not going to let [Canada] off their obligations to fund for services that are supposed to be provided through treaty."

The independence afforded by the Framework Agreement is huge for Georgina Island First Nation, says Pat Big Canoe.

"It's our plan to be completely independent of the government," says Big Canoe. "If they don't want to give us money, we're not going to fall apart. We're going to do well on our own."

PG 14 To view the article:

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