

Evaluating Canada's place in international property rights protection

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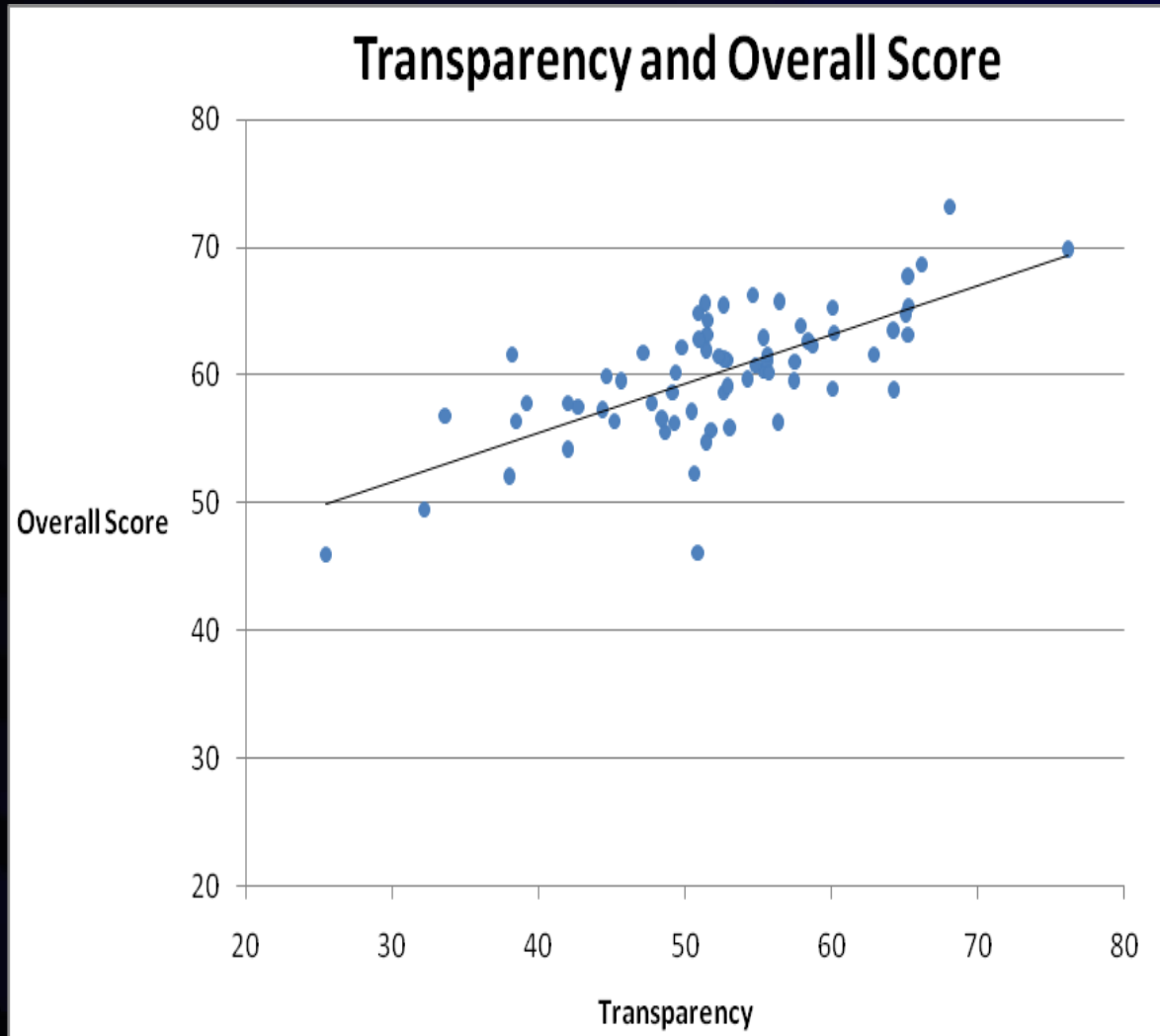
FRONTIER CENTRE FOR PUBLIC POLICY

- An independent Western Canada based public policy think tank which received charitable status in April 1999.
- Generates a wide range of publications, commentary and outreach across many project areas.
- Offices in the 3 prairie provinces
- 58 million audience on a regular basis
- Almost \$10 million in PR value in 2008
- University of Pennsylvania/Foreign Policy Magazine (January 2009 edition) ranked FCPP:
 - 22nd most influential “Go-To think tank” in North America (non-USA)
 - One of only five of 100 recognized think tanks in Canada to make the “Go-to-Think Tanks” list

Aboriginal Governance Index

- Entering fifth year
- Sample size last year was 5,106
- 1,688 from Manitoba, 2,616 from Saskatchewan and 802 from Alberta.
- Of these, 4,635 are short surveys and 471 long form.
- Ninety-seven bands were surveyed in the three provinces.

AGI Results from 4th annual survey



Common law property rights- fee simple

- Individual landowners do not own land absolutely= Crown holds allodial title (own title to use land, and to exclude others from using it).
- Landowner holds fee simple interest in property (remains absolute property of sovereign- Crown).
- landowners purchase fee simple title of the property to gain ownership right.

Fee simple interest holders have right to:

- 1. Possess land granted (includes the right to exclude others from possession, and grant possession to others in the form of leases and licenses).
- 2. Improve or destroy the land.
- 3. Alienate their right to the land (sell the land/bequeath the land to another).

Challenges to property rights in Alberta

- *Bill 19: The Land Assembly Project Area Act (2009)*
- *Bill 24: The Carbon Capture and Storage Funding Amendments Act (2010)*
- *Bill 36: The Alberta Land Stewardship Act (2009)*
- *Bill 50: The Electric Statutes Amendment Act (2009)*

Challenges to property rights in Alberta II

- All proposed legislation interferes with fee simple property rights in some ways.
 - A) **Bill 19: The Land Assembly Project Area Act** - gives province authority to freeze private land for public purposes without having fully to compensate landowners for relocation costs, losses to businesses due to interruption, and related damages.
 - B) Bill 24- *The Carbon Capture and Storage Funding Amendments Act (2010)* permits pumping of liquefied gas into pore space without permission of the fee simple titleholder, and does not offer compensation for any inconveniences incurred by the titleholder.

Alberta legislation (Cont'd)

- **Bill 36: The Land Stewardship Act (2009)**- Most criticized legislation, Act allows for centralised planning of regions and elevates Land Use Secretariats and the Ministry of Sustainable Development above the powers of all other departments and municipal governments, This diminishes accountability in government, as the cabinet is given great power in regional planning, but may not be fully accountable for those plans.
- **Bill 50: The Electric Statutes Amendment Act**

Allows provincial cabinet the power to determine where transition lines should be erected, by declaring the proposed line as 'critical transmission infrastructure.' provincial government the power to construct new lines over private property without the consultation, advice and approval of the Alberta Utilities Commission, which involves public input and scrutiny.

International Property Rights Index

- Started in 2007 by the Washington, D.C.-based Property Rights Alliance through Hernando de Soto Fellowship.
- In 5th year, comprehensive measure of property rights began with 70 countries, now 129, covering 97 % of world GDP.

IPRI Ranking

- The following are the three core components of the IPRI: 1. Legal and Political Environment (LP) 2. Physical Property Rights (PPR) 3. Intellectual Property Rights (IPR)
- Three main components and 10 variables that make up the components

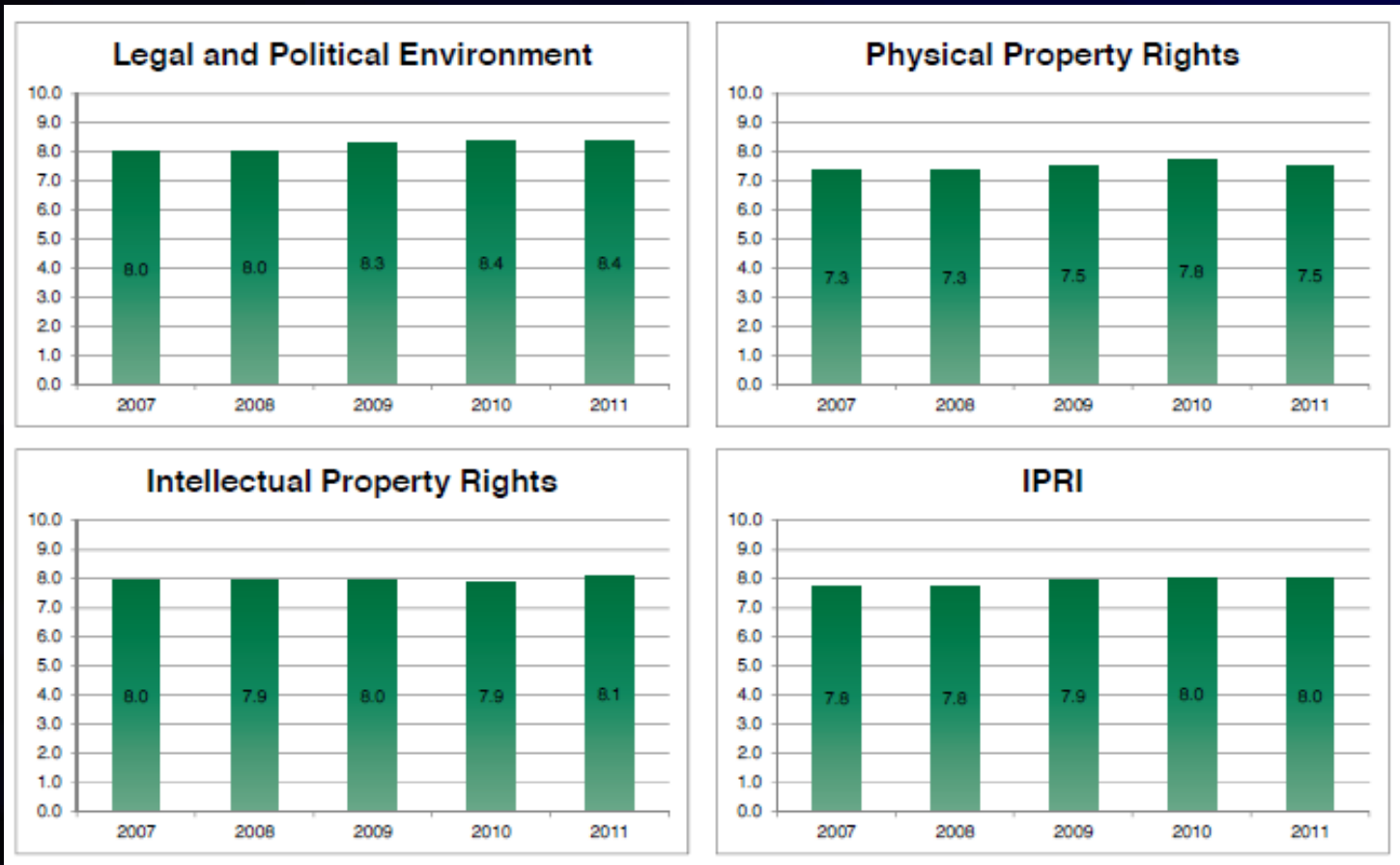
Structure of the IPRI

- **1. Legal and Political Environment (LP)**
 - Judicial Independence · Rule of Law · Political Stability · Control of Corruption
- **2. Physical Property Rights (PPR)**
 - Protection of Physical Property Rights · Registering Property · Access to Loans
- **3. Intellectual Property Rights (IPR)**
 - Protection of Intellectual Property Rights · Patent Protection · Copyright Piracy

Notes on Methodology

- Overall grading scale of IPRI ranges from 0 to 10, with 10 representing the strongest level of property rights protection and 0 reflecting the non-existence of secure property rights in a country.
- Each component and variable is placed on 0 to 10 scale.
- Calculation of final index score = variables within each component are averaged to derive the score for each of the three components. Final overall IPRI score is average of component scores.

Canada Results (2007-2011)



World Rank: 9 Regional Rank: 1

Canada Results

- Canada's IPRI the same after two years of slight increases
- Canada highest in its region and its hemisphere
- PPR decrease thanks to 0.4 decline in Protection of Physical Property and Access to Loans.
- Canada has one of best Copyright Piracy scores in the world

Top 10 IPRI Scores

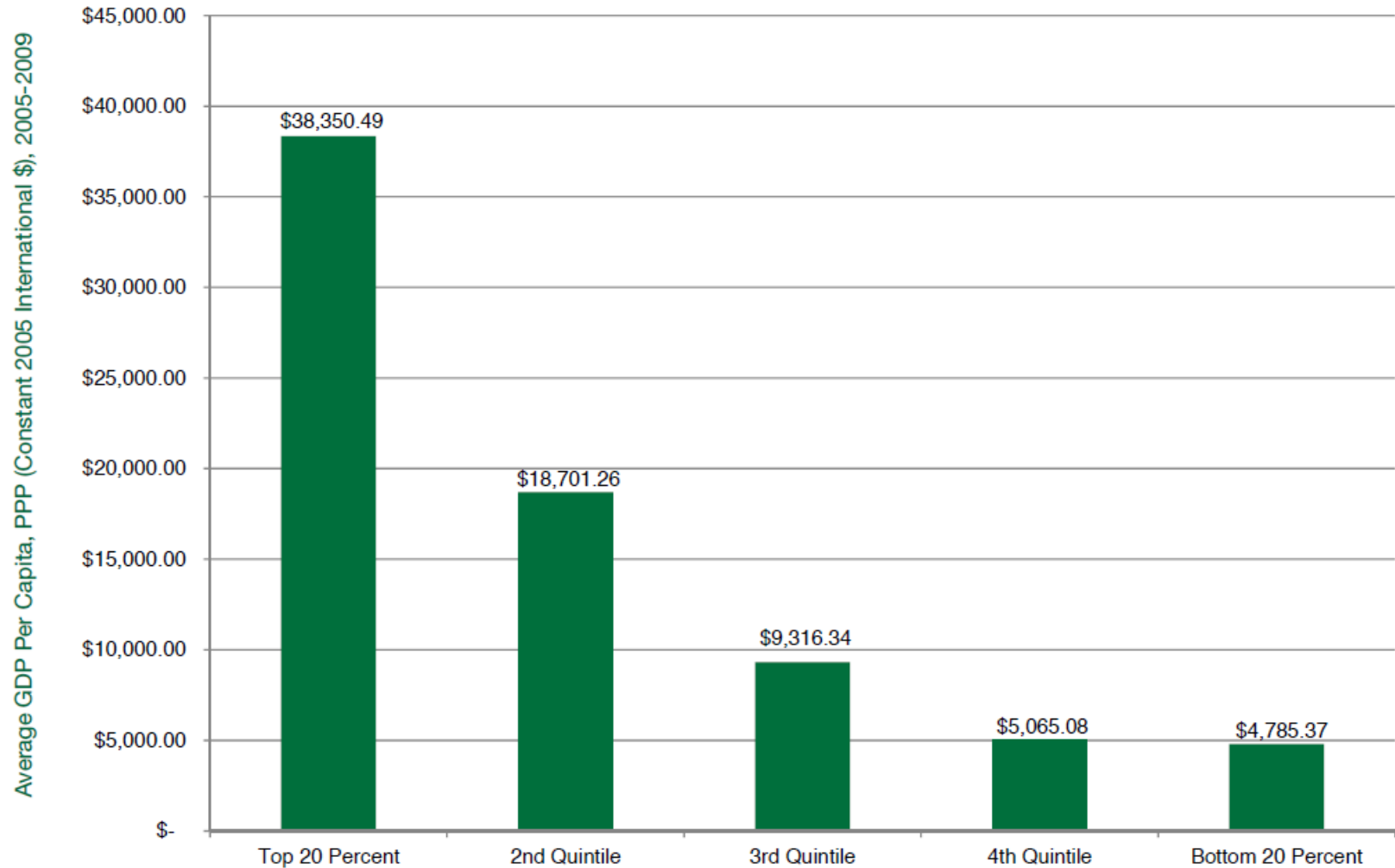
- Finland (1)
- Sweden (1)
- Singapore (3)
- Luxembourg (4)
- New Zealand (4)
- Norway (4)
- Switzerland (4)
- Denmark (8)
- Netherlands (9)
- Canada (9)
- Australia (9)

Bottom 10 IPRI Scores

- Bolivia (120)
- Moldova (120)
- Nigeria (120)
- Cote D'Ivoire (123)
- Libya (123)
- Angola (125)
- Bangladesh (125)
- Burundi (125)
- Zimbabwe (128)
- Venezuela (129)

GDP by IPRI Quintile

Figure 8: Average Per Capita Income by IPRI Quintile

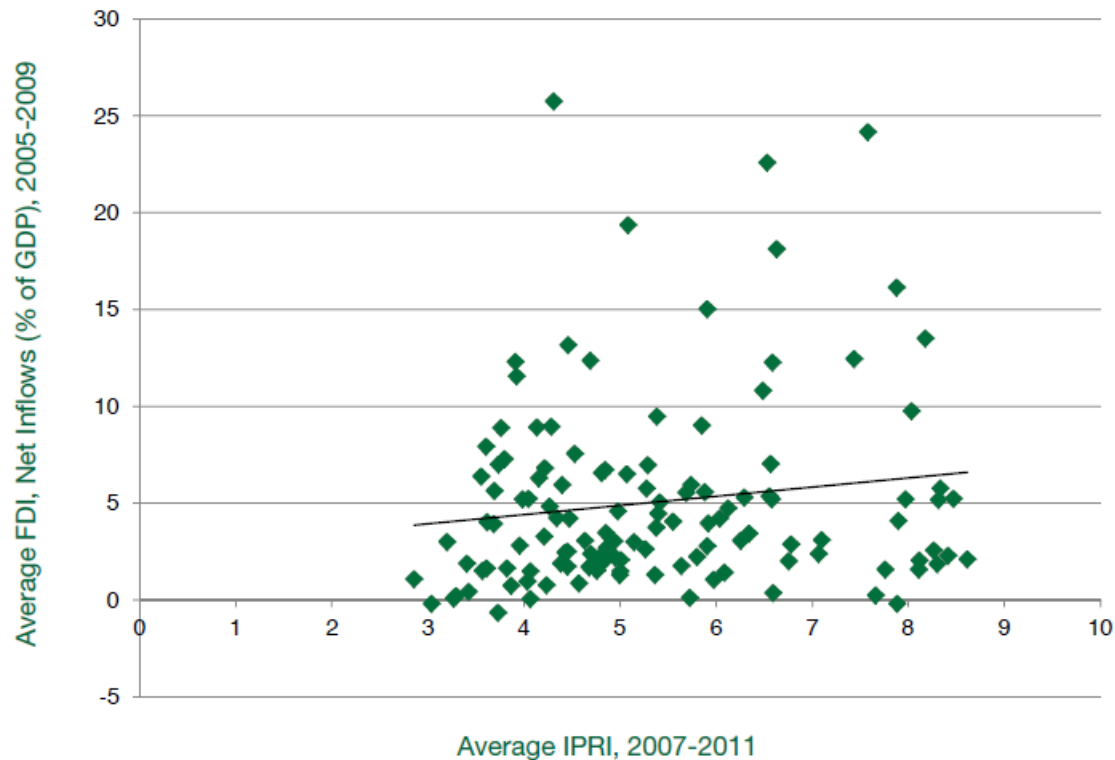


Results of IPRI study

- ⑩ On avg. countries in top quintile of IPRI scores enjoy per capita income 8 X of their counterparts in bottom quintile
- ⑩ A high IPRI score is strongly correlated to economic development. A one point increase in IPRI score predicts a \$8,960 increase in GDP per capita (R-squared=0.63).
- ⑩ Similarly, IPRI components (LP, PPR, IPR) are highly correlated with GDP per capita.
- ⑩ Developing countries with strong property rights show stronger per capita GDP than those who fail to respect them.

Relationship between IPRI and FDI Inflows as percentage of GDP

Figure 13: Relationship between IPRI and FDI Inflows as a Percentage of GDP



Avg. IPRI, 2007-2011

Results of Study (IPRI and FDI Inflows)

- Establishes there is a positive relationship between avg. IPRI score and avg. FDI inflows measured as % of GDP.
- Countries with a well-established legal system, stable political environment, strong protection of physical property rights attract more FDI.

Insecure property rights affect economic activity

- Tim Besley and Maitreesh Ghatak (professors of economics/poli sci- LSE)
 - 1) Increase risk of expropriation= diminished incentives to invest and produce
 - 2) Decrease productivity by necessitating need to defend property
 - 3) Fail to facilitate gains from trade (assets can't be transferred to someone who uses productively)

Property and Economics

- Fee simple ownership: Best way to put land to productive use.
 - (1) raises value of land as owner may transfer or use it as he/she wishes.
 - (2) Can be easily sold and transferred on market allowing owner to create capital.
- Hernando de Soto, Nobel. *The Mystery of Capital*.
 - Catalogued real estate, discovered \$9.3 trillion in “dead capital.” **CAPITAL** - Potential value of asset in economy.
 - productive use

Nisga'a Landholding Transition Act, passed October 2009



- March, 2009 sitting, Wilp Si'Ayuukhl Nisga'a introduced *Nisga'a Landholding Transition Act*.
- First of several statutes
 - provides individual Nisga'a landholders with opportunity to receive fully transferrable fee simple ownership of their residential properties
- Registered in Nisga'a Land Title Office.

History of Landholding Legislation

- 2006 - Economic Roundtable
- 2007 - Discussion Papers and Start of Community Discussions
- 2008 - Report to Special Assembly
- 2009 - Draft Legislation and Continuation of Community Discussions
- Information meetings were held in each Nisga'a village in June 2009

Legislation Discussion

- **Concerns:** loss of land base.
- Land, no matter who owns, remains “Nisga’a land”
 - Subject to Nisga’a laws. Subject to land use policies and local zoning regulations.
- Government will not lose power to designate “public lands,” conservation lands, and other collective ownerships, like any government.

Contents of Nisga'a Legislation

- Small residential lots.
 - Lots can be no more than 0.2 hectares (half an acre) and must be zoned as residential.
- Move is **voluntary**
 - Nisga'a citizens who have land by entitlement must choose to opt into the system. They have 90 days to accept or decline offer.
- Land affects 0.5 % of total Nisga'a lands.

Why is this significant?

- Sec. 89 of Indian Act - real and personal property of FN on-reserve cannot be alienated, pledged, or mortgaged except to band or Crown.
- As modern treaty, Nisga'a modified Aboriginal title and received it as fee simple grant

Economic Problems on-reserve

- "You don't have to travel to Zambia or Peru to see dead capital. All you need to do is visit a reserve in Canada. First Nation people own assets, but not with the same instruments as other Canadians. They're frozen into an Indian Act of the 1870s so they can't easily trade their valuable resources."



- Hernando de Soto

Problems investing on reserves



- “It is still considerably more difficult to invest and conduct business on First Nations lands than elsewhere in Canada. Both FNs and investors have to spend considerably more time and professional, administrative resources to overcome this. Transaction costs to complete investment are four to six times higher than off reserve lands.”

- Andre Le Dressay

First Nation economic potential

- Study, Fiscal Realities, presented to INAC last spring, measured land value for select BC bands. On 68 bands, value at \$4 billion, or \$60 million per reserve.
- Of the 2.6 million hectares of land occupied by FNs, about 4 X the size of PEI, much of it has outstanding value.

Land rights and economy

- De Soto, formalizing land titles creates assets, unlocks capital
- Access to capital by new title holders, increase loans 280%
- Without land title certainty= economic disparities, higher costs of doing business, losses of potential investments

What does this all mean for Alberta and Canada?

- Alberta- knowing strong connection between property and prosperity, ensure robust property protection, reconsider legislation, curb expropriation
- Canada- All provinces need to curb expropriation , US- declined eminent domain
- Consider supporting First Nation Property Ownership Act, work with bands