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Infrastructure Institution needed to address \$25 billion infrastructure deficit among First Nations in Canada

First Nations across the country deal with aging or decrepit infrastructure every day with little hope for improvements due to lack of funds or investment. A recent study by the Canadian Council for Public-Private Partnerships states that experts estimate the infrastructure deficit across First Nations in Canada to be at least \$25 billion and even higher than \$30 billion. These infrastructure investments need to be sustainable. They need to meet the needs of the present without compromising the needs of future generations. They need to support the development of employment opportunities for First Nation communities. Research has to be done to ensure all costs over the entire life cycle have been considered to ensure there will be sufficient funds to cover those costs.

Financing gaps occur because many First Nations don't use all available fiscal tools or don't have sufficient fiscal capacity. Examples of fiscal tools include annual property tax and other local revenues, long-term debentures, development cost charges and service taxes, public-private partnerships and transfers from other governments. Transfer funds from other governments are not stable enough for debenture financing as the amount of transfer funds is determined by the current elected government and would likely change with the election of a new government.

The FMA was designed to provide expanded tools to finance infrastructure and help facilitate the fiscal tools identified above. The FMA provides scheduled First Nations with expanded authority to make taxation laws that include property taxes, services taxes, development cost charges, business activity taxes and user fees.

Project Management gaps occur where there is insufficient experience or expertise to efficiently and cost effectively manage and build infrastructure projects. There is little experience within First Nation administrations to manage all elements of an infrastructure project. Also, few First Nation government administrations have the administrative framework in place to support either private or public investment. This includes missing statistical information and certified administrative capacity.

Across First Nations in Canada

The estimated infrastructure deficit is approximately



The FNTC is supporting First Nation proponents of a First Nations Infrastructure Institution (FNII) to be created under the FMA. The FNII could help close capacity gaps and provide higher value for money for the significant impending First Nation infrastructure investments by providing assistance to First Nations through:

- Implementing standards and laws required to support infrastructure projects and improve investment climates;
- Assessing infrastructure project readiness and developing an infrastructure development plan;
- Developing integrated infrastructure planning;
- Creating administrative capacity to assess appropriate costs for infrastructure projects;
- Creating capacity to efficiently project manage and build infrastructure projects;
- Creating certified training and systems for First Nation administrations to support the operation of sustainable infrastructure systems;
- Advocating for the development of new FMA revenue streams within an improved fiscal framework to finance infrastructure projects; and
- Assessing infrastructure risks and developing risk management strategies.

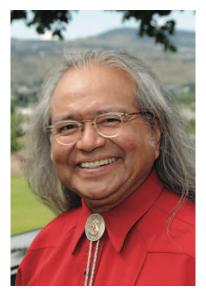
The proposed FNII could help fill the infrastructure capacity gaps faced by many First Nation governments in Canada. By filling the planning, financing, project management, and legal gaps, the new FMA institution can support First Nations in the development of economically and fiscally sustainable infrastructure projects. $\textcircled{\bullet}$



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Chief Commissioner's Message



This season, the FNTC continues to advocate for the expansion of First Nation jurisdiction. We are preparing to send out a poster featuring a timeline of the history of First Nation property taxation in Canada. The goal of this poster is to highlight how First Nations had full tax jurisdiction prior to contact and how it will have taken 200 years by the year 2050 to restore that jurisdiction, giving First Nations full tax powers on their own lands.

First Nation taxation can be traced back to the earliest of times. Long before the appearance of Europeans in North America, paying tribute for occupying or using someone's territory was a common practice amongst First Nations in Canada. This form of tax was a concession given in exchange for a privilege. Wealth distribution ceremonies, such as potlatches and giveaway dances, were another form of taxation.

Prior to 1850, First Nations maintained exclusive control over their citizens, land and finances. With early contact, there was cooperation between tribal governments, the colonial government and religious organizations to build on-reserve infrastructure including roads, mills, schools and housing. Through this period, tribal councils maintained complete control and jurisdiction, making decisions about the type and pace of development and how finances were allocated.

By the mid to late 1800s, real property taxation began to emerge in several First Nation communities in Quebec and Ontario. Initially, First Nations collected tax for specific expenditures like the construction of bridges, and later for more general expenditures like the cost of government administration.

However, by 1867, the major taxation elements of the Canadian tax framework were being developed while First Nations tax powers were simultaneously suppressed. The *Indian Act* of 1876 was passed and consolidated existing legislation with respect to First Nations and culminated in the goals of Federal Indian Policy: protection and assimilation.

In 1881, traditional methods of generating revenue through trade were banned through the 'pass and permit' system, which prevented First Nation people from leaving their reserves or trading outside their communities. In 1884 potlatches were banned and then later in 1890, sundances, giveaways and similar ceremonies were also banned.

This era of prohibition led to a state of dependency on the Government of Canada. It wasn't until modernization of the *Indian Act* in 1951 and discussions in the 1960s regarding property taxation that First Nations began to discuss property tax as a source of revenue independent from the government. It is here where the ideas and efforts from the First Nation leaders in the 1960s took hold and First Nations began to envision a future of increased powers and self-sufficiency.

Great leaps forward in First Nation property taxation have occurred, including the Kamloops Amendment to the *Indian Act* in 1988 and the *First Nations Fiscal Management Act* in 2005.

First Nations collecting property tax are continuing to advance the expansion of tax jurisdiction. The first step is to use all the fiscal tools in the FMA. We are encouraging and supporting FMA First Nations to implement development cost charges, service taxes, fees, property transfer taxes and business activity taxes.

The FMA represents the best way to implement more tax jurisdiction. It provides a First Nation led regulatory framework for our jurisdiction. It provides sample laws, standards and support. It provides accredited university training and tax administration software. It provides a clear path to expand our jurisdiction. Within the next few months, there will be 200 First Nations on the FMA schedule.

Some First Nations and the FNTC are proposing to further expand the FMA to include the FNGST and aboriginal resource tax (ART) revenues. The FNTC has already supported the implementation of many FNGST systems and is also working on pipeline and mining ART proposals with interested First Nations. These options benefit from First Nation institutional support and the FMA framework.

The FMA provides a mechanism for us to link our taxes to our jurisdiction. This means First Nations can have real control over their own services and infrastructure. This means First Nations can improve the outcomes for their members and residents. Property tax jurisdiction was taken away 200 years ago. The FNTC is available to work with First Nations who want to use these powers to restore their jurisdiction. We look forward to hearing from you.

Sincerely,

Mam

C.T. (Manny) Jules Chief Commissioner

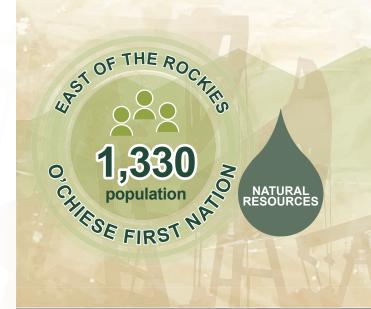
Wealth creation through a well drilling tax for O'Chiese First Nation

Situated 100 kms east of the Rockies northwest of Rocky Mountain House, O'Chiese First Nation (OFN) is one of several oil-producing First Nations in Alberta. With a registered population of over 1,330, primarily living in O'Chiese, the First Nation strives to create as many opportunities as possible for OFN to participate in the development of natural resources on their lands and to also provide new employment opportunities for its citizens.

O'Chiese has been taxing since 1998, but only recently joined the *First Nations Fiscal Management Act* (FMA). Over the last year, the First Nation has been working with FNTC to develop the first ever well drilling tax on First Nation lands. The First Nation Well Drilling Tax Law is a law First Nations are able to enact under the FMA. It taxes well-drilling companies for oil and gas exploration on the reserve.

Municipalities in Alberta and Saskatchewan are able to levy taxes on well drilling activities and the anticipated O'Chiese First Nation law will help to reduce the gap between First Nations and municipalities on the prairies in regard to revenue raising potential.

FNTC has provided a law development grant to O'Chiese First Nation to provide access to legal counsel during the law drafting and review process. It is hoped the well drilling tax law will be before the Commission for final approval at FNTC's fall 2016 quarterly meeting.



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Community perspectives: Sharing property taxation success stories though video

Over the past two years, the FNTC has undertaken a video project profiling First Nations to celebrate their successes in using property taxation to build their economies and generate revenues. The intent of the project was to revisit the past 25 years of First Nation property taxation in Canada and allow First Nations themselves to share how property taxation has impacted their community and what it means to them.

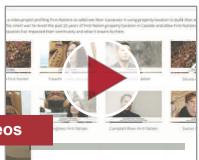
The goals of capturing these community success stories are to:

- Provide a platform for First Nations to tell their story of how property tax has made a difference in their community.
- Utilize stories from First Nations to demonstrate how property tax supports economic development on a daily basis in First Nation communities.
- Show how First Nations provide and maintain infrastructure and address the needs of members, residents, visitors, and businesses.
- Show how adequate infrastructure capacity for First Nations supports existing and new development, including closer coordination between economic development and capital improvements programming.

These community success stories feature contributions from tax administrators, leaders, community members and taxpayers. The videos also reflect the diverse nature of the communities that have benefited from property tax in terms of size of community, geographic location, and type of taxpayer (residential, commercial and utilities).

The FNTC continues its work on filming, editing and publishing videos as they are captured. To view videos that have been published to date, please visit :

www.fntc.ca/videos



Community Profile: Tk'emlúps te Secwepemc

The effective management of the Tk'emlúps te Secwépemc (TteS) property tax system provides a snapshot of the possibilities when First Nations successfully implement their tax jurisdiction. As the pioneers of taxation authority, TteS has been able to move forward with clear results such as employment, strengthening community and building infrastructure through property tax implementation.

Tax dollars collected go back into the community to improve services including fire protection, policing services in conjunction with the rural detachment, garbage, recycling, snow removal and City of Kamloops user fees for those properties connected to the city's sewer. As well, some property tax dollars go toward strategic planning initiatives and cultural incentives such as the Secwepemc museum, heritage park and the pow wow arbour.

The Arbour

While TteS has many accomplishments, the visual crowning glory is undoubtedly the arbour. This magnificent structure seats 2,500 people and is home to one of the largest celebrations of Indigenous culture and heritage in Western Canada: the Kamloopa Pow Wow. Thousands of visitors witness the storytelling, song and dance in traditional regalia in this annual celebration. However, the pow wow holds special significance for Tk'emlúpsemc (Kamloops people). It celebrates their heritage, builds community, and teaches children traditions and values.

The first official Kamloopa Pow Wow in the arbour opened on the site in conjunction as part of the 1993 Canada Games. Canada Games athletes, dignitaries, tourists, locals, other First Nations and TteS community members joined together to celebrate the achievement. For many, it was the first public demonstration of their right to proudly celebrate their culture and heritage in a long time.

The Arbour and Taxation

At that time, the community was already into their second year of collecting tax revenue.

While building the arbour was an organizational and construction feat, proper maintenance ensures it stands for many generations. Ongoing dedication from TteS and property tax revenue make this possible. Currently property tax dollars contribute each year to the maintainence and improvement of the arbour and grounds.

Since construction, it is estimated TteS has spent well over \$1 million on improvements to the water and sewage systems, landscaping and out buildings, such as washrooms and vendor space. These improvements would not have been possible without property tax. Revenues earned in the community, stay in the community.

The Kamloopa Pow Wow has grown into a major annual event that draws visitors from nearby communities and around the globe. TteS continues to strengthen ties with local businesses and advocates for community fiscal independence. Consequently, the arbour rarely sits idle.

Community members and local residents utilize the spacious grounds for graduations, weddings, funerals, memorials, movies, and trade events, such as RV and boat shows. These continue to generate revenue for TteS and the arbour is now a trusted local venue.

The pride expressed for the arbour goes beyond admiration for a job well-done. It also serves as a reminder of the importance of community and the strength of the Tk'emlúpsemc heritage. The demands of today's world include managing land and assets properly. Just as their ancestors before them, the Tk'emlúpsemc of today will continue to find innovative ways to persevere and prosper. It is in their best interests to direct property tax dollars where they are needed for a thriving community and future.

Through solid governance, Tk'emlúps te Secwépemc will continue to build education, infrastructure and community services for all. Tax revenue is an important vehicle that provides what they need to ensure the physical, mental, emotional and spiritual well-being of the citizens and community as a whole. (•)



An interview with FNTAA President Ernest Jack



The First Nations Tax Administrators Association (FNTAA) is an organization that was created due to the need for an association committed to advancing the professional administration of First Nation property taxation systems. The FNTAA supports its members by hosting an annual national forum, distributing newsletters and information bulletins, providing mentors to fellow tax administrators, promoting education opportunities and advocating for best practices.

Recently, *Clearing the Path* had an opportunity

to sit down with FNTAA President Ernest Jack to learn more about the FNTAA and the benefits of membership.

Can you provide a brief overview of the FNTAA and how the association supports First Nation property tax administrators?

The FNTAA was founded about 23 years ago with the purpose of introducing a networking system to share information on a timely basis since it was such a new field and tax administrators needed a way to support each other. One of the big things we came across was there wasn't a means to promote professional development. How can we all learn? How can we all benefit from having an opportunity to meet once a year and take good ideas back home to our communities? That's where we started.

From there, tax administrators began asking why don't we have classes? Why don't we have professional development? So we had to ask ourselves, how do we do that? That's how Tulo was formed. A committee was created by the FNTC and the FNTAA and we worked hard for a few years beginning in 2006 to develop a partnership with Thompson Rivers University and create and endorse the curriculum. Starting in 2008, it took three years for the first cohort to complete the program and graduate in 2011. From that time, there have been about 50 graduates who have gone through the program. We consider that a remarkable success and a huge step in the advancement of our professional development and is a tribute to tax administration as a profession.

How does Tulo support First Nation property tax administrators?

Tulo offers the professional aspect of our

profession through advanced knowledge and fresh thinking. It captures unique aspects of our field and illustrates them in an academic and yet innovative format through a blend of instruction, role plays and extensive case studies.

Can you explain the Certified First Nations Tax Administrator designation and why a professional designation is important?

The CFNTA designation demonstrates you have advanced knowledge and skills in the field and shows you are committed to continuing professional development through membership and especially attending the annual conference. As taxation is such a new area for some First Nations, it is important for tax administrators to be able to demonstrate they have skills and qualification to receive salaries commensurate with their skills and the value they add to their administrations.

It also serves to advocate for continued professional development as one of the criteria for maintaining the designation is annual attendance at our conference to stay informed and learn about how other tax administrators are managing similar challenges in their communities. It is essential to have certified people with extensive experience serving our community and recognition of tax administration as a profession is key.

This profession is real and it is the future of all First Nations looking to build a solid foundation of administrative capacities to deliver the best, most up to date property tax regimes possible. •

Images below feature the Tk'emlúps te Secwepemc, a leader in effective property tax system management.



Profile: Commissioner Price



Randy Price is a chartered accountant and respected natural gas pipeline industry tax professional from British Columbia with 30 years experience in taxation. He has extensive experience with First Nation tax issues as they relate to the interests of non-Aboriginal commercial taxpayers, particularly in his time as Vice President at Westcoast Energy Inc. and Duke Energy Corporation between 1994 to 2003 and is currently consulting, in association with PriceWaterhouseCoopers (PWC).

Clearing the Path recently had the opportunity to sit down with Commissioner Price to discuss his experience and involvement with FNTC.

First I'd like to ask a bit about your background in the energy industry?

During my years at Westcoast Energy, I acquired a keen interest in aboriginal affairs and was part of the team that developed a number of initiatives to improve the opportunities for First Nations that were in the geographical area of our operations in BC, Ontario and New Brunswick as our pipelines crossed a number of reserves and traditional territories and we had both commercial and utility interests.

After retirement, in 2004 I was part of a team working with the Gwich'in Tribal Council of Inuvik, an Inuit tribe, negotiating an access and community benefits agreement with the proponents of the Mackenzie Valley Pipeline. With the help of the ITAB, we supported the Gwich'in and the First Nations south of Inuvik in making the decision that property tax should be a key demand in the negotiations, as getting fiscal powers and the revenues that flow from them make aboriginal governments more politically and economically independent. All successful nations in the world have fiscal powers and levy taxes.

What brought you into the field of property taxation?

I had responsibility for property tax in 1990 and for the last 13 years of my employment with Westcoast Energy, which largely corresponded to the commencement of First Nations receiving the right to levy property taxes following the "Kamloops Amendment" to the *Indian Act* in 1988.

I keenly followed First Nations' acquisition of property taxation powers through the years after first listening to [Chief Commissioner] Manny Jules, then a member of the Kamloops Indian Band Council, at the 1978 Canadian Tax Foundation in Montreal outlining his vision for a First Nations property tax regime; then seeing his vision materialize through the Kamloops Amendment to the *Indian Act* in 1988, to the creation of the ITAB; and finally through the seven years it took to deliver the FMA in March 2005.

As Westcoast Energy's pipelines ran through seven reserves, some First Nations began to assert jurisdiction for property tax and tax bills began to arrive from new sources.

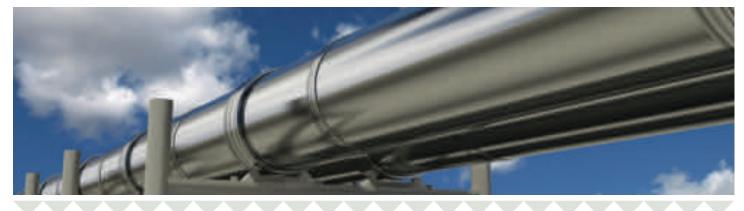
From your perspective, what is a concern taxpayers may have in respect to First Nation taxation?

The biggest concern of large utilities was simple, they bore the highest property taxes levied by both non-aboriginal and aboriginal taxing authorities. Westcoast Energy's property tax in the 1990s was \$60 million dollars which was 12% of its gross revenue. It was the largest property in BC in any industry. Also, it is important that tax rates and the assessment approaches to calculating the taxable/ assessed value be predictable and materially the same for all taxing jurisdictions in BC. The FMA and the FNTC Standards help to harmonize the non-aboriginal and aboriginal tax regimes.

In light of the Tsilhqot'in decision, the FNTC has done extensive research around the concept of an Aboriginal Resource Tax. In your view, how would such a tax help in moving development along?

Because of my work in aboriginal affairs at the community level, I was an early believer in what property taxes could do to improve the lives of First Nations peoples living on reserves. The 2014 Tsilhqot'in decision in the Supreme Court of Canada offers First Nations a significant opportunity to reduce poverty on reserves by opening the window to expanding their share of resource revenues beyond the boundaries of the reserve into their traditional territories. The Aboriginal Resource Tax (ART) is a concept the FNTC is working with the Tsilhqot'in and other nations that want to benefit from the Supreme Court Decision.

The ART is being structured to carve out a share of the total taxes that a resource investment can deliver. This means that it is not an add-on tax but a sharing of the fiscal tax field between aboriginal and non-aboriginal governments. An important additional benefit is that an investor/developer, by agreeing to pay the tax levied by the First Nation(s) respects the infringement on their aboriginal title and can get on with the resource investment. We believe an ART can avoid lengthy negotiations and court battles which can take decades to settle with their attendant staggering costs and is the best option for all parties in terms of growing economies and creating prosperity for First Nations.



The Canadian Property Tax Association – Bringing Together Professionals in Taxation





Brian Dell Executive Vice President, CPTA

Clearing the Path recently spoke with Brian Dell, executive vice president of the CPTA, and asked him to inform our readers on the work of the CPTA.

I am delighted to have this opportunity to give the readers of *Clearing the Path* a bit of insight into the Canadian Property Tax Association (CPTA). Our organization has had the privilege of working with the First Nations Tax Commission (FNTC) for the last 10 years, providing commentary and support on FNTC legislative reform and implementation of property tax initiatives. Prior to formation of the FNTC, the CPTA worked closely with the former Indian Taxation Advisory Board.

The CPTA was founded in 1967 and "is a national organization providing a forum for the exchange of ideas and information relating to both commercial and industrial property tax issues arising across Canada". The CPTA consists of four regional chapters being British Columbia, Ontario, Quebec and Eastern Canada, and Western. A Board of Directors oversees the membership and operations of the CPTA on a national level and provides guidance and support to the four Chapters, with each Chapter having its own Executive Committee. On a regional basis each Chapter brings its expertise to a diversity of issues in the area of property taxation, whether it be commentary on provincial legislative change or more localized assessment practices.

The constitution of the CPTA sets the aims and objectives of the organization as follows: to provide a forum and information exchange in the field of assessment and taxation of property to promote the equitable assessment of property tax purposes along sound and uniform lines to study existing and proposed legislation and make representations to Governments to perform such other functions as are consonant with the foregoing purposes.

Consistent with its objects, the focus of the CPTA is to advocate from the perspective of the taxpayer, keeping in mind recognition that revenues generated from a fair distribution of property tax across the entire assessment base are vital to the public need and good government. In furtherance of its objectives the CPTA draws from its diverse membership which includes in-house and external property tax consultants, assessors, appraisers, legal practitioners, and property tax officers within various public and private organizations.

The CPTA meets its objectives by bringing together various professionals in taxation through an open flow of information and knowledge relating to the property tax industry. Among the tools employed by the CPTA to keep its membership informed of current issues and developments are education seminars and a bi-monthly newsletter, Communication Update. In the fall of each year our members gather at a National Workshop for 3 days of learning seminars, and equally important, the opportunity to network with other experts from across Canada.

In addition, each Chapter organizes its own education seminars, breakfast or luncheon meetings, round table meetings or other functions to keep the membership connected and informed. The CPTA also takes an active role in consultation with government and participates in various adhoc stakeholder committees providing insight from the taxpayer's point of view.

We at the CPTA understand the challenges associated with working in an environment were there are numerous diverging opinions, whether they are issue specific or of national reach. Elements of regional interests and local economy must often be balanced against global principles. As is often said, there is seldom one single right answer to any question, however through openness, transparency, an appropriate exchange of information, and mutual respect and professionalism, collectively we can strive to achieve the best answer concurrent with the times.

The FNTC has made strong progress towards fostering open, fair and transparent property taxation on first nation lands. The hallmarks of a healthy property tax regime, from a taxpayer's perspective not only involves transparent legislative and regulatory processes, but also engages full disclosure of how an assessment has been prepared, the existence of an impartial and independent assessment review system, while all leading to the comfort that there exists in any local a fair distribution of tax burden.

The FNTC has made significant inroads in promoting a clear and discernible path for property taxation regimes on first nation lands. We at the CPTA look forward to forging the relationship between our organizations through continued and productive dialogue.

[CTPA] is a national organization providing a forum for the exchange of ideas and information relating to both commercial and industrial property tax issues arising across Canada."



Proposed Amendments to the Standards for First Nation Annual Expenditure Laws

Standards established by the First Nations Tax Commission (FNTC) reflect best practices in property taxation, and are designed to support First Nation economic growth, First Nation jurisdiction, property tax harmonization, and the interests of all stakeholders in the First Nation property tax system.

Under the *First Nations Fiscal Management Act* (the "Act"), the FNTC reviews and approves laws. Section 35(1)(a) of the Act gives the FNTC the authority to establish standards, not inconsistent with the regulations, respecting the form and content of local revenue laws. The standards established by the FNTC are additional requirements and, together with the Act and its associated regulations, form the regulatory framework governing First Nation taxation under the Act.

As a matter of policy, the FNTC seeks public input prior to introducing or significantly amending its standards. This input is critical in developing standards that are acceptable and effective for participating First Nations and their taxpayers.

At its June 2016 meeting, the FNTC approved proposed changes to the Standards for First Nation Annual Expenditure Laws. Annual expenditure laws are local revenue laws made under paragraph 5(1) (b) of the Act. The proposed amendments to the Standards include changes to the interim budget requirement and the use of contingency reserve funds.

Interim Budget Requirement in First Nation Expenditure Laws

The interim budget requirement was introduced in 2012 to address a potential legislative gap in the authority for First Nations to expend local revenue throughout the budget year. An amendment to the Act (section 13.1) which addressed the potential gap, received Royal Assent in 2015, and came into force in April 2016.Accordingly, the FNTC is proposing to remove the interim budget requirements in the FNTC Standards.

Contingency Reserve Funds

Another proposed change concerns the use of contingency reserve funds. Contingency reserve funds (CRFs) are intended to help governments remediate the adverse financial impact of unforeseen events and downturns in the economy. Several First Nations have established CRFs in their expenditure laws.

Under the current Standards, budget allocations to these reserve funds must come from the previous year's surplus. The proposed change would remove this restriction and enable First Nations to allocate up to 10% of the current year budget to the CRF, provided that the CRF does not exceed 50% of the current year budget.



Other Amendments

Other proposed amendments to the Standards reflect recent amendments to the Act including adding "payments in lieu of taxation" in the definition of local revenues, and ensuring that section 8 of the Standards (reserve fund requirements) applies to First Nations with section 83 *Indian Act* by-laws added to the FMA Schedule after April 1, 2016.

The FNTC is seeking public input in respect of these proposed amendments to the Standards. If you wish to learn more about the proposed changes, please contact the FNTC at mail@fntc.ca or by telephone at (250) 828-9857. Electronic versions of the proposed Standards (changes are highlighted in red) are available at www.fntc.ca.

Please direct your written comments to the FNTC on or before October 28, 2016. •





First Nations Tax Commission

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