

CLEARING THE PATH

FIRST NATIONS TAX COMMISSION

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SPRING 2010



Annual Laws: 2010 Changes

For most First Nation tax authorities, April and May means the beginning of the tax rate setting process. Last fall, the First Nations Tax Commission (FNTC) made a number of changes to its Standards concerning Annual Laws. These changes are designed to accommodate the unique circumstances of First Nation tax authorities, promote transparency, and protect taxpayer interests. The changes include:

Non-assessment based property tax rates

Some First Nations may now use non-assessment based property tax rates. The standards were changed to accommodate this unique form of assessment in cases where a First Nation charged these types of tax rates before their entry into the FSMA or where the First Nation's reference jurisdiction charges tax rates in this manner.

Multiple Rates for a Classification

Several First Nations wish to mirror their reference jurisdiction's rates even in circumstances where the reference jurisdiction establishes more than one rate per class. The Standards now provide for this practice.

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Supreme Court Justice Rothstein and Mr. Jules shake hands as Brian Crowley from the MacDonald Laurier Institute looks on at the launch of *Beyond the Indian Act* in Ottawa, Ontario on March 23, 2010.

First Nation Property Ownership: International Symposium on Land

On March 16-17th, 2010, the FNTC, in cooperation with the International Property Tax Institute, BC Assessment Authority, and the BC Ministry of Aboriginal Relations and Reconciliation held a symposium called "Land: The Economic and Social Platform for First Nations."

There were over 100 delegates in attendance from various First Nations, sponsoring organizations, and as far away as Australia. Among the topics discussed were: Land Title Registration; the Nisga'a Land Title System; Economic Potential of First Nation Lands; Property Assessment and Taxation; and Land and Indigenous Australians.

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Message from the Chief Commissioner



The future for property tax collecting First Nations looks bright. A recent survey of FSMA First Nations that have completed transition revealed that infrastructure projects including: water, sewer, roads, buildings and a breakwater are ready for \$22 million in financing and construction. While there is still a lot of work to do, it is feasible that these First Nations could be the first to securitize borrowing from the FNFA. Last year almost \$70 million in property tax revenue was collected by First Nation governments. This revenue is more than the total property tax revenue collected in the province of PEI. Most importantly, our communities are using these revenues to provide quality local services and build economic infrastructure. I am happy to announce that this year the Commission will be working on two initiatives to help grow First Nation economies and expand our revenue raising powers.

First, FNTC will continue to help First Nations implement their full range of FSMA revenue raising powers. We have completed standards and sample laws to implement development cost charges laws for interested First Nations. The Commission is also working to enable the business activity tax potential in the FSMA and will be developing a policy framework and model laws to ensure that this FSMA tax power is available for interested First Nations. We also look forward to working with First Nations who have broader tax powers under recently signed treaties to ensure they receive the full economic and social benefit from their fiscal powers.

Second, you are probably aware of the First Nation Property Ownership initiative that I am leading. Our objective is to develop optional legislation that will transfer underlying title of our existing lands to us and enable a range of individual property rights, including fee simple. I hope you have received my discussion paper about this, called the "First Nations Property Ownership Initiative – A First Nation Led Legislative Proposal". I believe that this initiative could unleash billions of dollars of dead capital buried in our lands while ensuring that our underlying title is always maintained. I hope you don't hesitate to contact me should you wish to discuss this proposal further.

Lastly, I would like to note the passing of a colleague and very dear friend, Wayne Haimila. Joining us in the mid-1990's, Wayne was instrumental in the work of the Indian Taxation Advisory Board, and virtually every initiative we tackled. His policy advice over a wide spectrum of issues, his intellect and experience, and most importantly his friendship, will be greatly missed. He certainly was one of the original trailblazers, clearing the path for First Nation jurisdiction and opportunity.

C.T. (Manny) Jules
Chief Commissioner

Beyond the Indian Act Launched

On March 23, 2010, authors Tom Flanagan, André Le Dressay and Christopher Alcantara launched their new book, *Beyond the Indian Act: Restoring Aboriginal Property Rights* in Ottawa, Ontario. About one hundred people attended the book launch, including Chief Commissioner Jules, who wrote the foreword in the book. Mr. Jules said that *Beyond the Indian Act* "is part of an agenda I have been pursuing all my adult life."

mean the creation of a new system that would allow First Nations to choose to have full ownership of property, both individually and collectively. This concept has been praised by Hernando de Soto, world-renowned economist and president of the Institute for Liberty and Democracy: "First Nations 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. *Beyond the Indian Act* provides strategies to correct this so First Nations people can generate wealth in a manner that other Canadians take for granted."

The book supports the idea of a First Nations Property Ownership Act, an initiative he is leading. The realization of this proposed legislation would

The property ownership initiative has also received much positive media attention since the book launch.

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Remembering Wayne Bruce Haimila

September 16, 1949 – March 10, 2010

Wayne Haimila was born and raised in Edmonton. He attended the University of Victoria for his undergraduate studies and obtained his law degree from the University of British Columbia in 1979. He practiced law before becoming an advisor to the Assembly of First Nations and later to the Indian Taxation Advisory Board and the First Nations Tax Commission, where he served for seventeen years, with the last few as Senior Legal Counsel.



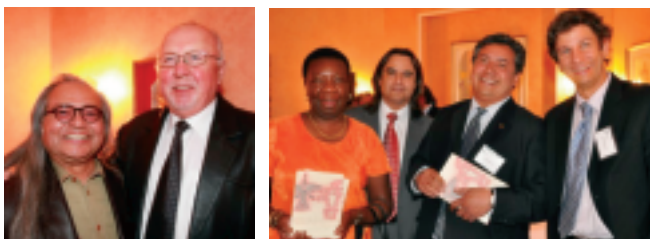
Wayne devoted his career to advancing First Nation initiatives. He was instrumental in some of the most important modern advances for First Nation peoples including the "Constitutional Express", advances in land claim processes and recent legislation, such as the *First Nations Fiscal and Statistical Management Act*.

His proudest accomplishment, however, was the birth of his son Terrence, with Brenda McGregor in 1996. He was also proud of Brenda's daughter Savanna whom he loved like his own daughter. Wayne was equally devoted to his extended family, especially his mother and grandmother, and will be dearly missed for his caring, kindness and generosity.

A published author, Wayne loved reading, travelling and music. He shared his knowledge and experience through his many renowned and hilarious stories. As a valued colleague, his gift to all at the FNTC was his integrity, honour, good nature and humour. He will be sincerely and deeply missed and always remembered as a dear friend.

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Columnist John Ivison, in the March 24th edition of the *National Post*, said is an "...important new book that advocates a simple legislative change that presents perhaps the single best opportunity to improve living standards on native reserves across the country."



Left: Chief Commissioner Jules with Senator St. Germaine.
Right: FNTC staff Lilian Richards and Robert Beaudry, with Tom Maracle and co-author André Le Dressay.

First Nations with CN Railway Interests Review Gateway Options

Representatives from 20 First Nations, as well as officials from the Prince Rupert Port Authority and

Ridley Terminals, met in Prince George, BC to discuss the taxation of CN Railway interests on reserves. The one-day meeting, held February 25, 2010, and convened by the FNTC, provided an opportunity to discuss issues of common concern, review the Commission's research in this area, and to chart a course for future work associated with the Port of Prince Rupert Gateway Project.

The Commission estimates that CNR track runs through, or directly tangent to, about 186 reserves across Canada (about 328 km in length). Further, CNR's mainline from the United States through Manitoba to the port of Prince Rupert, runs through or directly tangent to, an estimated 35 reserves.

The Prince Rupert Port Authority, according to their estimates, is now the fastest growing port on the west coast of North America. The port's goal is to become the leading trade corridor "gateway" between North American and Asian markets. In view of this increased activity, CN - the sole rail service provider to the port - plans to significantly increase its capacity. The FNTC pointed to the need for a working relationship with the impacted First Nations to fully realize the potential economic opportunities associated with the port expansion.

Songhees Nation: Interview with Christina Clarke, Tax Administrator



Meet Christina Clarke, the tax administrator for Songhees Nation since 2003. Songhees has the distinction of being the first community to enact a tax law under the FSMA.

Can you tell *Clearing the Path* readers a little bit about your First Nation?

Songhees Nation has 4 reserves totaling about 130 hectares located on the southern tip of Vancouver Island. Three of the reserves are uninhabited islands. There are about 560 Lekwungen People composing the membership of Songhees Nation. About half of the members live on Songhees Reserve No.1A. The Reserve is surrounded by four municipalities. There are approximately 1200 taxpayers residing on Songhees lands.

When did you first enact a property taxation by-law? Songhees was the first First Nation to enact a law under the *First Nations Fiscal and Statistical Management Act*. How did you find the transition to the FSMA?

Songhees exerted property tax jurisdiction in 1995. In 2005, our Council saw the wisdom in transitioning to the FSMA in order to facilitate economic development through development of our governance system and our physical, as well as administrative, infrastructure. As the first through the process of developing FSMA Local Revenue Laws, we received tremendous support from the FNTC. The transition meant a considerable amount of time and effort but with support from Chief and Council, the membership and the taxpayers, we moved through it smoothly. We continue to move forward with implementation of our Financial Administration Law and eventual certification by the Financial Management Board.

What type of taxable property is located on your reserve?

We have 662 folios, 652 are residential, including mobile homes, townhouses and an apartment complex. We have 5 utilities and 6 businesses.

How has having property tax jurisdiction benefited Songhees?

Property taxation has contributed to local government development by engendering 'outside-the-box' thinking to bring us beyond simple dependence on government transfers. It has led us to consider how our laws impact the value of land and economic opportunities for our members.



The above truck is used in the Songhees Nation Bylaw Enforcement system which was developed with tax revenue dollars.



Songhees Nation also used tax revenue for road paving, sidewalks, a drainage upgrade system and a playground.



Tax revenue contributes to capacity building for government and administration, as well as community development, such as the open house (above left) and totem pole (above right).

What would you like to see the tax revenue used for? Are there development plans in the works?

Beyond the provision of services, local revenue has been used to contribute to capacity building for our government and administration. We have used tax revenues for community development in the form of a new playground, road paving, sidewalks and a drainage system upgrade. Tax revenue has been used to create a Bylaw Enforcement system. We use tax revenue for community gatherings which are open to all residents of the reserve.

Tax Revenue will also contribute to the development of a Multi-Purpose Facility which will include a gymnasium, conference centre, health facility, education and administration centre.

What type of response do you get from your membership about property taxation?

Our members have occasionally expressed disinterest in property taxation. Efforts have been made in recent years to make visible contributions to the community using property tax revenue and to increase understanding about the relationship between property taxation, governance systems and economic development.

What is the perspective of the taxpayers and your relationship with them?

Songhees has an excellent rapport with the Songhees Taxpayers. The Songhees Ratepayers Association was formed in 1995 and meets with Chief and Council on a regular basis to discuss matters of mutual concern. The taxpayers were pleased with our decision to formalize and expand this process with an FSMA Taxpayer Representation Law.


Taxpayers were invited to participate in the development of the proposed law. The Songhees Taxpayer Advisory Committee will work closely with the property tax administrator and Chief and Council to ensure the voice of the Songhees Taxpayer is heard. We hold an Annual General Tax Meeting and we distribute quarterly newsletters to keep communication lines open.

What is the greatest challenge you face moving forward with economic development?

Insecure Land Tenure is our biggest challenge. We do not have our own land code and our members are disillusioned by the Indian Affairs lands management system. The members have allowed their leases to lapse, leaving us with nearly all the commercial properties under 'buckshee' leases. Without registered leases, the property values are impacted and the investment climate is tarnished.

What is your favourite accomplishment as a tax administrator?

We are certainly very proud of being at the forefront of FSMA implementation and I am proud of my contribution to the process. However, my favorite accomplishment is facilitating the ongoing dialogue between taxpayers, band members and the leadership as we consider how to maximize the benefits of property taxation for the Songhees Nation and its 'investing' taxpayer residents.



CPTA 44th Annual National Workshop

The Canadian Property Tax Association will hold its 44th Annual National Workshop in Québec City on September 26 to 29, 2010. Founded in 1967, the CPTA is a national organization which provides a forum for the exchange of ideas and information relating to commercial and industrial property tax issues arising across Canada. For more information, please visit the CPTA website at www.cpta.org.



FNTAA Annual National Forum

The First Nations Tax Administrators Association will hold its 17th Annual National Forum on First Nations Property Taxation on September 15th and 16th, 2010. The forum will be held in Edmonton, Alberta. For more information, you may visit the website at www.fntaa.ca.



2010/2011 Tulo On-Campus Schedule

Tulo delivers certificate and diploma programs in First Nations Tax Administration and First Nations Economics in partnership with Thompson Rivers University in Kamloops, BC. The following schedule shows the on-campus courses offered in 2010/2011:

June 7 to June 11, 2010

APEC 164: Administration: Tax Notices, Collection & Enforcement

This course is about managing a First Nation and/or local government tax administration system. It will focus on taxpayer notification, local revenue billing, collecting and enforcement. Best practices from systems across Canada will be presented along with the regulatory requirements associated with the FSMA. A substantial portion of the course will be devoted to using the FNTC's specialized software for local revenue administration.

June 21 to June 25, 2010

APEC 162: Establishing First Nation Tax Rates & Expenditures

This course is a detailed overview of establishing property tax rates through a local services budget. It will focus on estimating local service costs, creating preliminary budgets, working with the council, estimating local revenues and determining, where applicable, tax rate multiples. Although it is intended for First Nation property tax administrators using the FSMA authority, it is applicable to any local government administration. Part of the course will be devoted to using a custom spreadsheet application for local government budgeting and tax rate setting.

August 30 to Sept 3, 2010

APEC 163: Assessment and Assessment Appeals

This course is an introduction to property markets and property assessment. It will focus on property assessments and assessment appeals in Canada and under the authority of the FSMA or s. 83 of the *Indian Act*. It will discuss the FSMA regulatory requirements for assessments and assessment appeals. It is relevant to First Nation and local government tax administrations.

Sept 20 to Sept 24, 2010

APEC 165: Communications, Taxpayer Relations and Dispute Resolution

This course is about establishing a mutually beneficial working relationship between First Nation tax authorities and taxpayers. It will focus on interest-based negotiations, communication templates for taxpayers and media and best practices in taxpayer relations. It will also provide an overview of the informal and formal dispute resolution processes related to the FSMA and the First Nations Tax Commission.

Nov 29 to Dec 3, 2010

ECON 265: Investment Facilitation on First Nation Lands

It is four to six times more expensive to facilitate investment on First Nation lands than it is off First Nation lands. This course is about what causes these higher costs and what can be done to reduce these costs. It will introduce the concept of transaction costs. It will discuss how private and public investment work together to create economic growth. The course will focus on the interests of investors and what First Nations can do to facilitate investment on their lands. It will be of interest to both First Nations and interested investors.



Photos above show students in class at the Tulo Centre of Indigenous Economics in Kamloops, BC.

Jan 10 to Jan 14, 2011

APEC 166: Service Agreements and Joint Contracts

This course is about developing service and joint agreements with local governments and/or private partners. It will focus on local service agreements between two local governments or local service agreements private contracts. It will also focus on the delivery of local services or the construction of local infrastructure through public private partnerships. The course is intended for First Nation and local government tax administrators. It will utilize the First Nations Tax Commission's spreadsheet application to assist service agreements negotiation.

Feb 21 to Feb 25, 2011

APEC 164: Administration: Tax Notices, Collection & Enforcement

This course is about managing a First Nation and/or local government tax administration system. It will focus on taxpayer notification, and local revenue billing, collecting and enforcement. Best practices from systems across Canada will be presented along with the regulatory requirements associated with the FSMA. A substantial portion of the course will be devoted to using the First Nations Tax Commission's specialized software for local revenue administration.

March 14 to March 18, 2011

ECON 270: Economic Feasibility and Impact Analysis on First Nation Lands

An introduction to cost-benefit analysis as it relates to investment activity on First Nation's land. In order to understand cost-benefit analysis students will acquire skills and knowledge on the time value of money as well as basic statistical concepts. The course will be delivered using real case studies as it relates to First Nation projects.

For more information on Tulo programs and registration information, please visit the Tulo website at www.tulo.ca or call 250-828-9881.

The Tulo 2010/2011 on-line schedule will be available soon.

Annual Laws — 2010

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Use of Reference Jurisdiction Rates

The Standards accommodate those First Nations that, for competitive or contractual reasons, must use identical rates to their reference jurisdiction. Before the 2008 freeze on assessments in BC, it was assumed that First Nations would use identical assessment methods when matching rates. However, this freeze on assessments meant that not all First Nations followed the same assessment methodology. The Standards were changed to ensure that First Nations use identical assessment methods when matching the rates of the reference jurisdiction.

FNTC will now only review average tax bills against the national rate of annual inflation. Where an average tax bill increase exceeds the national rate of annual inflation, the First Nation can still use a comparison to their reference jurisdiction to establish the rate. First Nations will be asked to furnish the necessary information for the comparison. A consequence of the change to the reference jurisdiction average tax bill rationale is that there is no longer a need to compare three year average tax bill increases to the compounded rate of inflation. This is because the annual inflation rate comparison is the best indicator and will be used in most cases. As a result, this provision was deleted.

Taxpayer Notice of Proposed Tax Rates

Subsection 8.1 of the Standards requires First Nations to provide notice in the event that the average tax bill increase exceeds section 7 requirements. A new subsection 8.2 has been added for greater clarity as to how First Nations should notify taxpayers when a proposed rate will lead to average tax bills in excess of FNTC Standards. Notice must be provided on the First Nation's website, posted in a public place, or sent in-writing to each taxpayer. Alternatively, information can be provided through a public meeting.

Reporting Grant Expenditures

Several First Nations have inquired on the use of grants, particularly on their ability to provide direct grants to businesses. Grants to for-profit entities work as an incentive to help the government achieve a public purpose or goal. These public purposes include neighbourhood and economic revitalization, heritage site preservation, health promotion, etc. In order to promote greater transparency and accountability to taxpayers and members, the FNTC Standards now require First Nations to report grant programs on the Schedule to their Annual Expenditure Law. First Nations are to identify their programs and the budget allocation. A reporting line to the budget in the Schedule has been added.

For more information on these changes, please contact the FNTC at (250) 828-9857.

FNTC Approves Standards for New FSMA Laws

In March 2010, the First Nations Tax Commission approved Standards for Taxation for the Provision of Services Laws and Standards for Taxpayers Representation to Council Laws. The Taxation for the Provision of Services Law is a local revenue available under paragraph 5(1)(a) of the *First Nations Fiscal and Statistical Management Act*. It is an important tool for infrastructure financing which provides for the taxation of services above and beyond general property taxation. Local government examples of this form of taxation include local improvement taxes, parcel taxes, and service charges designed to pay for such things as roads, water systems, and sewer systems.

Taxation for the Provision of Services Laws are based on “benefiter pays” principle and are intended to be ‘taxpayer driven’; however, First Nations can initiate the project/tax. The service area would typically be a portion of the reserve that receives the service. Thus far, Westbank First Nation is the only First Nation that has this type of law in place (enacted under section 83). In addition to Standards, the Commission also approved a sample Taxation for the Provision of Services Law to assist First Nations in developing their own laws.

The Taxpayer Representation to Council Law is a local revenue law made under paragraph 5(1)(c) of the FSMA. This optional law is intended to improve taxpayer relations by establishing procedures so that taxpayers and Council can articulate their concerns in a more coherent and effective manner. In addition, the law will provide dispute resolution procedures in order to resolve disputes efficiently. Several First Nations have shown considerable interest in developing a Taxpayer Representation to Council Law. FNTC Standards establish the following core elements:

- **Notice of Proposed Tax Rates and Draft Budget** – At a minimum, the law must provide for a five-day notice of the proposed rates and draft budget.

- **Access to Documents** – The law must provide for access to the following specific tax-related documents: budgets, audits, resolutions, and agreements. The law must describe the types of information that may be excluded from being accessed by taxpayers under the law.
- **On-Going Communication** – The law must describe the methods that will be used to ensure there is on-going communication with taxpayers.
- **Dispute Resolution** – The law must provide for local dispute resolution procedures for taxpayers and First Nation representatives.

Additional components could include taxpayer associations, taxpayer advisory bodies, and the use of petitions. The standards do not set any requirements for the use of these optional components. A sample Taxpayer Representation to Council Law has been developed consistent with the proposed standards and features, required provisions, and optional provisions to accommodate the unique situation of First Nations wishing to use this law.

For more information on standards, sample laws and how First Nations can benefit from these, contact Tracey Simon, FSMA Registrar.



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