



FNTAA 18th Annual National Forum

On September 14, 15, and 16, 2011, the First Nations Tax Administrators Association (FNTAA) held its 18th Annual National Forum in Little Shuswap Lake, BC.

FNTC Deputy Chief Commissioner, David Paul, discussed what property tax on reserve could look like by 2050. Westbank Chief Robert Louie spoke of the importance and future impact of land management on First Nations. Presentations were also made by other FSMA institutions, Tulo Centre and on the First Nations Market Housing Fund. Ms. Deanna Hamilton was honoured for her dedication and commitment to the field of First Nation tax administration.



Mrs. Tracey Simon, FSMA Registrar and Records Manager for the FNTC, addresses tax administrators at the FNTAA conference.

Commission Responds to BC Carbon Tax Policy

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The Advisory Council also advise that "the fact that taxpayers on Westbank First Nation Land will receive the benefit from 'other carbon tax recycling measures including reductions in personal and corporate income taxes' is not relevant to the argument. All BC citizens will receive these benefits. This does not mitigate the unfair treatment for those residing on First Nation lands who cannot receive a benefit that is received by the next door neighbours."

The Commission supports maintaining an open dialogue regarding future tax changes and coordinating changes in tax policy between First Nations and the BC Ministry of Finance, in an effort to ensure that potential First Nation fiscal and investment impacts are taken into consideration in advance of changes being made, and that the concerns of taxing First Nations and their taxpayers will be addressed.

CPTA and FNTC Sign MOU

In November 2011, Canadian Property Tax Association (CPTA) President, Grace Marsh and FNTC Chief Commissioner, Manny Jules, signed a Memorandum of Understanding (MOU). The FNTC and CPTA have had a long-standing relationship over many years. The CPTA 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.

In the MOU, the organizations agree to continue to meet from time to time, with a view to maintaining an open dialogue concerning First Nations property taxation, and property taxation in general, by discussing matters of mutual concern, sharing information on emerging regulatory or policy initiatives, and identifying initiatives which may be undertaken jointly to achieve organizational objectives.

Ms. Marsh said: "On behalf of the Board of Directors of the CPTA, I am extremely pleased to be signing the MOU along with Chief Commissioner Jules. The unanimous CPTA Board support of the MOU demonstrates our ongoing commitment to the FNTC and their objectives of an efficient, responsive property tax system."

In September 2011, the CPTA held its 45th Annual Workshop in Niagara Falls. The meeting took into consideration the plentiful and diverse issues facing property taxation in Canada today. Chief Commissioner Jules made a presentation on the importance of regulating to improve the First Nation investment climate.

FNTC has a similar MOU with the FNTAA which is available on the website, www.fntc.ca.



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TRU Honours First Tulo Centre Graduates

On October 7th, 2011, eleven graduates of the First Nation Tax Administration program — formed in partnership between the First Nations Tax Commission (FNTC), Tulo Centre of Indigenous Economics and Thompson Rivers University (TRU) in 2007 — were awarded their certificates in the program at the 2011 TRU Fall Convocation. The program is the first of its kind in Canada and is aimed at providing its students with the hands-on practical experience to manage First Nation tax systems.

Christina Clarke, tax administrator at Songhees First Nation, was among the first students to graduate from the program. For Ms. Clarke, her education will equip her with the practical tools necessary to implement the *First Nations Fiscal and Statistical Management Act* (FSMA) for her community.

"I was excited to take the Tulo program because there was a lot of emphasis on understanding how to implement the *FSMA* for the benefit of the economic development of First Nations," said Ms. Clarke.

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Tax administrators Christina Clarke and Carlene George pose for a photo after receiving their certificate.

FNTC Seeking Key Improvements in FSMA Final Report

For the past seven months, the FNTC has been engaged in a multi-lateral process to advance legislative changes to improve the accessibility and efficiency of the *First Nations Fiscal and Statistical Management Act*. Officials from Aboriginal Affairs and Northern Development Canada (AANDC) have held a series of meetings with the FSMA institutions regarding the review and possible amendments to the legislation, with a final report to be ready by January 2012. The Minister must present the final report on the seven year legislative review of the FSMA on or before March 23rd, 2012.

Under s.146 of the FSMA, the Minister of AANDC is required to review the provisions of the FSMA and the operations of the institutions, and submit a report to each House of Parliament on that review, including any changes that the Minister recommends relating to the evolution of the mandate and operation of the institutions.

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Message from the Chief Commissioner

With the Christmas season upon us, it is a chance to spend time with family and friends. It is also a time to reflect and learn from the past year, and to plan and hope for the next.

The First Nations tax system has much to celebrate from 2011. We worked together to develop laws and standards to support expanding local revenue. We welcomed 12 new First Nations into the FSMA. We completed our work on the review of the FSMA with your help and with the other Fiscal institutions to help improve the Act. We proudly witnessed the

first graduates from the Tulo Centre of Indigenous Economic graduate with a Certificate in First Nation Tax Administration. And, in seeking to improve our economies, we advanced the First Nation property ownership initiative.

Looking forward to 2012, the new year promises to see new milestones reached for tax administrations. The Commission will continue to work with First Nations to expand their revenue options. We look forward to helping interested First Nations who are in the FSMA implement the first hotel tax and the first business occupancy tax under the new authority. We will be working with First Nations on other revenue options, including taxes for the provision of services and, in the prairies, well drilling taxes. FNTC will continue to help those First Nations who ask us to promote and implement their First Nations Goods and Services Tax systems.

Over the past few months the Commission has been working with a number of First Nations on assessing their borrowing needs and developing borrowing laws to support using their local revenue to secure infrastructure loans. I fully expect that in 2012 we will see First Nations begin to lever their local revenue for the development of new services on their lands that will attract investment and build a strong economy.

Each year at this time, with family and friends gathered, we listen to Christmas music, which is so full of reflection and hope. And as you reflect on the past year and plan for the next, I would like to wish you and yours a very Merry Christmas and a Happy New Year.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

Review of FSMA

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Based on feedback from First Nations using the FSMA, and the FNTC's own experience, the Commission has advanced a number of amendments aimed at facilitating the exercise of First Nations' law-making authorities under the FSMA:

- Notice of laws—The Commission has proposed an approach that better balances the interest of taxpayers with the interest of First Nation governments. Currently, 60 days notice of every property tax law must be delivered to every member and every taxpayer.
- Timing for making annual laws—The Commission is seeking to building in flexibility and consistency with the provincial off-reserve practice across Canada.

- Fees and charges—The Commission proposes that First Nations have the ability to make laws under the FSMA to levy fees and charges related to the provision of certain local services
- Grants-in-lieu—The Commission has proposed changes that would clarify that grants in lieu of taxes are included within the local revenue account.
- Assessment appeals—The Commission has proposed changes that would streamline the assessment appeal procedures in the FSMA.
- Access—The Commission is seeking to improve the accessibility to the legislation so that s.83 *Indian Act* systems can make the transition to the FSMA more easily.

It is anticipated that amendments will be made to the FSMA following the Minister's tabling of the report in Parliament.

"The fundamental economy builder in this country is individual private property rights so that we can enter into partnerships...we want to be able to empower the individual, but also create government institutions so that we can be accountable and be part of the fiscal and governmental makeup of the federation of this land...Without infrastructure, you can't build an economy."

Land Tenure Under the *Indian Act*

Reserve land under the *Indian Act* (which governs almost all First Nations below 60) is Crown land, i.e. the legal title to the land is held by the Crown (federal and/or provincial), and the power to manage the land is federal. Because the land is held by the Crown for the use and benefit of Indian bands, a trust or fiduciary responsibility lies with the Government regarding its management of the land. The land itself is inalienable, and cannot be sold or mortgaged unless the Indian interest in it is yielded by the band to the government ("surrendered").

As far as "Indians" are concerned, they can hold only a right of "possession" of a parcel of reserve land, which can be sold or passed on only to other members of the band. To lease such land to a non-band member requires the approval of the government. Reserve land falls under federal law and is therefore not governed by the vast body of provincial law that governs the normal conditions of property rights in Canada, creating an extensive "regulatory gap".

The land tenure system described (exceedingly briefly) above was designed in the mid 19th century to fit with the then view of how the Indian issue would be solved. It was meant as a temporary measure: Indians would be placed on reserves until they were sufficiently acculturated to hold property in their own right, live independently of government supervision and protection, obtain the right to vote, and become subject to taxation.

Reserves were isolated geographically and legally from the rest of society and were expected to disappear over time as the Indian population entered the surrounding world. Indians were to be granted property rights only when they had decided to leave their former way of life and enter "white" society. Until they did so, they would have to live under the land tenure system of the *Indian Act*, where the land they lived on was owned by the government.

The idea behind this land tenure system was not to incentivize economic activity by the Indian population, quite the contrary; it was intended to incentivize leaving the reserves and the Indian way of life in order to gain the possibility of a "normal" economic and political life.

History, obviously, has not accorded with this view. Yet, the land tenure system of the *Indian Act* continues to exist and to frustrate the economic aspirations of First Nations.

The Essence of FNPO

The essence of the First Nations Property Ownership proposal is as follows:

- First Nations should have the option (requiring majority support of members) to hold the legal title to the land currently held by the Crown as "reserves" under the *Indian Act*;
- Individual First Nations should have the power to transfer title in fee simple (with any restrictions they would deem fit) to individuals without any loss of their jurisdiction over the land despite any possible change in ownership;
- First Nation jurisdiction over First Nation Land should be substantially expanded;
- A number of important safeguards should be included to preserve the First Nation character of the land;
- The new First Nation Land should be registered in a "Torrens" style land registry (which could eventually serve reserve lands as well).



Tax administrators from Penticton, T'it'q'et, Little Shuswap, Kamloops, and Osoyoos First Nations attend the First Nations Tax Administrators Association 18th annual conference. See story on page 8.

FNTC Presentation to Standing Committee on Finance

On Tuesday, November 1st, 2011, Chief Commissioner Jules was among a panel of seven speakers, who were invited to address the House of Commons Standing Committee on Finance during their pre-budget hearings.

Chief Commissioner Jules spoke about the need for creating sustainable infrastructure systems to build economies on First Nation lands and First Nations private property ownership. Many committee members were interested in his proposals, as was evident in the question and answer period that followed.

Chief Commissioner Jules outlined the success of First Nations property taxation for the committee: there are about 140 First Nation tax authorities and, since 1990, they have generated at least \$800 million in local revenues. These First Nation tax authorities have used local initiatives and development of local capacity to bring jobs and business opportunities to their communities and regions but much more can be done. He discussed the fact that First Nations are still tremendously disadvantaged and the investment market does not work as well on their lands as it does elsewhere. The infrastructure is still inadequate and needs to be changed.

FNTC proposed that the key to changing this are in allowing the markets to work on First Nation lands by using local capacities to create sustainable infrastructure systems.

In a brief given to the Committee, Chief Commissioner Jules focussed on an infrastructure proposal, asking the government to consider a whole new approach to providing First Nations infrastructure systems that are integrated into the tax system. The proposal is for the government to work with the FNTC on programs that would aim to develop self-sustaining infrastructure systems. It would mean a shift in focus from developing assets that only meet community needs to developing the fiscal and administrative capacity that will allow First Nations to assume responsibility for planning, financing, building, operating and maintaining infrastructure.

The initiatives that the Commission proposed would accelerate the development of infrastructure systems and include working with the federal government to:

- develop common reporting and planning

requirements to qualify for borrowing using the *First Nations Fiscal and Statistical Management Act* and also Aboriginal Affairs and Northern Development Canada funding;

- make other tax revenues available as local revenues for the purposes of financing infrastructure;
- develop a grant program whereby First Nations could apply for funding for projects that will create the fiscal capacity to assume infrastructure responsibilities; and
- further develop capital planning and management capacity within First Nations using the Tulo Centre of Indigenous Economics.

“What you have to do is create the fundamentals of building an economy,” said Chief Commissioner Jules.

The Chief Commissioner also discussed a proposed First Nations Property Ownership Act. The passage of the act by Parliament would allow First Nations to own their own lands, to put an end to the paternalism of the *Indian Act*, where “designated lands” are described as “a tract of land”.

Allowing the market to operate more effectively on First Nation land, the end result of the Act would be the lower cost of doing business, improved reporting requirements, and less bureaucracy.

The First Nations Property Ownership Act would also allow participating First Nations to create the same property rights that are used in real estate, credit, and investment markets elsewhere in the country. Businesses would be able to work at the same speed with First Nations, using this act, as they do in any other market.

Dave Van Kesteren, (Member of Parliament for Chatham—Kent—Essex, Ontario) commended Chief Commissioner Jules on the alternative approach to reserve land tenure, and was eager to learn more.

Similarly, Brian Jean (Member of Parliament for Fort McMurray—Athabasca, Alberta) called the proposed First Nations Property Ownership Act “fantastic”, and was eager to see the Torrens system put in practice on reserve.

Throughout the question and answer session, Chief Commissioner Jules emphasized the importance of the government’s need to change the philosophical approach to dealing with Aboriginal people as a whole. He stressed the need to create economies, instead of maintaining the current system which is on a ration basis. He also advised that there is a need to “build the capacity within First Nations to be able to sustain and build infrastructure on our own.”

Tulo Graduation

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Her education will soon contribute to the project development of a new wellness centre, presently in the works, which will be complete with a full-size gymnasium, fitness studio, conference facilities, health centre, administration centre and community centre. In attendance at Ms. Clarke’s graduation was Chief Robert Sam of the Songhees Nation, which was the first First Nation to convert its taxation system from under s.83 of the *Indian Act* to *FSMA* laws. He says the award ceremony marks a time of rapid growth and change.

“First Nations in Canada are in transition,” said Chief Sam. “And, we will need more graduates of the Tulo programs to help lead our people down the road to self-determination.”

Board Chair of the Tulo Centre of Indigenous Economics, Chief Michael LeBourdais, said: “We are tremendously proud of our graduates and are looking forward to hearing about their leadership in developing on-reserve infrastructure projects that utilize best practices they have learned from our program. We have the utmost confidence that our Class of 2011 is now uniquely positioned to help First Nation governments unlock their economic potential and create sustainable communities.”

The certificate program is designed to provide students with the practical skills and knowledge to develop First Nation economies, generate tax revenues and create support systems for First Nation investors and taxpayers. In particular, the program provides students with the skill set to implement the *First Nations Fiscal and Statistical Management Act*, which provides a legal and administrative framework for First Nation property tax systems.

Dr. Alan Shaver, President of Thompson Rivers University, who also attended the graduation ceremony, added: “This program reflects TRU’s commitment to Aboriginal learners and is another example of how Tulo provides innovative approaches to serving the needs of our communities in BC and the rest of Canada.”

Chief Commissioner Jules, in his remarks to the graduates and guests at the dinner sponsored by the FNTC on the eve of the graduation, said: “Together, we are one step closer to achieving our collective goals as First Nation governments. We are very pleased to recognize the hard work of the students and the dedication of the instructors who are helping to build on our past for a brighter future.”

For those interested in learning more about the Tulo program, please visit the website at www.tulo.ca.



Tulo graduates, Terry Nicholas, Nicole Casimel, Melinda Nunez-Shular, Katherine Stevens, and Carlene George following the graduation ceremony.



Graduate Jeremy Pilon stands beside Chief Michael LeBourdais, Chair of the Tulo Centre Board.



Members of Sage Hills perform at the celebratory dinner, sponsored by FNTC, for Tulo graduates.



Members of Sage Hills dance with guests at the celebration.



Brian Finlay: A Career in Tax Administration

Clearing the Path sat down with Brian Finlay, longtime tax administrator for the Little Shuswap Lake Indian Band (LSLIB), to ask a few questions about his career and property taxation in his community.

How long were you the tax administrator for Little Shuswap Lake? What would you say was your key accomplishment as a tax administrator?

I began work with the LSLIB in the tax department in 1993 and left the department in 2008 when I was elected to Band Council. I think my key accomplishment was establishing the Tax Department for the LSLIB. In 1993, there were very few taxing First Nation communities and it was a huge learning curve—not only for me but for the rate payers as well. A major part of my job, at that time, was creating a good working relationship with the rate payers as there was a lot of uncertainty and mistrust of the process at the time.

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

Little Shuswap Lake Indian Band is a small First Nation community located between Kamloops and Salmon Arm and is comprised of approximately 320 members of which 180 live on reserve. The leadership of LSLIB is comprised of Chief and two Councillors. LSLIB has Custom Election Regulations, and, therefore, leadership holds 4 year terms.

Little Shuswap Lake first enacted a property tax by-law in 1993. How have things changed, in terms of the collection of property tax, since that time?

Since 1993, the key change I have noticed is the creation of the four institutions of the FSMA that give First Nations the tools necessary to add certainty to their lands. The ability to borrow money at competitive rates for large scale infrastructure projects from a First Nation institution, instead of having to rely on the banks for financing, is one of the more notable changes, in my opinion.

What type of taxable property is located on your reserve?

The bulk of the taxable properties on LSLIB lands are residential properties, with some business and light industry.

How has having property tax jurisdiction benefitted Little Shuswap Lake?

LSLIB is now able to provide services to the

membership and ratepayers. One of the major concerns, when we first took over the jurisdiction, was the lack of visible services from the province to the ratepayers. We now offer more services than were ever offered by the province, and have been able to negotiate service agreements with the Regional District. Tax jurisdiction has also given the community the opportunity to develop our recycling program, garbage pickup, walking paths, a new fire hall, and high speed internet, just to name a few.

Are there development plans in the works?

Currently the LSLIB Chief and Council are in the approval process of a community sewage system for our Scotch Creek IR#4 rate payers. We are nearing the completion of our new fire hall, and plans are underway for a water system on IR#1.

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

For the most part, our membership is supportive of property taxation. Once explained to them, and seeing some of the services that have come out of taxation, we have been able to ease some of the mistrust over our assuming the jurisdiction.

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

Once our ratepayers were engaged in the process they became very supportive. Opening the door to communication has had great benefits to both the rate payers and the LSLIB.

What is the greatest challenge the First Nation faces moving forward with economic development?

I think the greatest challenge to First Nation economic development initiatives is existing INAC policy, lack of financial capacity and the question over land title/ jurisdiction - until First Nations have title over their lands, economic development on most First Nation lands will continue to crawl at a snail's pace.



Mr. Finlay is seen above standing in front of the new fire hall on the Little Shuswap Lake Indian Band, built from property tax revenue.

Metro Vancouver Cuts Funds to LMTAC

Metro Vancouver has been actively involved on the Lower Mainland Treaty Advisory Committee (LMTAC) since 1994. In October, they decided to cut funding to the LMTAC for another six months. In pushing ahead with plans to take control of local Aboriginal issues in the region, Metro planned to form its own Aboriginal committee to deal with First Nations.

The LMTAC is currently made up of 26 local government jurisdictions and provides input to treaty negotiations as an advisor to the Government of BC. Metro spends \$340,000 a year on LMTAC, which also provides other research and advisory services to the regional district on servicing agreements with First Nations and issues concerning non-Aboriginals living on reserve lands.

LMTAC members Alan Nixon (North Vancouver councillor) and Harold Steves (Richmond councillor) wanted to defer the cancellation until June 2012, arguing that the committee has been a huge benefit in helping municipal governments have their issues heard by the provincial and federal governments and concerned that the province won't allow Metro Vancouver at the table if LMTAC no longer exists.

On October 28th, Metro voted to send a letter to the province asking that reserve lands be exempt from municipal boundaries, based on a LMTAC discussion paper that recommended the exemption because of the growing number of non-Aboriginal people moving to First Nation lands. The concern was that those living on reserve lands could have voting powers in the future yet don't pay taxes to local governments.

The FNTC has a long history of facilitating service agreements between First Nations and local governments. The FNTC believes that service agreements have been to the benefit of both local governments and First Nations and have created a platform for mutual prosperity. The issues raised by the development of First Nation economies and the relocation of significant non-First Nation populations to First Nation lands are best resolved at a government-to-government level through good faith negotiations. The fact that these issues are now broadening and deepening to include regional capital planning and appropriate fiscal arrangements is testimony to the success of these past arrangements. It also provides every reason to believe we will build on these successes in addressing new challenges.

Response to BC Carbon Tax Policy

In January 2011, the BC Government introduced several measures aimed at reducing the burden of carbon tax on certain BC property taxpayers. One of the measures was the Northern and Rural Area Homeowner Benefit (NRAHB), up to \$200, for homeowners outside of the Capital Regional District, Greater Vancouver Regional District and Fraser Valley Regional District starting in the 2011 tax year.

Upon learning about the tax relief measures—and that they would not be available for any taxpayers situated on First Nation lands—the FNTC raised the issue with the BC Minister of Finance, Kevin Falcon. The FNTC estimates that taxpayers from 35 taxing First Nations are affected. Residential taxpayers on reserve have made inquiries as to whether First Nations would be offering similar increases to their homeowner grant programs. Since First Nations do not collect carbon tax, they do not have an existing fund available to provide for the enhanced grant. If services are to be maintained at existing levels, expenditures to provide the carbon tax grant would result in a tax increase for the current year.

However, the Minister of Finance advised that the government's policy with regard to the application of the NRAHB did not apply to taxpayers on reserves of taxing First Nations.

In response to this position, the Commission continues to support on-reserve taxpayers in the view that taxpayers on reserve should have the same access to carbon tax relief measures available to similar taxpayers off reserve. It is the provincial government, not taxing First Nations, that has jurisdiction to shift the incidence of taxation from property to the carbon tax in a revenue neutral manner and, therefore, the provincial government is best-placed to provide the carbon tax relief.

The Westbank First Nation (WFN) Advisory Council has also been active in seeking a government response. In a letter to Minister Falcon, the WFN Advisory Council noted that Minister Falcon had erred in stating that the benefits of the NRAHB are not based on "individuals, sectors, businesses, or regions." As they stated, "This is not a logical conclusion to a policy that is specifically based on regions to the point that it is actually named 'Northern' and 'Rural'. Specific regions are excluded from this (the Lower Mainland and Victoria) while the remainder of BC homeowners receive the benefit of this tax recycling, (other than those residing on First Nation lands)."

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