

CLEARING THE PATH

FIRST NATIONS TAX COMMISSION

VOLUME 6

ISSUE 1

SPRING 2012



Leadership Perspective: FSMA Key to First Nation's Economic Future

Chief Paul Gladu of Bingwi Neyaashi Anishinaabek attended the 2012 Governance Development Network Forum. *Clearing the Path* sat down with Chief Gladu to discuss the future of his First Nation.



Chief Commissioner C.T. (Manny) Jules and Chief Paul Gladu at the Governance Development Network forum.

How did the presentation by the First Nations Tax Commission better inform you on the *First Nations Fiscal and Statistical Management Act*?

I appreciated the presentation by Chief Commissioner Jules on the *First Nations Fiscal and Statistical Management Act* and on how property taxation not only acts as the regulatory framework to support investment but as a means of asserting jurisdiction and protecting First Nations' inherent powers. I see and understand the value and benefits of using FSMA specifically in improving certainty to stimulate investor confidence and how it can provide us with the ability to leverage property tax revenues to access low-cost, long-term financing.

How does the FSMA align with the business objectives of Bingwi Neyaahi Anishinaabek?

Our business objectives align directly with the FSMA as we have passed the critical crossroads in asserting our

continued on page 6

First Nations Take Major Steps Toward Debenture Financing

In February 2012, the FNTC approved Borrowing Agreement Laws for the Tzeachten First Nation, Songhees Nation, and Osoyoos Indian Band.

The Borrowing Agreement Law authorizes a First Nation to enter into a borrowing member agreement with the First Nations Finance Authority, and is a prerequisite to accessing debenture financing through the *First Nations Fiscal and Statistical Management Act* (FSMA).

The approval of these laws follows each First Nation's recent Financial Management Certification from the First Nations Financial Management Board. This Certification is important as it instills confidence in the First Nation financial management and reporting systems that ultimately support economic and community development.

Over the course of the next few months, it is expected that these First Nations will begin work on their borrowing laws to finance capital infrastructure with their property tax revenue. Pooling their borrowing needs with other First Nations waiting to be certified, they will form the initial First Nation bond.

WHAT'S INSIDE

- 2 MESSAGE FROM THE CHIEF COMMISSIONER
- 2 COMMITTEE RECOMMENDS FNPO
- 3 ANNUAL TAX CYCLE: SPRING 2012
- 3 IMPROVEMENTS TO THE TAX RATE SETTINGS
- 4 GOVERNANCE DEVELOPMENT NETWORK
- 5 SCC RULING ON PROPERTY TAX RATES
- 5 TAS WEBINARS
- 6 12TH ANNUAL AFOA CONFERENCE
- 7 MAXIMIZING FSMA POTENTIAL
- 8 REGISTER FOR TULO CLASSES



Message from the Chief Commissioner

March 23rd, 2012 will mark the 7th anniversary of the *First Nations Fiscal and Statistical Management Act* (FSMA). This date represents an important milestone for FNTC and the over 70 First Nations who are participating in the FSMA, as the Minister of Aboriginal Affairs and Northern Development Canada (AANDC) will present his Report to Parliament on the progress of the Act.

The FNTC has been working with the other FSMA fiscal institutions and Canada in reviewing the legislation and recommending how the FSMA and our operations can be made more efficient and responsive to the needs of First Nations and their taxpayers. Over the past year, we have met with tax administrators, First Nations and taxpayers to discuss their experience with the legislation and have listened to their insights. We have heard suggestions on how to improve many elements of the FSMA including ways to make the transition to the FSMA faster and administratively more efficient, and the need for more revenue raising powers similar to those of other governments. We have conveyed these recommendations to Canada. We look forward to the Minister reporting on these recommendations to Parliament, and highlighting how the FSMA has led to more transparent and consistent law making, improved taxpayer relations, and greater revenue raising opportunities.

One aspect we hope the Minister notes is the progress towards a First Nation debenture. Just last month, the Commission approved borrowing agreement laws for Tzeachten First Nation, Songhees Nation, and the Osoyoos Indian Band. These First Nations have their financial management systems certified by the Financial Management Board and are working closely with the First Nations Finance Authority to complete their borrowing requirements. We expect other First Nations to follow suit over the next several months. Collectively, these First Nations will form the needed critical mass for a First Nation debenture. Having access to affordable long term financing will have an immediate impact on how First Nations build strong local economies, and we are pleased that many First Nations from across Canada are moving in this direction.

I am looking forward to the Minister's report in the coming weeks. It will not only be an opportunity to celebrate our past successes but one that will enhance a stronger foundation for years into the future.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

Finance Committee Calls on Federal Government to Work with FNTC on FNPO Legislation

The House of Commons Standing Committee on Finance, in its report, "Staying Focussed on Canadian Jobs and Growth," recommended that the federal government examine the concept of a First Nations Property Ownership Act as proposed by the First Nations Tax Commission. The report was tabled in parliament on December 14, 2011 by Committee Chairman James Rajotte.

"The recommendation by the Standing Committee on Finance is a strong sign of support in our work on this initiative. The Committee recognizes the importance, and potential of property ownership on

reserve," said Chief Commissioner Jules, who appeared as a witness before the Committee on November 1, 2011. "We are prepared to work with the federal government to advance the First Nation Property Ownership initiative as legislation should they wish to pursue that option."

The Committee launched the pre-budget consultations in June 2011 with an invitation for Canadians to participate in the budget consultation process. The report is a summary of the suggestions made by the witnesses that appeared before the Committee (in person or through a written brief), and presents the Committee's recommendations for the 2012 federal budget.

While the recommendations contained in the report by the Standing Committee on Finance are not binding on the federal government, they nonetheless are viewed as instructive for the preparation of the federal budget, which is expected in March 2012.

Annual Tax Cycle: Spring 2012

Property taxation on First Nation lands is completed in annual cycles. While the timing on these cycles may vary slightly from region to region, the main elements are consistent across Canada. In most provinces this time of year, the major activities in the annual tax cycle are assessment, budget and rate setting, and audits.



1. Assessment Process

There are varying assessment practices across Canada. Generally speaking, assessments are conducted prior to the budget and rate setting process, and involve an assessor's inspection of taxable property and a determination of value and classification. Once values are established for all taxable properties, the assessor prepares an assessment roll and typically sends a notice to the owners or occupiers of the properties. The value and/or classification of any one property can be appealed to an Assessment Review Board (ARB). After these appeals are concluded, the assessor will prepare a revised or amended roll. The tax administrator will use the roll to determine the First Nation's assessment base and calculate the appropriate tax rate to meet expenditures.

2. Budget and Rate Setting

Each year First Nations enact a property tax rates law and an expenditure law. The rates law establishes the rate of tax for each class of property and minimum taxes if used. The annual expenditure law sets out how the First Nation intends to spend the property tax it will collect. First Nations can budget property tax on a wide variety of expenditures. However, there are certain conditions required by the FSMA and FNTC Standards. For example, budgets must be balanced and be included with the law.

3. Local Revenue Account and Audit Requirements

Taxing First Nations must prepare an audit of the local revenue account. The local revenue account is a separate account where all of the First Nation's property

tax revenue is placed. First Nations conduct a separate audit of the local revenue account annually. Tax administrators typically meet with the auditor annually to familiarize the auditor with the local revenue account, and ensure revenue and expenditures in their local revenue account are reported properly.

In addition to reflecting sound financial management policy, the audit of the local revenue account is a legal requirement for First Nations taxing under the FSMA. This process gives members, taxpayers, and potential investors confidence in the First Nation tax system, and access to the audit of the local revenue account is a fundamental pillar in instilling that confidence.

Please visit the FNTC website at www.fntc.ca for current sample laws and by-laws as well as related standards, policies and regulations.

Commission Announces Improvements to Policy on Tax Rate Setting

In June 2011, the Commission approved proposed Standards for First Nation Rates Laws for the purposes of seeking public input. The period ran from June 30, 2011 to September 30, 2011, with input provided by several taxing First Nations.

The FNTC, dedicated to building and maintaining fair and efficient property tax regimes, listened to the concerns of First Nations and taxpayers surrounding the rate setting process. In December 2011, the FNTC made several improvements to its policy on First Nation tax rate setting.

One of the major changes addresses the use of reference jurisdiction rates in annual rate setting. No longer will First Nations who use reference jurisdiction rate setting be required to compare average tax bills against the change rate of inflation. Second, recognizing the importance of informing taxpayers, notification of proposed rates is now required. First Nations must provide annual notice of their proposed rates before they are submitted to the Commission. This notice requirement would be applied to the submission of any annual rates law. First Nations may use their own website, or the First Nations Gazette, as an acceptable method for providing notification.

Watch for the Annual Laws and By-laws Bulletins that will include these and other important changes to the Standards. These bulletins will be distributed and posted to the FNTC website.

Ontario First Nations Attend 5th Annual Governance Development Network Forum

The Governance Development Network (GDN) invited the First Nations Tax Commission to its annual networking forum on January 18, 2012 at Casino Rama in Orillia, Ontario to learn more about how to maximize economic development potential through the *First Nations Fiscal and Statistical Management Act*. The theme of the meeting was "Empowerment Through Community Engagement."

GDN holds meetings at alternating locations once a year to hold workshops on "best practice" presentations, success stories, round table discussions, group interactive sessions, and guest presentations on topics relevant to the development and implementation of governance tools and processes, including self-government processes.

"There is a great need for this service since the whole area of governance development is new in my area and other Anishinaabek communities," says GDN co-founder and Vice-President Ennis Fiddler on the networking network, which was formed five years ago and has since attracted members from 16 First Nation organizations and over 70 First Nations. "Together as each of us grow, our communities have said that they do not want to leave anybody behind."



Delegates from throughout Ontario gather together for the annual Governance Development Network forum

At the invitation of GDN, FNTC participated in the three-day forum, demonstrating its support of GDN's efforts to assisting First Nations in achieving and building on governance success for their communities.

"Now that many of our northern communities are becoming involved with large business entities, our main goal is to provide information on how to most effectively manage our resources," said Lorraine



FNTC's Robert Beaudry shares his experience in First Nations property taxation at the GDN forum.

George, Governance Consultant for the Governance Development Network. "Our members specifically asked for the expertise of FNTC who have a long-standing reputation in the area of governance development."

FNTC Senior Tax Advisor, Robert Beaudry, and Education Coordinator, Sarah Jules, provided a joint information session on FNTC and the Tulo Centre of Indigenous Economics, which was followed by an keynote address by Chief Commissioner Jules.

"Together as each of us grow, our communities have said that they do not want to leave anybody behind."

- GDN Vice President Ennis Fiddler

Chief Commissioner Jules provided information to the delegates on the First Nations Property Ownership Initiative and how it is designed to establish First Nation title to lands and protect First Nation jurisdiction over those lands. He emphasized the need for First Nations to go beyond the *Indian Act* and focus on restoring a First Nation culture of independence by exercising property ownership and land management powers independent of the Crown.

"We don't need another government to protect us – we need powers and responsibilities to protect ourselves," said Chief Commissioner Jules on the current system in which by-laws are subject to Ministerial approval. "Our First Nations need many choices and this proposed legislation represents just one."

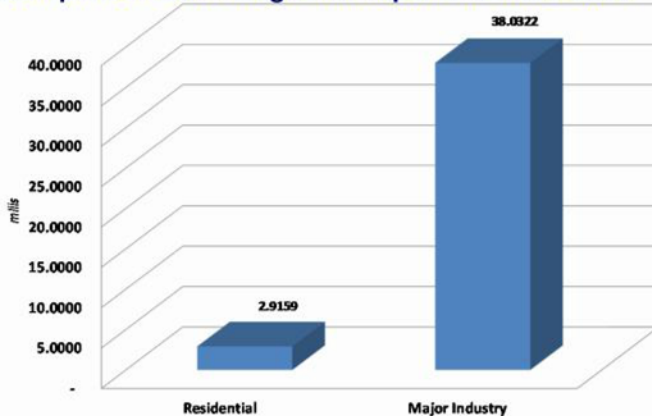
GDN is a volunteer-driven organization, comprised of elected officials, band managers, administrators and other First Nations representatives from throughout Ontario.

Visit GDN's website at www.governance.firstnation.ca.

Supreme Court Rules on Appeal of Major Industry Property Tax Rates

On January 20th, 2012, the Supreme Court of Canada (SCC) released its unanimous judgment dismissing Catalyst Paper appeal in which it argued that the District of North Cowichan's tax rate for major industry was disproportionately high. Catalyst's claim was that the tax rates set by the Vancouver Island, BC municipality were unreasonable and bore no relationship to the municipal services it actually used or consumed.

Comparison of Average Municipal Tax Rates 2011



Graph illustrating the different tax rates applied to residential and industrial properties in British Columbia.

The District had set rates in 2009, where the ratio between residential property and major industrial property was 1:20.3. Until 1984, it was prescribed by regulation for all municipalities in BC that the ratio be 1:3.4. The District, acknowledging that the rates for major industrial property class are higher than they should be, has been working toward the goal of more equitable sharing of the tax burden in the future.

The SCC generally only hears appeals on questions of public importance or where the law is uncertain and in need of clarification. FNTC was following the case to see how the SCC would address the legal issues regarding the setting of tax rates. The SCC acknowledged that the impact of the District's tax rate by-law on Catalyst is "harsh." However, so long as a by-law falls within the decision-making jurisdiction of an elected council and the by-law does not constitute a decision that no reasonable council could make, then the courts will not intervene.

The Chief Justice wrote in the decision: "I conclude that the power of the courts to set aside municipal by-laws is a narrow one, and cannot be exercised simply because a by-law imposes a greater share of the tax burden on some

continued on page 8

Free TAS Webinars — Sign Up Now

Monthly webinars on the Tax Administration Software (TAS) are now available. These webinars are on-line, interactive tutorials designed specifically for users of TAS or those interested to see how TAS works. These webinars follow the annual tax cycle and highlight the functions that assist tax administrators in their work.

TAS is a user-friendly program that assists tax administrators to effectively manage property tax administration. The software helps to accurately implement legislative requirements and maintain compliance with FNTC policies and standards.

TAS guides the tax administrator through the annual tax cycle: assessments, budgeting, rate approval, tax notices, collection and enforcement. TAS also includes all of the reports required for the law submission process.

TAS is a "cloud" based service, which means the database is located on a secure server that can be logged into and accessed from any computer. Upon launching TAS, there are four main sections:

1. **Settings:** Inputs tax notice due dates, penalty amounts, appeals start date, etc.
2. **Assessment:** Imports assessment data, organizes folio information and prints tax notices.
3. **Mill Rates and Budget:** Calculates tax rates, enters referencing jurisdiction information and creates budget.
4. **Resources:** Attaches important documents, such as service agreements, laws and contracts.

Are you wondering what TAS is all about, what it looks like, and if it would be beneficial to you? Join the "Features of TAS" Introductory webinar scheduled for Wednesday April 4, 2012 at 10:30 a.m. PST. Email info@tulo.ca to reserve your spot, or to receive the TAS Webinar schedule.

Please view www.gotas.ca for more information or contact help@gotas.ca to get started today.



12th Annual AFOA Conference

FNTC provided information to delegates at the 12th Annual Aboriginal Financial Officers Association national conference held from February 14-17, 2012 in Saskatoon, Saskatchewan.

Over 900 delegates from across the country participated in the conference, including Aboriginal financial professionals, tax administrators and other managers, Chiefs, Tribal Council members, government representatives and consultants working with Aboriginal communities.

FNTC distributed information packages and talked to delegates about how property taxation can help to build First Nation economies.



FNTC's Registrar and Records Manager, Tracey Simon, fielded questions and provided information at the FNTC trade fair booth. Margaret Eli of Westbank First Nation, BC, was the winner of the iPad2.



Tulo's Education Coordinator, Sarah Jules, presented a digital camera to Carrie Ann Alexis of Alexis Nation, Alta., the winner of the Tulo's trade fair prize.

Leadership Perspective

Continued from page 1...

sovereignty in regards to the planning, management and administration of land use in our community. We are presently participating in a Land Use Planning pilot project, which started in January 23, 2012. As well, we have recently been accepted under the Framework Agreement on First Nations Land Management Act, which will see the development of our Land Code. It would only make sense that BNA concurrently initiates the application process to FSMA in order to maximize our efforts in regards to policy development with the two processes we are undertaking.

What kind of economic development initiatives are you currently undertaking?

Bingwi Neyaashi Anishinaabek is set to begin construction on a Cedar Value Added Sawmill and a Wood Pellet Facility both located in the community. Future ventures could also see the exploration of renewable power sources with a solar park, a wind-generation plant and a cogeneration facility. Other initiatives that are in various planning and development stages include the construction of a long-term Elders care facility and the Copper Thunderbird 5 -Star Eco-Lodge Resort, as well we are considering lithium mining and seasonal cottage development.

What is your vision of your First Nation's future?

We are excited to be moving forward in the continuing development of our First Nation's policies and protocols, including governance, community housing, economic development and infrastructure. What makes our First Nation unique from other First Nation communities is the fact that we only received our official reserve status just twenty months ago. It presents both an exciting and daunting opportunity because we are essentially building a Nation literally from the ground up. We envision a sustainable community, supported and led by strong citizens, and lucrative investment opportunities for interested parties as part of both our present and our future.

What needs to happen next in order for your First Nation to reach these goals?

The continued support from our First Nation community members and our larger stakeholders will all ensure that we will achieve our goals. The FNLMA Framework Agreement, which will give us the authority to create our own land code and laws in relation to the development of our reserve lands and natural resources, makes FSMA the next logical step for our community. Ultimately, each of these developmental stages brings us closer to our future goal of formulating our own Constitution and ultimately making Bingwi Neyaashi Anishinaabek a truly self-determining, self-governing First Nation.

Maximizing FSMA Potential

Students from throughout Canada came to Kamloops in January for a week of studies in real property taxation at the Tulo Centre of Indigenous Economics, located on the Thomson Rivers University campus.

Students, like Lise Steele of the We Wai Kai Nation, are helping to implement First Nation property taxation in their community. The First Nations are working at various stages of developing their own property taxation system as offered through the *First Nations Fiscal and Statistical Management Act (FSMA)*.



Tulo students Gordon BlueSky and Lise Steele sharpen their skills in First Nations property taxation.

Steele spent a week learning about local revenue budgets and First Nation expenditure laws and rates laws in her APEC 1620 class. She says the training is helping her in her job as the newly-appointed tax administrator for We Wai Kai Nation, which has five designated reserve lands in BC. Four are on Quadra Island and the fifth in Quinsam is located on Vancouver Island in Campbell River.

Tulo courses align with her First Nation's initiatives currently underway. Along with undertaking sectorial self-government initiatives, such as establishing their own membership and land codes, We Wai Kai Nation is working with the FNTC in drafting its property taxation laws. The draft laws will be presented to the community upon completion.

"It's our first year and we don't have a lot of businesses on reserves that would be affected. The few we have are band-owned entities and they would be exempt from taxation," says Steele, whose Nation operates a lodge, campsite, gas station, liquor store and food franchise. "However, we want to get the best practices in place so that as we grow and build the

potential of new leaseholds, these rules will already be put in place."

Pleased with her progress in the program, Steele feels she is better equipped to coordinate the law notification process that she will be conducting in the community.

"So far, I've been gaining a thorough understanding of what is required under the FNTC standards and laws," says Steele. "This training has been very valuable because it's not about an imagined scenario – it is about real life, on-the-ground work that's happening right now."

She continues, "I feel more confident about my ability to explain the laws to our band membership and make sure that they are fully aware of how the assessment law works, why we are putting it in place, the reasoning behind it, and the goals of those tax revenues."

"This training has been very valuable because it's not about an imagined scenario – it is about real life, on-the-ground work that's happening right now."

- Lise Steele on Tulo training

Gordon BlueSky of the Brokenhead Ojibway Nation (BON) is also studying First Nation property taxation at the Tulo Centre of Indigenous Economics. BlueSky is also interested in exploring the possibilities of how FSMA can benefit his reserve, which is located 30 minutes north of Winnipeg and home to the jointly-owned South Beach Casino and Resort.

Brokenhead Ojibway Nation has recently purchased new property outside of Winnipeg through its Treaty Land Entitlement, and Bluesky says his First Nation is considering property taxation as an addition to the legislation presently governing his First Nation.

"It is such a long and cumbersome process under the *Indian Act*, and I believe we are ready to move beyond that and move into our own lands management system," says BlueSky. "Whenever we had to sit down with municipalities and create these services agreement, I realized that our own property tax revenue could eventually finance our own infrastructure, and that's when we made contact with the FNTC."

continued on page 8

SCC Ruling

Continued from page 1...

ratepayers than on others."

In this case, the District followed the process required by legislation in making the by-law, took into account relevant considerations, including the impact on fixed income residents that a precipitous hike in residential taxes might produce, and had adopted a five-year plan working towards more equitable sharing of the tax burden.

The Chief Justice also wrote: "Its [District of North Cowichan] approach complies with the Community Charter, which permits municipalities to apply different tax rates to different classes of property...The by-law favours residential property owners, to be sure. But it is not unreasonably partial to them."

As with the courts below, the SCC concluded that the by-law fell within a range of reasonable outcomes and, accordingly, there was no basis for the court to set aside the by-law.

Maximizing FSMA Potential

Continued from page 7...

"I realized that our own property tax revenue could eventually finance our own infrastructure, and that's when we made contact with the FNTC."

- Gordon BlueSky, Tulo Student

Since his reserve was added to the FSMA Schedule through a Band Council Resolution, BlueSky says the Tulo course is equipping him with the appropriate technical skills to navigate the FSMA regulatory framework. He admits that property tax is a new field to him but he's excited by the successes experienced by his fellow classmates.

"To hear about what has been happening at Tk'emlúps Indian Band (TIB) or with my other classmates from BC, Ontario, Manitoba or Saskatchewan has been inspiring – there has been so much gained and learned here, which I wouldn't have learned anywhere else."

"If you rewind TIB back 30 years ago, for example, BON is just going through that development phase," says BlueSky. "And thanks to this class and my colleagues, I'm beginning to see new opportunities and possibilities for my First Nation that I hadn't realized before."

Tulo Centre of Indigenous Economics

Register now for the Certificate in First Nation Tax Administration program.



Learn how to effectively manage your First Nation's property tax system.

2012-2013 Course Schedule

April 30 - May 4, 2012

APEC 1640: Administration

August 13 - 17, 2012

APEC 1650: Communications and Taxpayer Relations

October 15 - 19, 2012

APEC 1660: Service Agreements and Joint Contracts

November 5 - 9, 2012

APEC 1670: Development Cost Charges

February 4 - 8, 2013

APEC 1680: Capital Infrastructure and Debenture Financing

Register today by completing the registration package found online at www.tulo.ca or email info@tulo.ca for more information.



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