

CLEARING THE PATH

FIRST NATIONS TAX COMMISSION

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Long-term Vision for Tzeachten First Nation's Future Taking Shape



Tzeachten First Nation's GM Sheila Schmidt displays blueprints of new developments in the works.

Now that it has progressed from the stages of property taxation to debenture financing, Tzeachten First Nation is closer to achieving its economic goals.

"It's just the calm before the next storm, yet we're ready to jump in and make our goals a reality," says Ms. Sheila Schmidt, General Manager of Tzeachten First Nation, of the past three years since the First Nation joined the *First Nations Fiscal and Statistical Management Act* (FSMA) through the First Nations Tax Commission (FNTC).

"We may have new responsibilities and requirements to meet, yet we're excited about how our plans are coming together in a tangible way," adds Ms. Schmidt.

Located in the Upper Fraser Valley within the city of Chilliwack, Tzeachten First Nation

owns its own commercial development, including the Vedder Crossing Plaza, which houses a grocery store, bank, restaurant, medical clinic and several retail stores.

Ms. Schmidt first began leading Tzeachten First Nation's management team in 2002 and oversaw their transfer from implementing property taxation under the *Indian Act* to creating their own laws through the FSMA.

Having taken advantage of the services offered by each of the FSMA fiscal institutions, Tzeachten First Nation has become one of three First Nations in Canada to receive certification from the First Nations Financial Management Board (FMB), which will provide them with the requirements to become borrowing members through the First Nations Finance Authority (FNFA).

Ms. Schmidt says she is proud of their progress since they first started to head in this direction three years ago.

"The first trigger for us was going under the FSMA," recalls Ms. Schmidt. "That was when

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Message from the Chief Commissioner

On May 25th I was interviewed by the *National Post*. I was asked to give a few thoughts on how to advance First Nations. My thoughts were summarized by them with one piece of advice: tax.

I have always believed that our tax jurisdiction is the key to sharing in the success of this country. Tax is the key because it unlocks the potential of private investment. It is simply not possible to share in the wealth of this country without private investment.

Let me give an example. Every year billions of dollars are generated from private investment in resource development in Canada. Many of our communities are hoping to get a share of this wealth. The majority of wealth created by resource development investment is not created by selling the resource. The wealth is created through investments in finding, extracting, processing and shipping the resource. It is also created by the businesses that serve the resource industry and its workers. The majority of the government revenues come from the taxation of these activities, not royalties. Governments use these revenues to create a good business climate that attracts more investment which generates more tax revenues.

This is the virtuous circle of economic growth that the First Nations Tax Commission has always promoted by helping First Nations assert their tax jurisdiction. By not asserting tax jurisdiction First Nations are missing opportunities for revenues and creating a business climate that generates jobs and improves community infrastructure.

In this edition of *Clearing the Path*, we discuss a few of our recent activities in helping First Nations grow their economies and build tax systems. We have been working with many communities to pass their rates and expenditure laws as quickly as possible. We are also continuing to work on the First Nation Property Ownership initiative which will generate more economic opportunities for interested First Nations.

In March of 2012, the federal government introduced Bill C-38, a piece of omnibus legislation that includes amendments to the FSMA. The result of the amendments means that the First Nations Statistical Institute will cease operations in 2013. It is important to emphasize that this change will not affect the operations of the FNTC or the other FSMA institutions, nor will it affect First Nation property taxation, financial management, and access to debenture financing, the essential hallmarks of the FSMA.

Finally, I would like to take this opportunity to announce that the FNTC Annual Report will be released in July 2012. The Annual Report is our report to you. As always, I am interested in hearing your views about the ways the Commission can better serve the First Nations tax system. I hope you have an enjoyable summer.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

FNTC Responds to Report on Seven-year Review

In March 2012, FNTC welcomed the release of the Minister of Aboriginal Affairs and Northern Development's "A Report to Parliament on the Legislative Review of the *First Nations Fiscal and Statistical Management Act*".

"Clearly, the legislation has made a difference, helping First Nations build their economies, improve investor relations, and achieve a measure of self-sufficiency -- we look forward to working collaboratively with the Minister in carrying out any improvements

stemming from the report," said FNTC Chief Commissioner C.T. (Manny) Jules.

The tabling of the Report in the House and the Senate satisfied the Minister's statutory requirement pursuant to s.146 of the FSMA.

Subsequently, in its 2012-2013 budget, the federal government announced the closure of the First Nations Statistical Institute (FNSI) by 2013-2014. This decision will result in amendments to the FSMA reflected in Bill C-38, the omnibus bill to implement the budget and other measures. In addition to ending FNSI, the FSMA will be renamed the *First Nations Fiscal Management Act* (FMA).

Tzeachten's Vision

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we realized that not only would we improve our jurisdiction and regulations through FNTC, we would improve our financial practices through the FMB certification process, and that would take us to another level of sophistication, which would ultimately result in this end benefit: debenture financing through the FNFA."



Tzeachten First Nation's administrative building, pictured here, undergone expansion in 2011.

It's a natural next step for the First Nation, which has already experienced the benefits of First Nations property taxation. With a membership of 500 members, half of whom live on-reserve, Tzeachten First Nation has already witnessed significant economic growth, resulting in an exponential increase in administrative staff.

To address the shortage of office space, Ms. Schmidt oversaw the expansion of their administrative building, a \$430,000 construction project, the type of initiative that could have been financed through FNFA debenture financing.

Not slowing down anytime soon, two shovel-ready projects are ready to proceed to construction. The groundwork for a seven-unit townhouse complex has been laid out, which will provide housing for Tzeachten membership. This will be the third residential development for membership. In addition, there are approximately 1,500 non-member residents residing in seven on-reserve residential developments that form part of their taxation folio.

Their other project is the construction of a multi-purpose building to be used for public

sporting events and private community gatherings. Aside from the construction costs of the 3,500 sq.ft. building, they are budgeting for extra costs including: infrastructure services, storm water drainage systems, paved parking and lighting, a \$1.3-million project they plan on financing with FNFA debenture funds.

Ms. Schmidt says that building the legal and administrative framework has been critical in their success.

"All the pieces of the puzzle have been coming together," she says. "FNTC has been great -- they have sample laws, which have been a valuable resource for us because it meant we didn't have to reinvent the wheel."

Now that they are a borrowing member of FNFA, Ms. Schmidt hopes to take advantage of the new revenue options, which will address their outstanding debt.

"Between our two loan payments, we're paying about \$10,000 a month in debt servicing because of aggressive repayment terms with our current lender. But if we refinance under the FNFA, we will save approximately \$5,500 a month in debt servicing alone, and the same amount we're paying right now to finance \$1-million could actually leverage about \$3-million."

Having experienced first-hand the benefits of First Nation property taxation, Ms. Schmidt says she's eager to share the successes of Tzeachten First Nation with other First Nations who may be considering joining the FSMA.

"The support we've received has been phenomenal -- I would tell people to pick up the phone and call FNTC, or go to their website and look at the resource material there," encourages Ms. Schmidt. "And even though it may seem overwhelming, I'd tell them you won't have to work through it yourself - you'll find support from the FNTC staff and plenty of us willing to share our own experiences."



FNTC and BCAA Hold Dialogue Session

In June 2012, FNTC met with representatives from the British Columbia Assessment Authority (BCAA) as part of a joint working group.

The one-day workshop brought senior policy advisors and area assessors together to identify ways to improve the level of assessment services to taxing First Nations in BC.

Items highlighted include facilitating access to BCAA services, protecting the quality and accuracy of the roll, improving assessment review boards, and increasing the level of communication to First Nations.

BCAA Board Member, Mr. Ernest Jack who attended the workshop, emphasized the need for BCAA to communicate to First Nations on the full range of services offered by BC Assessment.

“First Nations have come a long way over the last twenty years. Our systems are larger and more complex, and perhaps most importantly, more in tune with capturing investment opportunities,” said Mr. Jack. “While many First Nations may not need the full range of services that BCAA provides, it is important they are aware of them as their systems evolve, and the need arises.”

Over the course of the next year, both groups will be working on a series of projects based on a joint work plan working towards improved assessment service delivery.

The policy workshop reflects the memorandum of understanding between the two organizations, signed on March 26, 2012.

Taxing First Nations Advised to Prepare for PIPEDA

Over 10 years ago, Canada introduced legislation, entitled the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to regulate how personal information is used by private industry.

It has since raised issues for taxing First Nations that collect assessment information and produce tax rolls and notices on what it means. In particular, PIPEDA regulates the collection, use or disclosure of personal information by Federal Works, Undertakings and Businesses (FWUB) engaged in a commercial activity.

Since band councils fall under the *Indian Act*, they are under federal jurisdiction and considered FWUB's, which means that the legislation applies to a First Nation government engaged in a commercial activity; therefore, personal information must be protected in accordance with this Act.

Released in three stages from between 2001 to 2004, it set out the ground rules for managing personal information in the private sector and addressed concerns related to the

use of electronic documents and signatures as legal alternatives to original documents and signatures.

There is a low risk that it applies to the governmental activity of assessment and taxation laws. However, FNTC is encouraging taxing First Nations to familiarize themselves with this legislation to the extent it may apply, and address potential application by making adjustments in the assessment law.

Recent information from the Office of the Privacy Commissioner of Canada (OPC) indicates that general trends are only observable because there is not enough statistical evidence. For example, in the First Nation context, OPC has received 39 complaints against First Nation respondents in 10 years since PIPEDA came into force.

OPC advises there is ongoing legal analysis in this area and FNTC will monitor developments in privacy legislation and its applicability to First Nation taxation.

Strengthening Internal Capacity with TAS

Tax season used to be a challenge for Ms. Deanna Honeyman, senior tax administrator at Tzeachten First Nation. But since using the Tax Administration Software (TAS), she says she can work more effectively and efficiently.

“Three years ago I was handwriting receipts and that was tedious,” admits Ms. Honeyman whose taxation folio numbers nearly 1,000 tax folios, the majority of which are collected from their residential developments. “We’re definitely better off with TAS and I’m more confident in my job because the process is much more streamlined.”



Deanna Honeyman, tax administrator at Tzeachten First Nation, manages over 1,000 tax folios every year.

Developed in 2009 by FNTC and Tulo, the software program is a technical tool tailored to help taxing First Nations meet the specifications required under the FSMA and s. 83 of the *Indian Act*.

“Prior to TAS we were using an MS Excel database that we outsourced to an IT consultant -- it wasn’t an efficient system because if a taxpayer came in and they found a typo or the smallest error on their tax notice, they’d have to wait up to two

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Important Changes to the Standards for First Nation Tax Rates Laws

In April 2012, the First Nations Tax Commission announced two important modifications to the Rates Law Standards governing First Nation Annual Rates Laws.

Designed to reflect current practice and promote transparency for taxpayers, the changes enable “reference jurisdiction rate setting” and introduce for the first time, a requirement for tax rate notification.

“Reference jurisdiction rate setting” refers to the practice of First Nations pegging their tax rates identically to the tax rates of a non-First Nation jurisdiction adjacent to their reserve boundaries.

Nearly 50 percent of taxing First Nations follow this practice each year.

Tax rate notification builds on the current practice of some First Nations, and requires taxing First Nations to give notice of their rates prior to submitting them to the FNTC for approval.

First Nations have the option of giving notice of the rates before or after Council enacts the annual rates law, as well as the option of using their website, the *First Nations Gazette* website, taxpayer representation to council law, or a meeting, to provide notification.

Both changes follow a six month public input process involving First Nations and their taxpayers.

For more information visit www.fntc.ca, or call the FNTC @ (250) 828-9857.

Background on the First Nations Property Ownership Initiative

What is the First Nations Property Ownership Initiative?

The First Nations Property Ownership (FNPO) initiative is a proposal for federal legislation that would return ownership of current reserve lands to First Nations and confirm their jurisdiction over those lands. First Nation ownership would replace the existing Crown ownership and include First Nation reversionary rights and expropriation powers.

It would also enable all types of land tenure including individual ownership. FNPO would allow First Nations to opt-in to the legislative framework as an alternative to the *Indian Act*.

What does the First Nations Property Ownership Act proposal include?

- The First Nation, instead of Canada, will hold the legal title to its reserve lands, thus opening the door to more economic opportunities and facilitating all aspects of land management.

- The First Nation will, at its own discretion, have the ability to maintain permanent community-held land, as well as to grant full ownership to individuals.
- The First Nation will have full land management authority, as well as broader governmental powers over First Nation lands, which will apply regardless of what kinds of ownership rights the First Nation may decide to grant.
- Through the use of ownership, the First Nation will be able to substantially increase access to capital for individuals, such as for home ownership, as well as for community purposes, such as community-owned enterprises and infrastructure.
- Costs of doing business on First Nation lands will be substantially lowered; the economic value of First Nation lands will be substantially improved; and, private initiative and entrepreneurship will be greatly enhanced.
- The First Nation will have new tools to help resolve estates and matrimonial real property issues.

For more detailed information, please visit the FNPO website @ www.fnpo.ca.

| Key Differences in Land Holdings, Transactions and Jurisdiction | | |
|---|--|---|
| <i>Indian Act</i> | <i>First Nations Land Management Act (FNLMA)</i> | FNPO |
| 19 th Century Reserve Land. | 21 st Century Reserve Land. | 21 st Century First Nation Land. |
| Legal title is held by the Crown. | Legal title is held by the Crown. | Legal title is held by the First Nation. |
| Not optional | Optional | Optional |
| First Nations or First Nation members cannot have full ownership rights. | First Nations or First Nation members cannot have full ownership rights. | First Nations own land and can choose to grant full ownership to individuals. |
| Land cannot be used as security for mortgages, loans or bonding but some <i>Indian Act</i> leases can secure mortgages. | Land cannot be used as security for mortgages, loans, and bonding but FNLMA leases can secure mortgages. | Land can be used as security. |
| Land records are deposited in the Indian Lands Registry, without legal title guarantee. | Land records are deposited in the First Nation Land Management Registry, without legal title guarantee. Priorities and land title insurance is possible. | Land is registered in a "Torrens" land title office with legal guarantee of registered title. |
| 19 th century legal framework. | Modern legal framework. First Nations authority to pass laws. implemented over a number of years. | Modern turn-key legal framework that First Nations can choose to adopt and implement efficiently and quickly. |

First Nations added to the FSMA in 2012

First Nations added to the FSMA on March 2, 2012.

Coldwater Indian Band (BC)
Conseil des Montagnais du Lac Saint-Jean (QC)
Cowichan Tribes First Nation (BC)
Gitwangak First Nation (BC)
Membertou First Nation (NS)
Nadleh Whut'en Band (BC)
Nipissing First Nation (ON)
Skidegate First Nation (BC)
Wasauksing First Nation (ON)
Whispering Pines/Clinton Indian Band (BC)

First Nations added to the FSMA on June 8, 2012

Bingwi Neyaashi Anishinaabek First Nation (ON)
Lheidli T'enneh First Nation (BC)
Millbrook First Nation (NS)
Obashkaandagaang First Nation (ON)
Saulteaux First Nation (SK)

Schedule for TAS Tutorials

Monthly Tax Administration Software (TAS) Tutorials are offered via webinar, a training service using a combination of online and conference call interaction.

The General Sessions will take place on the days, listed below, from between 10:30 – 11:15 am. The Advanced Sessions take place from 11:15 - 11:45 am.

- May 31, 2012
- June 27, 2012
- July 25, 2012
- August 29, 2012
- September 19, 2012
- October 31, 2012
- November 28, 2012
- December 19, 2012
- January 30, 2013
- February 27, 2013
- March 20, 2013

TAS Tax Administration Software

2012/2013 Tulo On-Campus Schedule

Tulo delivers certificate programs in First Nation Tax Administration and First Nation Applied Economics in partnership with the First Nations Tax Commission and Thompson Rivers University in Kamloops, BC.



Students in class at the Tulo Centre of Indigenous Economics.

The following schedule lists the on-campus courses will be offered in 2012/2013:

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

December 3 - 7, 2012

APEC 1680 Capital Infrastructure and Debenture Financing

February 4 - 8, 2013

ECON 2630 Issues in Aboriginal Economics

March 4 - 8, 2013

ECON 2640 Residential and Commercial Development on First Nation Lands



For more information on the certificate programs, how to register, or how to apply for a bursary from the FNTC, please visit the Tulo website @ www.tulo.ca.

Upcoming Meetings

FNTAA 19th Annual National Forum

The First Nations Tax Administrators Association will be holding its 19th Annual National Forum on **September 26 - 28, 2012**. The meeting will be held at the Osoyoos First Nation's Spirit Ridge Vineyard Resort.



The focus is on professional development and educational opportunities with presenters from BC Assessment, FSMA Implementation and Lands Management.

The AGM and 5th Annual Golf Tournament will also be held at this time.

CPTA 46th Annual National Workshop

The Canadian Property Tax Association will be holding its 46th Annual National Workshop in Banff, BC on **September 30 - October 3, 2012**.



The theme of the meeting will be "The Evolution of Valuation: an Old-School Profession Coming of Age," taking into consideration the plentiful and diverse issues facing property taxation in Canada.

The agenda will focus on technology applications in the assessment world and also the appraisal of value for assessment purposes.

FNTC 5th Annual General Meeting

On **October 4, 2012**, the FNTC will be holding its 5th Annual General Meeting at the FNTC Head Office in Kamloops, BC.



The FNTC 2011/2012 Annual Report and Audit will be presented at the meeting.

Strengthening Capacity

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weeks for the change to be fixed by the consultant," Ms. Honeyman says of the former system. "Now our clients are happy because we can make the changes right away and they don't have to wait. Plus now we're in complete control – and we're no longer outsourcing."



From the beginning to the end of the tax cycle, Ms. Honeyman says the turnaround time has significantly improved with the help of TAS, which has allowed her to upload mill rate information, enter in their annual budget, and add information from BC Assessment Authority with ample time to ensure the notices are signed, sealed and delivered.

"It's so user-friendly I've been able to train others," says Ms. Honeyman. "And, creating tax notices is much better from before, especially when it was just me, but now we have a small team who know the system."



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