



CLEARING THE PATH

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A First Nations Tax Commission Quarterly Publication

First Nations Expand Fiscal Powers

Two First Nations in British Columbia, Tsawout First Nation and Tk'emlúps te Secwépemc (TteS), have taken bold steps in addressing their capital infrastructure needs by becoming the first communities to develop a property tax borrowing law and development cost charges (DCC) law under the *First Nations Fiscal Management Act* (FMA).

Situated on Vancouver Island, near the City of Victoria, Tsawout First Nation first established its property tax system in 1994. In October 2013, Tsawout's long term capital borrowing law was approved by the First Nations Tax Commission (FNTC). The law enables Tsawout to borrow \$2.15M through the First Nations Finance Authority (FNFA), allowing for the completion of much needed upgrades to Tsawout's sewage treatment plant.

According to Tsawout First Nation's Finance/Comptroller Russell Harder, "using local revenues to support long term borrowing will help establish capacity in our system to meet the requirements of current, as well as future, economic development plans. This is a very important step in helping Tsawout expand the tax base for local revenues, which will create opportunities to complete other infrastructure projects needed by the First Nation." Under the FMA, First Nations can use a portion of their annual property tax revenue to repay amounts borrowed through the First Nations Finance Authority. The term of the loan to Tsawout First Nation is for 30 years.

While borrowing addresses immediate needs, development cost charges are designed to meet future needs. Tk'emlúps te Secwépemc (formerly the Kamloops Indian Band) is located adjacent to the City of Kamloops. In January 2014, the First Nations Tax Commission approved the Tk'emlúps te Secwépemc Development Cost Charges Law.

The Tk'emlúps te Secwépemc law is expected to play an important part in funding capital infrastructure enhancements over the long term. Capital projects include a highway traffic interchange and a water reservoir.

Development cost charges laws made under the FMA charge a one-time tax on new developments, and revenue is used for specific projects identified in the community's long term capital plan. Established in 2005, the FMA offers First Nations access to a greater array of fiscal tools to help spur economic growth through improved capital infrastructure. The laws enacted by Tsawout First Nation and Tk'emlúps te Secwépemc provide concrete examples of how the legislation supports First Nation innovation. ■

Financial Transparency Act: Meeting the New Publication Requirements

In March 2013 the *First Nations Financial Transparency Act* became law. Among other things, the Act requires the public disclosure of certain financial information, including each First Nation's audited consolidated financial statements. Specifically, section 8 of the Act states:

8. (1) A First Nation must publish the documents [financial information] referred to in paragraphs 7(1)(a) to (d) on its Internet site, or cause those documents to be published on an Internet site, within 120 days after the end of each financial year.

(2) The documents referred to in subsection (1) must remain accessible to the public, on an Internet site, for at least 10 years.

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Message from the Chief Commissioner



At the beginning of the year many of us make New Year's resolutions. The First Nations Tax Commission resolves to help First Nations grow their tax base and to encourage First Nations to treat their taxpayers as investors in their communities. As you will notice as you read this edition of *Clearing the Path*, we are off to a good start on our resolutions.

First, I want to recognize the landmark accomplishment of the Songhees Nation. I was honoured to be a guest at the grand opening of their Wellness Centre on January 22, 2014. Financing the building of such a beautiful multipurpose facility takes dedication, perseverance and strong community support. I was heartened to see so many taxpayers attending this grand opening and to see them welcomed and recognized as members of the community. I am proud that the Commission was able to help Songhees with their First Nations Goods and Services Tax implementation. Songhees has always been a leader, and holds the distinction of being the first community to have property tax laws enacted under the *First Nations Fiscal Management Act*. Today, they are a model of how taxation benefits First Nations. Congratulations to the Chief and Council, the staff and the Songhees community.

I also want to recognize the work of the Tzeachten First Nation with respect to their property transfer tax law. They identified an opportunity for taxation in the *First Nations Fiscal Management Act* and worked with the Commission to implement this power in 2013. The Commission recognizes that other First Nations want to implement this power so we will soon be finalizing standards and a PTT sample law for other First Nations to use. We look forward to helping other First Nations implement this jurisdiction in 2014.

Finally I hope you read our story about the Loon River First Nation and how they use tax revenues to provide fire protection services to their community. Too often our communities lack sufficient fire protection services and the results can be tragic. Loon River has shown how taxation can make First Nation communities safer for taxpayers and their membership.

I hope you enjoy this edition of *Clearing the Path*. I wish you all a Happy New Year and good luck with your resolutions.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

Tulo Centre of Indigenous Economics Workshops Series

The workshop series continues with two workshops this spring. In these sessions, you will be introduced to property taxation on First Nation lands.

You will learn:

- The importance of establishing First Nation tax jurisdiction
- The opportunities to generate First Nation tax revenue
- How to implement First Nation property taxation
- How taxation supports First Nation economic

development and improves community services and infrastructure

- How to become a professional First Nation tax administrator

March 4, 2014
Winnipeg, MB

March 5, 2014
Saskatoon, SK



Tulo Centre of Indigenous Economics
www.tulo.ca | info@tulo.ca

Commission Seeks Public Input on Proposed PTT Standards

In December 2013, the FNTC approved proposed Standards for First Nation Property Transfer Tax (PTT) Laws for the purposes of seeking public input.

Standards established by the FNTC are a part of the regulatory framework governing First Nation taxation under the FMA. They reflect best practices in property taxation, and are designed to support First Nation economic growth, First Nation jurisdiction, harmonization, and the interests of all stakeholders in the First Nation property tax system. First Nation laws must meet the requirements of the FMA, its regulations, and the FNTC's standards.

The proposed Standards for First Nation Property Transfer Tax laws govern an emerging First Nation local revenue power. Property transfer tax laws are First Nation local revenue laws that establish a tax on interests in real property at the time of a transfer of the interest. The person who receives the transfer (the transferee)

pays the tax at the time the real property interest (i.e., a leasehold interest) is tendered for registration with the First Nation. The amount of tax owed is determined by multiplying a set rate by the fair market value of the real property interest that is transferred. In late June 2013, Tzeachten First Nation became the first First Nation to establish a property transfer tax under the FMA. Provinces and some Canadian municipalities have similar property transfer taxes under provincial legislation.

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

If you wish to learn more about the Standards, please contact the FNTC at mail@fntc.ca or by telephone at (250) 828-9857. Electronic versions of the proposed Standards are available at www.fntc.ca.

Proposed Standards for
First Nation Property Transfer Tax Laws

Indian Act Amendment Bill to Continue as Parliament Resumes; First Nations Gazette Ready to Assist First Nations

With Parliament returning in January, debate resumes in the Senate on Bill C-428, officially known as "An Act to Amend the *Indian Act* (Publication of By-laws) and to Provide for its Replacement".

The Private Member's bill is sponsored by Member of Parliament Rob Clarke (Desnethé-Missinippi-Churchill River), himself a member of the Muskeg Lake Cree Nation. Mr. Clarke has described the changes proposed in his bill as "housekeeping in nature and are designed to remove the underbrush from the (Indian) Act." The bill was first introduced in the House of Commons by Mr. Clarke in June 2012.

C-428 was at second reading in the Senate before Parliament recessed for the Christmas break in December 2013. The bill is sponsored by Conservative Senator Thanh Hai Ngo (Ontario), a member of the Standing Senate Committee on Aboriginal Peoples. It is expected that the committee will be studying the bill some time in February.

Under Bill C-428, section 81 *Indian Act* by-laws would no longer be disallowed by the Minister of Aboriginal Affairs and Northern Development. Instead, First Nations would have the option of publishing their by-laws in a newspaper, on their own website, or in the *First Nations Gazette*.

Commissioner Lester Lafond, who serves as the Chairman of the *Gazette* Editorial Board, wrote to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development in April 2013 (while the committee was studying the bill) to assure them that should Parliament approve Bill C-428, "the *First Nations Gazette* is ready to assist First Nations in meeting their requirements under this law, should they choose this vehicle to do so." The use of the *First Nations Gazette* was also supported by the Canadian Bar Association, during their appearance before the Standing Committee in April 2013.

Today, 180 First Nations use the *Gazette*, where approximately 2,600 by-laws, laws and land codes are published, providing direct access to First Nation citizens, leasehold and other residents living on reserve lands, electors, legal practitioners and those with commercial and other interests in reserve land. ■



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This means that by July 29, 2014, First Nations must post this financial information on their own websites – or an alternate website - and keep it posted for at least 10 years. That date is now only five months away and many First Nations are considering their options for meeting the new publication requirements.

Over the past year, the *First Nations Gazette* has undergone a number of internal changes and has significantly improved the function, utility and overall user experience. In addition to going “on-line only” (the hard copy *Gazette* will cease publication in April 2014), an expanded notification component has been developed (as found in the *Canada Gazette*), which is designed to assist First Nations in meeting their notification requirements. This includes providing notice of elections and results, the need to consult with their membership and, in the case of the *Transparency Act*, publishing audited financial statements.

As a reputable and reliable vehicle, the *Gazette* is ready to assist First Nations, particularly those without a website, by ensuring their financial information is published on an internet site and remains publicly accessible for at least a decade.

Harold Calla, Executive Chairman of the First Nations Financial Management Board, agrees the *Gazette* provides First Nations with a viable option. "The *First Nations Gazette's* publication service is an indispensable tool that promotes transparency, clarity and consistency. There's no question that the *Gazette* can help First Nations meet the requirements of the *Transparency Act*."

The *First Nations Gazette* was launched on Aboriginal Day in 1997 through a partnership between the Indian Taxation Advisory Board (predecessor to the FNTC) and the Native Law Centre at the University of Saskatchewan. Today, over 180 First Nations have used the *Gazette* to publish their laws/by-laws and land codes.

To learn more about using the notification component of the *First Nations Gazette* to meet *Transparency Act* requirements, go to www.fng.ca and follow the links. ■

The Role of Assessment Review Boards

Each year, usually between the months of February and April, hundreds of assessment appeal bodies across Canada hold hearings to sort out issues related to real property assessment. Whether they are called Assessment Review Boards, Board of Revisions, or Assessment Review Commissions, all assessment appeal

bodies ultimately perform the same function of adjudicating property assessment appeals. While provincially there is significant variation in timing, member eligibility, how Chairs are appointed, and the types of appeals these tribunals can adjudicate, First Nation assessment appeal bodies are fairly similar in composition and jurisdiction. Like many of their provincial counterparts, First Nation assessment appeal tribunals begin their work when a person appeals an assessment notice.

First Nation assessment appeal bodies emerged in the early 1990's with the establishment of First Nation property tax. To build confidence in First Nation property taxation, First Nations largely drew from provincial practice in developing their assessment by-laws which included provisions related to assessment appeal tribunals. Further refinements to these tribunals would come following the 1995 Supreme Court of Canada decision in *Canadian Pacific Ltd. v. Matsqui Indian Band*. In *Matsqui*, the Court examined the function and composition of First Nation assessment appeal tribunals and the need for their impartiality and independence.

The comments made by the Court and specifically those of the Chief Justice Lamer were instrumental in shaping the current regulatory framework supporting First Nation assessment appeal tribunals. FMA First Nations and most First Nations with section 83 by-laws have one assessment appeal body whose decisions can be appealed to a court of competent jurisdiction. Known as Assessment Review Boards (or ARBs), they are appointed by Council, typically have three year terms, consist of a member of a law society, a person with assessment experience, and sometimes a member of a First Nation. Remuneration is clearly set out in the law/by-law and is often consistent with provincial levels of remuneration for similar provincial tribunals. First Nation



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It is truly a one stop shop for all aspects of property tax management. It includes:

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- ✓ Collection and enforcement

assessment laws/by-laws also contain specific provisions governing the entire assessment appeal process including procedures that ARBs must follow.

In some cases, First Nations have encountered problems with outdated assessment law/by-law provisions particularly in the area of remuneration for ARB members. For example a First Nation had to make an amendment to its law because its provisions for ARB remuneration were 15 years old, and well below the provincial average rate of remuneration. Tax administrators typically review their assessment laws/by-laws annually and keep in contact with their ARB members, to ensure that the assessment laws/by-laws are current and the ARB is prepared in the event of an appeal.

Having an independent and impartial assessment appeal tribunal comprised of qualified persons is a fundamental element of property taxation, and First Nations have worked hard in ensuring that their property tax systems are built on this cornerstone. ■



TteS Chief Shane Gottfriedson, Hernando de Soto, TteS Councillor Fred Seymour, TteS Councillor Richard Jules

The focus of Mr. de Soto's remarks concerned the issue of poverty on reserve. "Why is this so? Why, in a country with such wealth and abundance of natural resources, are so many of Canada's First Nations living in poverty?" This same question has been asked about indigenous peoples, minority groups and entire nations around the world. Mr. de Soto has completed years of research to seek answers to this question, and has concluded that poor countries have property rights that are inadequately defined, difficult to understand, or often non-existent. Rich countries have well defined and easily understood property rights. Property rights matter because ultimately economies are not built on natural and human resources, but on the exchange of natural and human resources. According to Mr. de Soto, property rights systems enable a relatively easy trade of commodities, products and services. It is this uncomplicated business of trade which supports the creation of wealth for a country and its people.

In de Soto's opinion, it is not just a matter of creating private property or secure property rights; it also comes down to how easy it is to use that property in economic exchange. A property right that can be understood at a glance - that does not require extensive legal definition, review and verification - is going to create wealth.

Mr. de Soto likens property to the invention of the telephone: it enabled conversations but it didn't create the conversations. Similarly, property rights enable trade but they aren't trade itself. He feels that First Nations in Canada have been short changed. The existing system of First Nation property rights simply does not support economic exchange on anything approaching what is available in the rest of Canada. It does not provide property rights that are easily understood at a glance. According to de Soto, as long as this disparity continues, economic exchange will not occur on-reserve as fast as it does off-reserve. ■

International Economist Addresses Thompson Rivers University

Distinguished Peruvian author and economist Hernando de Soto, whose work has been cited by former President Bill Clinton as being a significant contribution to the worldwide reduction in poverty levels, visited Kamloops, BC in October 2013. He visited the First Nations Tax Commission, the Tulo Centre of Indigenous Economics, local First Nation leaders and Thompson Rivers University to speak about the application of his work to First Nations in Canada.



Tk'emlúps te Secwépemc (TteS) Chief Shane Gottfriedson, Chief Commissioner C.T. Manny Jules, Hernando de Soto, TteS Councillor Fred Seymour, TteS Councillor Richard Jules, Whispering Pines Indian Band Chief Michael LeBourdais

Loon River First Nation: Vital Service Delivery to Community and Taxpayers

When contemplating the implementation of property tax jurisdiction, First Nations think about how the community may benefit from the program. Loon River First Nation's experience represents an example of how the community and taxpayers have both supported and benefited from the additional community services made available through their property tax program. First Nations across the country are looking to see how other First Nation governments are applying their jurisdiction. Loon River First Nation is a leader in this regard.

Loon River First Nation (LRFN) is located 170km north of Slave Lake, Alberta. LRFN is part of Treaty 8 and has a total land base of 21,096.3 hectares spread over three settlements: Loon Lake 235, Little Prairie 237 and Swampy Lake 236.

LRFN offers a full range of services to its 540 members including Administration, Economic Development, Daycare, Consultation, Finance, Human Resources, Membership, Education K-12, Emergency Management, Housing, Health, Social Services and Public Works.

Northern Alberta, where LRFN is located, has significant oilfield and gas production, related process facilities and pipelines. A large part of the LRFN tax base is made up of these properties held by various industry companies.

The driving force behind wanting to implement property taxation, which LRFN did in 2007, was the need for a reliable water source and associated infrastructure. The tax dollars assisted in delivering this much needed service.

In 2010, a house fire on the reserve demonstrated the unfortunate inadequacies of fire protection services available to LRFN at that time. The home was burnt down and a family required emergency shelter.

LRFN Council took immediate steps to look into how they could update their fire protection services and decided to implement this important and life-saving service through property taxation.

As part of their financial planning, with assistance from the First Nations Tax Commission, LRFN proposed an

additional tax levy for a five-year term to help finance the necessary equipment.

Taxpayers were advised of the dire need and were asked to support the initiative and the additional levy on their tax bill. There was immense support from taxpayers, industry and the community. The taxpayers, who benefitted from the new services, agreed and shouldered the additional costs without any objections to support the First Nation.

LRFN Council was proactive and addressed the safety concerns for a safer community. With the additional funding, LRFN built a fire hall, purchased one fire truck and trained seven fire fighters.

In the Spring of 2011, the hot and dry weather sparked devastating forest fires that swept throughout northern Alberta. All available resources were pulled together and organized by the local municipal authorities in an effort to combat the worst fire emergency in decades. Homes in the community were endangered and all oilfield facilities in the outlying areas were at high risk. The Loon River



Loon River First Nation Fire Protection

First Nation fire pumper truck was part of the flotillas of equipment that battled the fires.

Due to the financial planning and subsequent emergency preparedness planning from the previous year, the community and by extension the taxpayers, were protected from the wild fires. The new fire protection services contained and prevented the spread of the fire to community and industry assets.

Since the fires in 2011, LRFN has increased trained firefighters to twelve and has added more equipment including a sewer truck, a grader, skid-steer, garbage truck and a backhoe.

The experience with the fire and LRFN response has strengthened the relationship and trust between Loon River and its taxpayers. The taxpayers are happy with the level the service and are open to improvements in service deliveries.

In addition to the fire protection service, the community has plans for using taxation revenue to help pay for installing a piped water line from a reliable source. This important water source will open the door for future developments such as a new recreation centre, a skate park, a ball diamond, expansion of the fire hall and an additional fire truck.

Visit the Loon River First Nation website for more information: www.loonriver.net ■

Songhees Wellness Centre: a Community's Dream Come True

A shining example of how First Nations are learning to prosper outside of the *Indian Act* and Government Funding

Thirty years ago the Wellness Centre was a community dream, eight years ago a Songhees Committee started the process of making the dream a reality, and on January 22, 2014, the Songhees Nation celebrated the grand opening of their long-awaited Centre.

The Songhees Nation, located on southeastern Vancouver Island near the City of Victoria, had first conceived of building a gym to house after-school and evening activities for the youth.

In 2005 the Songhees Nation and the Government of Canada settled the Rail Spur Claim, and the Songhees Council was able to set aside funds to begin the process of planning for their gym.

At that time, a community committee was formed to research and plan the facility. The committee and the Council collected the ideas with the guideline "if we could have anything we want, what would it look like?"



Songhees Nation Wellness Centre Exterior: the facility incorporates traditional elements and modern technology.



Grand Opening Ceremony of the Wellness Centre

Songhees has a limited land base and its government was operating out of a number of different buildings. The community wanted a facility where all of the programs and services could be housed in one location. They wanted a gathering place for all community members, from children to elders, as well as the ability to offer sports training, job training and arts and culture programs.

The Community came together and was very proud of the resulting plan. It included all of the aspects they felt the community required to thrive.

Songhees applied for government funding for the facility, and received only \$1m out of the \$24m required to build. Songhees began to think out of the box and, not wanting to diminish the community's vision, came up with a strategy to fund the building on their own.

Songhees implemented the First Nations Goods and Services Tax (FNGST) and entered into a revenue sharing agreement with Canada. That revenue stream, along with a lease agreement, was enough to securitize a long-term loan.

During this process, Songhees was working with the First Nations Tax Commission on implementing the *First Nations Fiscal Management Act* (FMA). In 2008, Songhees became the first First Nation in Canada to pass taxation and assessment laws under the FMA (they initially began collecting property tax under the *Indian Act* in 1995). Songhees is certified by the First Nations Financial Management Board, is a borrowing member of the First Nations Finance Authority as has passed a Financial Administration Law.

The Songhees Nation and its Wellness Centre is a shining example of how First Nations are learning to prosper outside of the *Indian Act* and government funding. Songhees credits the success to community involvement and support from the First Nation fiscal institutions.

Songhees invites those interested in learning more about the Centre and how they completed this project to contact them: www.songheesnation.ca ■

Register Now for the Program: Certificate in First Nation Tax Administration

This unique educational opportunity - delivered through a partnership between the Tulo Centre of Indigenous Economics, Thompson Rivers University and the First Nations Tax Commission - is designed to build the skill set for First Nation property tax administrators.

This program consists of eight courses, available through online and face-to-face learning environments, that provide the requisite skills to establish the legal framework to support property taxation. It teaches students how to establish effective property taxation policies that can be used to promote economic development and economic capacity building.

The program, developed and taught by industry leaders, includes real life case studies, relevant multimedia presentations and state of the art activity-based learning. Students are taught with quality real world information and are given opportunities to practice what they have learned in the classroom setting. This approach is intended to impart practical knowledge and confidence, ensuring that students acquire core knowledge and skills needed to implement and run a property taxation system.

There are varied and diverse requirements of First Nations and tax systems across Canada and the CFNTA has been developed with this in mind. The course material considers the differences when they occur and ensures the students are aware of the differences.

The *Certificate in First Nation Tax Administration* and its students are at the forefront of property taxation on First Nation lands. Graduates of this program are prepared to administer a high quality First Nation property taxation system.

Visit the Tulo Centre website (www.tulo.ca) for more information, including the schedule and a registration package. ■



First Nations Tax Commission
Commission de la fiscalité des premières nations

The First Nations Tax Commission offers a student bursary program to provide financial support to property tax administrators working in First Nations in Canada to attend courses in property tax administration and First Nation economics.

Bursaries include tuition, books and some travel costs. Bursary Program Package and application available online: <http://tulo.ca/bursary.htm>

Taxation Word Search

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